MAZZARELLI DECLARATION

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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

DECLARATION OF ANGELA M. MAZZARELLI
IN SUPPORT OF A STAY OF THE JANUARY 27, 2006
PRELIMINARY INJUNCTION ORDER

ANGELA M. MAZZARELLI declares as follows:

1. I am a Supreme Court Justice from the First Judicial District. In December 1994, I was designated by the Governor of the State of New York to serve on the Appellate Division, First Department. My fourteen-year term as a Supreme Court Justice expires at the end of this year. I write in support of an application for a stay of the January 27, 2006 Order or a determination that it be made otherwise inapplicable to the 2006 Election. I will demonstrate below how, as a result of that Preliminary Injunction Order, I will suffer irreparable harm, undue hardship and expense.

2. Should this Order not be stayed and later the court's findings reversed on appeal, the irreparable harm that I and other similarly situated incumbent judges are likely to suffer is enormous. Once the primary election is held in 2006 -- an election which will necessarily disadvantage hard working incumbent judges -- there is no remedy to return anyone to their prior status. Should any of us not prevail in a primary, in which we are intrinsically disadvantaged,

who could repair the damage to the careers and lives of we incumbent judges? Who could repair our shattered judicial careers and return to us the opportunity to continue serving the People of the State of New York?

3. I am the only woman now sitting in my Court, the Appellate Division, First Department, and one of only two who have ever had the honor to serve on its bench. I am a graduate of Brandeis University and Columbia University School of Law. I have a diverse background in the law. I was a legal services attorney. I worked in the court system and I worked in private practice. I was elected to the Civil Court of the City of New York in 1985, after a contested primary.

4. In order to win that primary, I spent one year of my life campaigning. Preparation for an election is time consuming, it requires a committee of supporters, a finance committee to raise funds, a treasurer, volunteers and paid staff. It requires the creation and distribution of literature, posters, and other advertising materials. It requires that the candidate be devoted to campaigning which includes public appearances at all sorts of committee meetings and gatherings. All of this, of course, necessitates months to organize and fund, and even more time to implement. Certainly, during the period of my Civil Court primary, I was not able to devote full time to my private practice.

5. Thereafter, in 1988, I became an Acting Supreme Court Justice. In 1992, I was nominated by the Democratic and Republican parties at their respective judicial conventions, and elected to the Supreme Court. In 1994, I was designated by Governor Mario M. Cuomo to the Appellate Division and have since been re-designated two times by Governor George E. Pataki. As such, my qualifications have been rigorously reviewed by a number of screening panels,

including those of both Governor Cuomo and Governor Pataki. In addition, I have been rated qualified by the Association of the Bar and various other bar groups. And, I believe, I am respected by members of the bench and bar for my dedication to my work and the quality of my temperament and scholarship.

6. Until the January 27, 2006 Order was issued, I expected that, after additional screening, I would be re-nominated by the Democratic and Republican parties at their respective judicial conventions, and that I would not have to engage in a full throated contested primary or general election. This is because it has been traditionally the custom and practice for sitting Supreme Court Justices, absent good cause, to receive bi-partisan nomination for re-election. This is particularly so in my case because I have been designated to the Appellate Division by Governors of both parties and have served with distinction. Therefore, I have placed my undivided concentration on my judicial duties without concern for the upcoming election. Due to my long service as a judge, I have essentially been out of politics and the public eye for 20 years with the exception of the few months involving my Supreme Court nomination. I also expected that I would be able to remain out of politics.

7. However, as a result of the timing and nature of the January 27, 2006 Order, I have now been thrust into a political campaign on short notice, at an extreme disadvantage as against non-judge candidates for Justice of the Supreme Court. Because of the campaign restrictions placed upon me as a sitting Supreme Court Justice, pursuant to Title 22 of the Uniform Rules for Trial Courts [22 N.Y.C.R.R.], I have been prohibited from engaging in political activity effectively for 20 years and particularly, since my election to the Supreme Court more than thirteen years ago. This rule prohibits me from engaging in any political activity except during a "window period beginning nine months before a primary election, judicial nominating convention... or other party

meeting for nominating candidates for the elective judicial office" for which I have announced my candidacy.

8. On the other hand, anyone who is not restricted from self promotion or other means of obtaining publicity for themselves (a lawyer in private practice, an assembly member, state senator, term limited council member, or other public official with a high profile position: someone with wide name recognition, or someone with an in-place campaign organization, who has not been subject to any restrictions), will have a decided unfair advantage against me in a primary. Such a candidate could also have access to surplus funds from prior campaigns or personal wealth to defeat my candidacy. Unfortunately, I am not a person of independent wealth.

