

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MARGARITA LÓPEZ TORRES, STEVEN
BANKS, C. ALFRED SANTILLO, JOHN J.
MACRON, LILI ANN MOTTA, JOHN W.
CARROLL, PHILIP C. SEGAL, SUSAN LOEB,
DAVID J. LANSNER, and COMMON
CAUSE/NY,

Plaintiffs,

v.

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

Defendants.
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**DECLARATION OF WILLIAM
LIPTON IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTIVE
RELIEF**

Index No. CV 04-1129 (JG)

WILLIAM LIPTON declares as follows:

1. I am currently the political director for the Working Families Party of New York State ("WFP"). I submit this declaration in support of Plaintiffs' motion for a preliminary injunction.

Background and Areas of Expertise

2. I have been doing political work in New York State for approximately 14 years, and have extensive experience in virtually every aspect of political campaigns.

3. I earned a B.A. in history in 1990 from Columbia College.

4. Since 1998, I have worked at the Working Families Party, a political party with local chapters throughout the state. WFP's headquarters are located at 88 3rd Avenue in Brooklyn, New York. WFP qualifies as a legally recognized

“political party” under New York’s election law because the party obtained more than 50,000 votes for its endorsed candidates in the 1998 and 2002 gubernatorial elections. Since its inception in 1998, WFP has endorsed candidates on the ballot in all of the statewide elections and New York City mayoral elections, and in the majority of elections for New York City Council seats. In addition, WFP has fielded its own candidates against Democratic or Republican candidates in local races in New York City and in Albany, Rockland, Erie, Nassau and Suffolk Counties.

5. I served as WFP’s Organizing Director for approximately two years, and have been WFP’s political director since 2000. I am responsible for formulating and implementing election plans for the WFP. In 2003, for example, I ran Letitia James’ general election campaign for City Council in Brooklyn. Also in 2003, I oversaw the campaigns of WFP’s slate of Supreme Court candidates in the Second Judicial District in Brooklyn and Staten Island.

6. With WFP, I have been directly involved in over 20 political campaigns in New York City and State. As a general rule, I focus WFP’s efforts in specific campaigns on fieldwork. Such efforts include, among other strategies, phone banking operations, door-to-door canvassing for petition signatures and for votes, house parties to raise campaign funds and establish support, “lit drops” in which campaign literature is placed under a voter’s door, distribution of campaign literature on the street (“street pieces”), letter campaigns to develop voter support for a campaign by mailing “dear friend” letters from a well-known local neighbor to his or her friends and neighbors, direct mailings, automated recorded phone calls to voters (“autocalls”) in support of a candidate, rallies, press conferences, and union, club and other endorsements

for a candidate.

7. Through this work, I have developed expertise in political campaign operations and planning in New York City and State for judicial and non-judicial candidates, including the costs and tasks involved in petitioning candidates onto the ballot and running primary and general election campaigns.

8. I have been retained by counsel for Plaintiffs in this matter, the Brennan Center for Justice at NYU School of Law, for a fee of \$100 per hour capped at \$2,000. I have not testified before in any court proceeding as an expert witness or otherwise.

9. The opinions expressed in this declaration are based principally on my experience working on campaigns, judicial and non-judicial, in New York City and State. In addition, as I explain below, I have obtained certain of the prices used in my analysis of petitioning and campaign costs from various vendors and have listed those as well as the assumptions underlying my analysis in Exhibit B.

The Burdens and Costs of Running Judicial Delegates

10. I was asked to analyze in depth the specific steps and costs that would be involved in attempting to run as a challenger Supreme Court candidate under the current selection system. My analysis envisioned such a campaign in the Second Judicial District, but the basic elements and burdens that would be faced by a challenger campaign in that District would apply, with some variations, to the other Judicial Districts across the State.

11. My analysis is included in a spreadsheet attached as Exhibit A. As noted, I made certain assumptions in the analysis based on my experience in campaigns,

all of which are listed in Exhibit B. The most significant assumptions I discuss below.

12. For a Democratic candidate for Supreme Court in the Second Judicial District who does not have the backing of the Kings County Chairman, in order to have a realistic chance to compete for the Party's nomination at the judicial convention in September it would be necessary to run slates of delegate and alternate candidates in each of the 24 Assembly Districts ("AD") across the Judicial District. To petition onto the ballot as a candidate for delegate/alternate, 500 signatures must be gathered from members of the individual's political party who live within the AD. N.Y. Elec. L. § 6-136(2)(i), (3).¹ Based on my experience in many petitioning operations, I would advise any challenger Supreme Court candidate to gather at least three times the number of signatures required by statute because s/he would invariably be challenged by the Party's candidates in court. In total, therefore, to have any reasonable chance of success placing delegate and alternate slates on the ballot I would advise the candidate to gather at least 1,500 signatures in each AD, *i.e.*, 36,000 signatures across the Second Judicial District.