9. Had I known a year ago that I would be required to run in a primary election or had I held a judicial position, the nomination for which is by primary election, I would have spent at least the last six months in personally planning my steps to organize a primary campaign. I would have started my planning for the campaign well before the window period by doing non-prohibited activities. For example, I would have made lists of individuals who could, at the appropriate time, be approached to serve on my committee. I would have saved literature from successful campaigns to use as examples for mine. I would have observed other campaigns with an eye towards evaluating their techniques and personnel. By the date of the Order, I would have been several weeks into the additional activities permitted during the "window period."

10. As a result of the restrictions that I as an incumbent justice must obey, the injury I may suffer will be irreparable if the Order is not stayed. It is manifestly unfair to change the legal

landscape of the present election system with less than nine months notice. It is simply not fair or just to surprise anyone, and particularly an incumbent judge with a full docket[1] in this manner.

11. I do not have the personal funds necessary to wage an effective primary campaign, nor are such funds available to me. Not only am I now required to assemble a finance committee to raise enormous sums of money, but I am also required to put together an election team with no notice, interview and hire campaign personnel without funds, and campaign on my behalf. Running a contested election in Manhattan is a very expensive undertaking. Hundreds of thousands of dollars are necessary to be properly competitive. This is an especially difficult task for someone like me whose career has been devoted to public service including 20 years as a judge. The application of the primary election system to the 2006 election, while seemingly egalitarian, in fact favors only wealthy candidates who can pay the large sums of money necessary to start a primary campaign at this late date. Moreover, it does not serve the fair administration of justice nor of retaining experienced, qualified members of the judiciary.

12. Because the Preliminary Injunction Order was not issued until January 27, 2006, it further cut back the already short "window period" by more than two weeks. This period is even more abbreviated as the court Order did not specify the details for the primary. For example, the Order does not set forth the number of signatures required or the timing of the elections. The combination of the shortening of the "window period" and the sudden and unexpected need to compete in a primary election has caused chaos and placed me at a great disadvantage.

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[1] In 2004, the most recent year for which statistics are presently available, the Appellate Division, First Department heard 2720 appeals and decided 5528 motions. In addition, 981 oral applications for interim relief pending a ruling on a motion were presented to individual justices of the court.

13. Given the timing of the Preliminary Injunction Order, the shortened "window period," and the restrictions on my political activities by virtue of my current judicial office, I have suffered irreparable harm. I have been placed in an untenable situation economically, ethically and politically. As a sitting Supreme Court Justice, I am bound by strict ethical requirements. Given the timing of the District Court decision, I am without the opportunity to balance deliberately the obligations of my judicial office with the demands of an election campaign. It is simply an unfair surprise to me and all other similarly situated incumbents to disrupt our courts and precipitously thrust us into expensive primary elections. Only the wealthy, those with large sums of money at hand can enter a race so quickly.

14. In summary, the need to engage in a sudden and unexpected political campaign for re-election at this late date has the potential to distract and disrupt me from giving undivided attention to my duties as a Supreme Court Justice designated to the Appellate Division. It also puts me at an unfair disadvantage as to other non-judge candidates. During my service as a judge, I have taken very seriously the cannon that binds all of us who hold judicial office: that it is unseemly for a judge to seek publicity. Essentially, the life of a judge is cloistered, and for 20 years I have so restrained myself. To say the least, the need to engage in political activities at this point in my career, on an emergency basis, to organize a committee to raise funds and to devote considerable attention to raising public awareness of my candidacy places me in an untenable unfair position. It causes me unfair prejudice and, if not stayed, will subject me to irreparable harm. Once an election is held, its results cannot be undone.

Accordingly, I pray that the court stay the January 27, 2006 District Court Order so that it does not apply to the 2006 election cycle.

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

Dated: New York, New York

February 22, 2006

Angela M. Mazzarelli

BIRCH AFFIDAVIT

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

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MARGARITA LOPEZ TORRES, STEVEN BANKS, C. ALFRED SANTILLO, JOHN J. MACRON, LILI ANN MOTTA, JOHN W. CARROLL, PHILIPI C. SEGAL, SUSAN LOE B, DAVID J. LANSNER, and COMMON CAUSE/NY,

Plaintiffs-Respondents,

AFFIDAVIT IN SUPPORT

-against-

NEW YORK STATE BOARD OF ELECTIONS; NEIL W. KELLEHER, CAROL BERMAN, HELENA MOSES DONOHUE, and EVELYN J. AQUILA, IN THEIR OFFICIAL CAPACITIES AS COMMISSIONERS OF THE NEW YORK STATE BOARD OF ELECTIONS,

Defendants-Appellants,

NEW YORK COUNTY DEMOCRATIC COMMITTEE, NEW YORK REPUBLICAN STATE COMMITTEE, ASSOCIATION OF JUSTICES OF THE SUPREME COURT OF THE STATE OF NEW YORK, ASSOCIATION OF JUSTICES OF THE SUPREME COURT OF THE CITY OF NEW YORK, AND JUSTICE DAVID DEMAREST, INDIVIDUALLY, AND AS PRESIDENT OF THE STATE ASSOCIATION,

Defendant-Intervener-Appellants,

ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Statutory Intervener,

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STATE OF NEW YORK

COUNTY OF RICHMOND

James Birch, John P. Connors, John Z. Marangos, Robert Mulhall and Mark Piazza each being duly sworn deposes and say:

1. We constitute the Committee on the Election of Justices to the Supreme Court of the State of New York for the Richmond County Bar Association and are also registered voters in the County of Richmond and as such we are directly affected as voters by the decision rendered in this proceeding.

2. We submit this affidavit in support of the within application for a stay pending appeal of the decision and order in the within action of the Honorable John Gleeson a Judge of the United States District Court for the Eastern District of the State of New York.

3. The decision of Judge Gleeson spoke to a constitutional objective but in effect serves to deny equal protection as prescribed by the fourteenth amendment of United States Constitution, to the people of Staten Island.

4. Pursuant to Article 6 of the Constitution of the State of New York and Section 140 of the Judiciary Law of the State of New York, our State is divided into twelve judicial districts.

5. Richmond County and Kings County comprise the Second Judicial District. See Jud. Law Section 140, and Article 6 of the Constitution of the State

of New York.

6. The effect of the District Court decision in directing an open primary will be to disenfranchise the residents and voters of Richmond County (Borough of Staten Island).

7. The 2005 Election Enrollment totals(annexed hereto as Exhibit A) reveal that the total number of enrolled Republicans in Richmond County was 80,342 as opposed to Kings County which had an enrollment of 131,209.

8. The 2005 Election Enrollment totals also reveal that the total number of enrolled Democrats in the County of Kings to be 904,075 to Richmond County's 117,215 almost nine times larger.

9. If the combined total number of Democratic and Republican registered voters in Richmond County, were to cast their votes for one candidate in all probability the candidate would be defeated due to the great disparity of population (904,075 registered Democrats alone in Kings County).

10. Within approximately five years the terms of three of five of the current Justices of Supreme Court in Richmond County terms expire at which point in all probability they would not be re-elected, in an open primary as directed by Judge Gleeson. The net result of the order of Judge Gleeson, would be that no resident of Richmond County would again be elected to serve as Supreme Court Justice.

11. This would also mean that no resident of Richmond County could sit in the Appellate Division, the State's intermediate appellate court as to be appointed a candidate must be an elected Supreme Court Justice. See Article 6, Section 4 of the New York State Constitution.

12. The lack of equal protection becomes even more clear when considering there should exist one justice for every 50,000 people that comprise the population. See Article 6, Section 6(d) of the New York State Constitution.

13. As the County's population is currently in excess of 450,000 Richmond County is entitled to nine Justices of the Supreme Court. Pursuant to Judge Gleeson's order, Richmond County would have none.

14. Judge Gleeson's determination grants ultimate relief to the plaintiff's without considering the disenfranchising of the voters of Richmond County.

15. We also do not speak to a dilution of one man one vote to elect Supreme Court Justices, we speak to a total disenfranchisement. Cf. Wells v. Edwards, 409 US 1095 (1973).

16. The United States Supreme Court has often noted the general principal of population equality and applied while allowing for some deviation. See Abate v. Mundt, 403 US 182 (1971); Morris v. Bd. Of Estimate , 831 F2d 384 (2nd Cir., 1987) affirmed 489 US 688 (1989).

17. The case at bar constitutes total deprivation of Richmond County's

right to elect its own jurists in the guise of preliminary relief.

18. The harm imposed by Judge Gleeson's "temporary remedy" of direct primary election, at least with respect to Richmond County, is greater than the perceived evil. While the "chief virtue of the primary system..." assume(s) that intra party competition (will be) resolved in a democratic fashion" (citations omitted)", in Richmond County it sounds a death knell for Richmond County residents seeking election to the position of Justice of the Supreme Court in the Second Judicial District.

19. The residents of Richmond County lose not only their right to compete for elective office under Judge Gleeson's remedy, but also lose the "effectiveness of their votes" Baker v. Carr, 369 US 186 (1962). Judge Gleeson found that the current system "prevent(ed) competition among candidates and deterr(ed) voter participation", with respect to Richmond County, his remedy increases the perceived evil.

John Z. Marangos Esq.

Mark Piazza Esq.

Robert Mulhall Esq.

James Birch Esq.

John P. Connors, Jr. Esq.

Sworn to before me this
15th day of February, 2006.