13. To accomplish this petitioning operation, a challenger candidate would first need to assemble a campaign staff, including a campaign manager; administrative director; a fundraising director and staff; a database coordinator; a field director and assistant field director; and an employee who would need to work for three months just recruiting over 300 delegate and alternate candidates from the District. The campaign would incur basic overhead costs for rent, phones, and supplies.

¹ In Assembly Districts in which 5% of the number of enrolled members of the candidate's political party equals less than 500, the candidate need only gather that lesser number of signatures. N.Y. Elec. L. § 6-136(2)(i). Unless the political party in question has a very limited membership (and thus no significant likelihood of prevailing in Supreme Court races without cross-endorsement), however, candidates must gather the full 500 signatures. In the Second Judicial District, all Assembly Districts include sufficient Democratic voters that 500 signatures would be required as the statutory minimum.

14. Second, because the challenger would not have the support of the existing party infrastructure, the candidate would have to hire field managers (roughly one for every two ADs) and petitioners to gather signatures for a period of approximately 25 days. In addition, the campaign would need to rent passenger vans to transport the petitioning teams to their ADs every day. Inevitably, because of the temporary nature of petitioning work, the campaign would lose approximately 10 percent of its wages on workers who did not produce acceptable petitions for one reason or another. In addition, the campaign would need to have separate petitions printed with the names of the challenger delegate and alternate candidates on them for each AD at a cost of \$300 per AD, as per Astoria Graphics, the company to whom most campaigns go for their petitions in New York City.

15. In addition, the campaign would need to retain an election lawyer with a significant team to review the petitions before they are filed, to handle the inevitable onslaught of legal challenges to a challenger candidate's petitions, and to challenge the Party's candidates' petitions where appropriate. I have reviewed the declaration of Henry Berger, the most prominent election lawyer for Democratic candidates in New York State over the last 20 years, and his estimates for the costs of such legal assistance confirm my own estimates for such work based on my experience.

16. If a challenger campaign were successful in placing their slates of delegates and alternates on the ballot, the campaign would still be required to run "primary" campaigns against the delegate slates assembled by the Party's district leaders in each AD. For those campaigns, I would strongly advise the campaign to assemble a door-to-door operation to visit those voters in each AD who are most likely to vote for

the challenger's slate of judicial delegates. Door-to-door is generally considered to be the most effective form of voter contact and would be appropriate for this campaign because in the majority of cases, the campaign would need to convince voters to vote for candidates running for an office, *i.e.*, judicial delegate, for which these voters had never voted before. This is especially true because the campaign would need specifically to avoid contacting voters who are likely party loyalists, even though such voters are the ones most likely to have a history of voting for candidates for judicial delegate. The list of voters targeted by the campaign as likely to vote for the challenger's slate of judicial delegates would be constructed through an analysis of the voter file for the two boroughs. In addition, the operation would also need to include the design and printing of "street pieces" and four mailings, as well as a GOTV piece for distribution in the few days leading up to Election Day.

17. Finally, in the four days leading up to and including Election Day, the campaign would need to run a GOTV operation to get out the voters who are most likely to support the challenger slates of delegates. That operation would include, among other things, door-to-door contacts with the households previously contacted by the campaign from Saturday to Monday, an Election Day "pull operation" to encourage voters to vote through phone banking and door-to-door contacts, a palm card operation in key locations, and the monitoring of polling places by a team of volunteer lawyers.

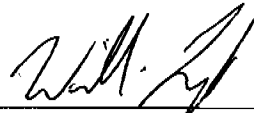
18. Each element of the campaign discussed above is itemized in greater detail in Exhibit A. Based on my analysis, a challenger candidate for Supreme Court in the Second Judicial District would face campaign costs of over \$1.3 million

or more simply to have a realistic opportunity to elect a majority of delegates and alternates to the judicial convention. In other words, a campaign for Supreme Court by a challenger candidate without the Party's backing would require overcoming burdens that are virtually insurmountable to most, if not all, potential candidates.

19. It is important to note, moreover, that my analysis assumes a rather lean campaign budget in numerous ways. In addition to making conservative assumptions throughout my analysis (*see* Exhibit B), I have not even included certain costs that I would advise any challenger campaign to incur. For example, I would advise the campaign to pay for attorneys to monitor each of the major polling sites, a function that is usually handled by the party leaders through volunteers.

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

Dated: Brooklyn, New York
June 1, 2004



WILLIAM LIPTON