Notary

DENISE MARANGOS
NOTARY PUBLIC, State of New York
No. 01MA6048997
Qualified in Richmond County
Commission expires October 2, 2006

Exhibit A

St. Lawrence	25,429	23,556	2,538	736	164	273	547	233	0
Steuben	32,375	15,110	1,983	791	192	219	508	285	0
Suffolk	342,316	279,658	28,213	20,857	2,711	2,486	6,119	5,186	8
Sullivan	17,800	23,315	1,754	1,217	131	281	396	299	0
Tioga	16,228	8,961	1,297	381	102	153	230	169	0
Tompkins	16,806	26,777	1,964	367	169	1,248	384	127	0
Ulster	34,824	38,496	3,990	2,697	359	1,321	885	526	4
Warren	22,971	10,186	1,688	576	116	269	338	129	0
Washington	19,008	9,646	1,714	638	121	162	373	155	0

Thursday, November 3 2005

NEW YORK STATE BOARD OF ELECTIONS
COUNTY ENROLLMENT TOTALS
01-NOV-05

OUTSIDE NYC

County	Republican	Democratic	Independence	Conservative	Working Families	Green	Liberal	Right to Life	Marijuana Reform
Wayne	26,265	14,692	2,313	1,476	196	193	570	328	3
Westchester	168,298	263,299	18,281	11,262	1,426	1,391	2,911	1,996	0
Wyoming	12,429	6,732	902	479	72	57	190	177	0
Yates	7,955	3,710	498	238	46	67	104	86	2
SUB TOTAL	2,595,066	2,562,555	236,613	132,198	19,636	26,031	48,237	31,396	141

NEW YORK CITY

County	Republican	Democratic	Independence	Conservative	Working Families	Green	Liberal	Right to Life	Marijuana Reform
Bronx	53,678	504,639	13,198	3,833	2,235	570	3,934	2,062	5
Kings	131,209	904,075	25,313	5,243	3,695	4,251	6,302	2,819	10
New York	127,605	716,557	28,235	2,323	1,615	4,158	5,239	1,482	12
Queens	154,681	666,729	21,336	7,014	2,392	1,817	5,817	2,552	2
Richmond	80,342	117,215	6,600	4,481	818	395	1,576	957	0
SUB TOTAL	547,515	2,909,215	94,682	22,894	10,755	11,191	22,868	9,872	29
STATEWIDE TOTAL	3,142,581	5,471,770	331,295	155,092	30,391	37,222	71,105	41,268	170

NEW YORK STATE BOARD OF ELECTIONS
COUNTY ENROLLMENT TOTALS
01-NOV-05

OUTSIDE NYC County	Republican	Democratic	Independence	Conservative	Working Families	Green	Liberal	Right to Life	Marijuana Reform
Albany	50,169	101,888	8,223	3,196	577	1,094	939	478	0
Allegany	14,767	7,101	855	407	102	92	197	124	0
Broome	52,369	46,814	4,481	1,545	478	757	962	460	0
Cattaraugus	21,531	18,315	1,735	1,120	189	168	473	350	2
Cayuga	20,486	17,040	2,061	1,420	151	209	430	194	0
Chautauqua	31,036	31,360	4,492	2,054	292	287	787	445	3
Chemung	24,467	17,656	2,316	632	157	152	457	282	0
Chenango	14,863	8,189	1,271	488	124	175	292	138	1
Clinton	17,496	17,779	2,276	437	114	238	622	186	2
Columbia	14,466	12,840	2,093	1,424	96	307	293	145	0
Cortland	12,070	9,433	1,260	456	95	160	180	55	0
Delaware	15,600	8,792	1,219	548	60	168	236	108	0
Dutchess	59,185	53,885	6,726	3,520	466	795	1,167	912	2
Erie	191,247	333,881	20,170	14,068	2,073	2,283	5,782	4,174	35
Essex	14,277	6,744	1,401	199	40	136	221	73	0
Franklin	11,489	10,453	1,321	367	62	138	209	120	1
Fulton	18,181	7,618	1,085	407	98	92	226	101	1
Genesee	17,206	10,104	1,375	876	122	114	357	237	3
Greene	14,314	7,366	1,221	893	71	125	188	163	0
Hamilton	3,375	1,044	141	54	3	14	15	11	0
Herkimer	21,476	11,269	1,727	507	91	114	288	125	1
Jefferson	28,780	18,043	2,567	822	171	171	542	228	1
Lewis	10,179	4,823	569	246	33	42	139	79	0
Livingston	18,757	11,107	1,491	798	96	187	360	178	1
Madison	19,478	11,795	2,140	884	155	215	396	190	0
Monroe	154,245	170,935	14,545	8,271	1,055	1,699	2,797	1,600	62
Montgomery	12,585	11,587	1,248	629	87	82	302	165	0
Nassau	358,848	324,406	19,621	9,880	1,498	1,595	4,634	3,173	4
Niagara	51,052	60,810	4,126	2,859	600	487	1,473	1,145	0
Oneida	51,986	42,843	4,886	1,559	255	242	829	467	0
Onondaga	102,476	99,253	10,820	4,874	1,114	1,379	1,982	1,297	1
Ontario	29,852	20,197	2,783	1,272	142	378	563	237	0
Orange	80,158	69,744	7,094	3,792	535	815	1,190	995	0
Orleans	12,977	6,727	854	520	106	72	256	144	0
Oswego	42,409	21,706	3,445	1,937	263	305	788	365	0
Otsego	14,829	10,674	1,445	412	104	236	240	138	2
Putnam	24,726	18,584	2,570	2,549	133	227	369	352	0
Rensselaer	29,369	27,971	5,378	5,147	793	457	702	347	1
Rockland	45,534	81,346	4,592	3,822	419	393	832	752	0
Saratoga	69,246	35,203	6,039	1,954	275	643	839	337	1
Schenectady	31,878	35,562	3,842	2,600	364	354	641	358	0
Schoharie	7,908	5,023	806	323	44	96	121	60	0
Schuyler	5,922	3,939	518	224	60	114	153	84	0
Seneca	9,098	6,568	650	491	68	104	213	128	0

KOHM DECLARATION

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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

DECLARATION OF ROBERT C. KOHM
IN SUPPORT OF A STAY OF THE JANUARY 27, 2006 PRELIMINARY INJUNCTION ORDER

ROBERT C. KOHM declares as follows:

1. I am a Supreme Court Justice, Eleventh Judicial District. My fourteen - year term as Supreme Court Justice expires at the end of this year, and as a result of the January 27, 2006 Preliminary Injunction Order, I will suffer undue hardship and expense, unless that Order is stayed pending appeal, or otherwise made inapplicable to the 2006 Election.

2. Until the January 27, 2006 Order was issued, I had no intention of engaging in extended political activity as it has been traditionally the custom and practice for sitting Supreme Court Justices, absent good cause, to receive their party's nomination for re-election. This has allowed me to concentrate on my judicial duties without concern for the upcoming election and I have essentially been out of the public eye these thirteen years.

3. I am put at an extreme disadvantage as against non-judge candidates for Justice of the Supreme Court because of the campaign restrictions placed upon me. As a sitting Supreme Court Justice, pursuant to Title 22 of the N.Y.C.R.R., I have been prohibited from

engaging in political activity, since my election more than thirteen years ago. I am prohibited from engaging in any political activity except during a "window period beginning nine months before a primary election, judicial nominating convention ... or other party meeting for nominating candidates for the elective judicial office" for which I have announced my candidacy. In this case, had I known I would be the subject of a Primary Election, I could have begun my campaigning as of January 12, 2006. I am not a member of a political club and have not been for more than sixteen years. During that period my Assembly District has been redistricted several times. The result is that I do not know the District Leader where I live. Many of the District Leaders have retired or died during the past sixteen years and have been replaced by persons that I do not know. This places me at a terrible disadvantage to someone who is actively engaged in local politics and is known to local district leaders who I must ask to carry my petitions. On the other hand, any non-judge, a lawyer, an assemblyman, senator or other public official with a high profile position or somebody with wide name recognition will have a decided advantage against me in a primary and may even use prior left over campaign funds or personal wealth to defeat my candidacy.

4. The Preliminary Injunction Order was not issued until January 27, 2006, thereby further cutting back the already short "window period" by more than two weeks. The combination of the shortening of the "window period" and the sudden and unexpected need to compete in a Primary Election has placed me at a great disadvantage and is extraordinarily disruptive to my daily duties as a sitting Justice of the Supreme Court.

5. I served as a Captain in the U.S. Army during the late 1960's. Upon my discharge I worked briefly for a small law firm before becoming an Assistant District Attorney. I left the District Attorney's Office to become the Principal Law Clerk to the Honorable Edwin

Kassoff and held that position for eighteen years before being elected to the Civil Court and then the Supreme Court. During this period my wife and I raised three sons, sending them to Catholic elementary school, Catholic High School and Fordham and St. John's Universities. My wife stayed at home to raise our sons and all of or savings was spent on tuition and tuition related items. I do not have the personal funds necessary to wage an effective primary campaign, nor are such funds available to me. Not only am I required to raise enormous sums of money, but I am required to put together an election team with no notice, hire campaign personnel without funds, help raise funds and campaign on my behalf. Practically speaking, given the suddenness of the Preliminary Injunction Order, and the shortened "window period," I will suffer irreparable harm as a sitting Supreme Court Justice who is a candidate for re-election if the status quo is not protected, and the Injunction not stayed pending appeal, or at least made inapplicable to the 2006 Election.

6. Moreover, I believe that the need to engage in a sudden and unexpected political campaign for my office will be a distraction from, and cause a severe disruption to, my duties as Supreme Court Justice and I will be distracted by the need to engage in political activities to raise public awareness of my candidacy.

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

Dated: New York, New York
February 16, 2006

JUSTICE ROBERT C. KOHM

GANGEL-JACOB DECLARATION

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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

DECLARATION OF PHYLLIS GANGEL-JACOB RELATING TO A REQUEST TO STAY THE JANUARY 27, 2006 PRELIMINARY INJUNCTION ORDER

PHYLLIS B. GANGEL-JACOB declares as follows:

1. I am an Associate Justice, Appellate Term - First Department, a position to which, as a sitting Justice of the Supreme Court, I was appointed in 2001, and I submit this declaration in support of the Defendants' application for a stay of the January 27, 2006 Preliminary Injunction Order (the "Order").

2. I was elected to the New York Supreme Court in November 1993, after being nominated by the Democratic District Convention. When elected to the Supreme Court, I was already an appointed Acting Supreme Court Justice (since 1989) and a Judge of the New York City Civil Court. I was elected to the Civil Court in 1984, after having run a contested, county-wide primary election against 'the County's candidate.' I was also designated in 1993 as interim Supreme Court Justice by then-Governor Cuomo, but due to a partisan dispute the Senate did not consider any such designations in that year. I have thus practical experience with the election processes relative to judicial positions in New York. Prior to entering the race for Civil

Court, I had not been previously involved in any political organization, and neither I nor anyone in my family knew anything about party leaders and political clubs or had heard of Mr. Farrell.

3. The New York State Constitution mandates the popular election of Justices of the Supreme Court. The legislature has long had in position a convention system for party nomination of candidates for that election. I was found 'highly qualified' by the New York County Democratic screening panel as a candidate for that District Convention three times, and each time I carried on an active campaign both before the election of delegates in September and in the few weeks between that election and the convention. I visited clubs and spoke, attended club fundraisers, and sent out mailings that explained my experience and qualifications to club members and to those elected as delegates and alternate delegates to the Convention. I and my supporters made a very large number of telephone calls to delegates. There were approximately 200 delegates and alternate delegates and several thousand interested club members and screening panel members, all of whom had a chance to pass on my candidacy. I do not have precise figures, but I believe that I spent less than $10,000, perhaps not much more than $5000, on each such effort.

4. In my 1984 primary county-wide election campaign, I spent over $130,000, of which $40,000 was the cost of a single mailing to Manhattan Democrats. My spending in the November races was negligible, but in counties where no single party predominates as Democrats do in the City, judicial candidates must face large expenditures for that race. But even there, there seems to be a reciprocal respect for incumbent judges that reduces the expense (and risk) of running for incumbents.

5. In my opinion the impact of doing away with the convention system, as Judge Gleeson's Preliminary Injunction does, is to multiply the expense of running for office a

HUNDRED-FOLD, for I am told that a county-wide primary must necessarily cost in the neighborhood of $500,000. That money must be raised by candidates, both incumbent and not. Present rules affecting political activities of judges limit that activity to a nine-month window, giving non-sitting candidates an edge over incumbents. The stresses of dealing with a popular election will – during that nine-month window that incumbents have – impose great time pressure on judges and must adversely affect the efficiency and quality of work done by the courts – however nobly a judge or justice may strive to do both jobs.

6. The expense of primaries as compared to the convention system is daunting. Finally, the extreme pressure it will put on all judges up for re-election is very great, and the consequences of that pressure cannot be foreseen, but must be deleterious. All of these factors must be weighed in making the determination that a stay of the Order is proper. Abstracting for the moment whether success for the plaintiffs in this case is likely, it seems clear to me that there will be irreparable harm that will be done by the Order, both to the justice system and to those who seek election or re-election to a judicial position. The cost to candidates must be even more oppressive for members of minority and disadvantaged communities or to women, whose average earnings are still less than those of men of similar experience. The disadvantages that the proposed Order create for incumbent judges threatens the continued benefit of having incumbent judges on the bench, and this collective experience is essential to the effectiveness of the court system. A stay of the Court's order in this case is therefore justified.

7. I am without personal interest in judicial elections, for under the State constitution I must step down at the end of this calendar year and cannot again stand for election. Judge Gleeson understood my testimony as admitting that 'without the support of county leader Farrell, a candidate for the Supreme Court cannot succeed.' What I tried to testify to, however,

was that I had, on the contrary, won more delegates than he had (and even in Harlem). Nor do I believe that Judge Gleeson need have been so troubled by the fact that my husband became a Democratic District Leader during my active pursuit of nomination to the Supreme Court. I am glad that my husband involved himself in the local party club, which like other clubs was active in running slates for the District Convention; within four years of joining the club, he was democratically endorsed in his unopposed run for District Leader, an unpaid, volunteer party office with almost no formal power other than participation in the County party structure. It was club support that he sought, and being a district leader was the service which earned that support. And I counted on his support, for we worked and campaigned as a team, for the goal of my election as Justice.

8. To achieve that goal I was repeatedly required to explain my qualifications to, and meet with and see the viewpoints of, many individuals. Although the system may require some reform to guard against corruption and may work better in some areas than in others, in the end, I thought the process was both democratic and wise. My testimony was meant to state and to support that conclusion through my own experience. And I am glad to see that Chief Judge Kaye is of the opinion that the convention system might be preserved if significantly improved by adoption of some recommendations made by the recent report of the Feerick Commission, a commission that she herself had put in motion.

Dated: New York, New York
February 16, 2006

Phyllis B. Gangel-Jacob

PHYLLIS B. GANGEL-JACOB

SCHLESINGER DECLARATION

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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

DECLARATION OF ALICE SCHLESINGER RELATING TO A REQUEST TO STAY THE JANUARY 27, 2006 PRELIMINARY INJUNCTION ORDER

ALICE SCHLESINGER declares as follows:

1. I am a Supreme Court Justice, First Judicial District, of the State Supreme Court, New York County, and I submit this declaration in support of the Defendants' application for a stay of the January 27, 2006 Preliminary Injunction Order (the "Order").

2. Specifically, I wish to point out that conclusions in the Order are inconsistent with the words and the tenor of my testimony with respect to my candidacy for Supreme Court Justice. Judge Gleeson concluded that "the witnesses from the First District confirmed that, without the support of county leader Farrell, a candidate for Supreme Court Justice cannot succeed." (Order at 25). This statement is incorrect, and contrary to everything I testified to at the hearing.

3. As I testified at the hearing, when I decided to run for the office of

Supreme Court Justice in 1995, I went to the screening panels, was reported out favorably and then I called the judicial delegates, district leaders, and the county leader in order to gain support at the Judicial Convention. I met with Denny Farrell for breakfast at which time he advised me to get delegate support, and I tried to do so. (Tr. 1963-1964).

4. I attended the Judicial Convention, and eventually withdrew from the process because I did not have enough support to win. (Tr. 1964). I again ran for the office of Supreme Court Justice in 1997, at which time I again was reported out of the panel, met for lunch with Denny Farrell, at which time he again told me to see what I could do to gain delegate support. I was more successful in gathering support this time, because people had known me and I had been talking to people, and some of the delegates in fact were attorneys who had appeared before me and respected me. Although my name was put forward at the Judicial Convention, and "seconded," I did not win the nomination that year. (Tr. at 1965-1966).

5. The next time I was reported out of the screening panel was in 1999. By this time, I knew that I had to obtain as much support from the Judicial Delegates as possible. I called every delegate and district leader toward this end. I had a team of volunteers who also helped me. By my count, I had 27 Judicial Delegates committed to me just prior to the Judicial Convention. (Tr. 1967-1968).

6. I met with Denny Farrell immediately prior to the Judicial Convention and told him that I believed I had the support of 27 Judicial Delegates. He told me that he believed I had, by his count, 28 Judicial Delegates, evidencing to me that he had been keeping a very close watch on the count. Mr. Farrell also indicated to me that he thought I had more support than any other candidate and that, accordingly, he would not oppose my candidacy. (Tr. at 1967-1968).

My husband's role of campaign manager was much more important than his status as district leader, in helping me garner the necessary votes.

7. It is my belief, that Mr. Farrell understood that, with or without his support, I was going to win the nomination. (Tr. at 1979-1980).

8. Although I paid my respects to the Chairman of the New York County Democratic Committee, it is my opinion that Mr. Farrell 's support was not necessary to my success in obtaining the nomination of the Democratic Party to be its candidate for Supreme Court Justice. Judge Gleeson's finding to the contrary is not based on my testimony and is wrong.

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

Dated: New York, New York
February 23, 2006

JUSTICE ALICE SCHLESINGER

LOBIS DECLARATION

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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

DECLARATION OF JOAN B. LOBIS
IN SUPPORT OF A STAY OF THE JANUARY 27, 2006
PRELIMINARY INJUNCTION ORDER

JOAN B. LOBIS declares as follows:

1. I am a Supreme Court Justice, First Judicial District. My fourteen-year term as Supreme Court Justice expires on December 31, 2006, and, as a result of the January 27, 2006 Preliminary Injunction Order issued by the United States District Court in this matter ("Order"), I would suffer undue hardship if this Order is not stayed pending appeal, or otherwise made inapplicable to the 2006 Election.

2. Until the Order was issued, I had no intention of engaging in any kind of political activity. The tradition and custom relating to incumbent Supreme Court Justices has been, absent good cause, to receive their political party's nomination for re-election. This, of course, allows Judges to perform their judicial duties without concern for or distraction by politics.

3. This is particularly important to me, given my history on the bench.

4. I have never had to organize a political campaign, and I have the privilege of having always been found "qualified" or "highly qualified" by various Independent and Bar Association Screening Panels. My judicial career began in 1984. While I was employed as a supervising attorney at a pre-paid legal service plan of a union for city employees, I was asked to apply for one of ten newly created Housing Court Judge positions. The request came from a group of gay and lesbian community leaders, including M.L. Henry, the Executive Director of the Fund for Modern Courts. This was part of a movement to include gay and lesbian lawyers in the pool of candidates for various judicial offices. I was selected for the position by a panel of Administrative Judges of the New York City courts, and found "qualified" by the Association of the Bar of the City of New York.

5. In 1987, a candidate for re-election to the Civil Court was nominated to run for Supreme Court in New York County. The Election Law and Democratic Party rules provided for a replacement candidate to be selected by the County Committee from candidates found qualified by an Independent Screening Panel established by the Democratic Party. After being found "qualified" by the Panel, I was among three candidates to appear before the County Committee. At the time I was totally unfamiliar with the political process as it relates to selection and election of judges. Nevertheless, within a period of a week or two, the Committee selected me as the Democratic Party candidate, and was then elected to the Civil Court for a ten-year term. Two years later, I was designated as an Acting Supreme Court Justice.

6. In 1992, I sought the Democratic Party nomination to the Supreme Court. Again I applied to the Independent Screening Panel, and was found "qualified." Delegates to the Judicial Convention selected me as a nominee, and I received favorable ratings by all the Bar

Associations that were screening candidates that year. That brief period was my last "brush" with politics.

7. All in all, then, my contact with the political process has been quite minimal, and long ago. To have to plunge into the political process at this point would be burdensome and onerous.

8. Of course, it is not just the fact that I have not been involved in the political process for over thirteen years (even though "involved" is a far cry from my very limited experience) that would make a primary election so disruptive. More significant is the fact that participation in the political process over the next ten months would be a major distraction from my professional duties, and has the potential of raising a host of ethical issues. I would have to immediately start going to political clubs and dinners; I would have to speak at political club events; I would have to start raising money for the campaign; I would have to hire an entire campaign staff (campaign consultants; direct mail companies; an election lawyer; a campaign manager; a designating petition coordinator; field operatives; election day workers; and the like); and I would soon have to start preparing for endorsement meetings in political clubs throughout the borough of Manhattan.

9. Not only would this entire process be wholly foreign to anything I have done, but it would also be totally at odds with my professional life for the last twenty years. As a Judge, I am prohibited from being involved in politics. I have been extremely careful to abide by this proscription.

10. More than that, I would be at an extreme disadvantage in the likely event that a wealthy lawyer runs against me -- especially if that candidate is an elected official or otherwise well known. I am a person of modest means, and would have to spend a considerable amount of time

raising an exorbitant amount of money to run a race in Manhattan. In that I am forbidden from directly asking people to contribute to my campaign, the process would become severely burdensome. Moreover, an elected official who has successfully raised money for other campaigns and who, therefore, has a fundraising network in place would undoubtedly enjoy a decided advantage should he or she choose to run.

11. Furthermore, the natural pool of contributors to judicial races is the legal profession. This unexpected primary process has already led to the unfortunate and unwanted situation where lawyers appearing before me have alluded to the primary. This is not only extremely uncomfortable for me as a sitting Justice, and no doubt for them as well, but the line between social niceties and improper conduct is sometimes a fine line.

12. Since my election to Supreme Court, I have presided over a Civil Part. For the last ten years, however, I have presided over a matrimonial part. In this capacity, I have great discretion over attorneys fees. The laws in New York allow matrimonial litigants to seek counsel awards during the pendency of an action. This role further complicates the life of a judge raising money and running for re-election.

13. Finally, the proposed primary campaign has the potential of severely distracting me from my professional duties as a Justice. To be a candidate for the next ten months would undoubtedly hamper my ability to do my job. I will not allow that. I cannot and will not abandon my job. It would not be fair to the attorneys who appear before me, or to the litigants whom they represent. As such, though I would campaign extensively, I cannot dedicate myself to the effort in the same way a non-judge would. Thus, I would be running for office with one hand tied behind my back.

14. For all these reasons, I believe that I would be irreparably harmed if the remedy crafted by Judge Gleeson is allowed to stand pending appeal. I respectfully request that it be stayed. Without a stay, it is highly unlikely that I would be re-elected, and my judicial career would come to an end. The damage could not be remedied.

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

Dated: New York, New York,
February 23, 2006

Joan B. Lobis

JOAN B. LOBIS