

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.

REPLY DECLARATIONS IN
SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTIVE
RELIEF

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.

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RECORD

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**CORRECTED 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 successfully fielded its own candidates against Democratic or Republican candidates in numerous local races in New York City and in Albany, Rockland, Erie and Nassau 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 voters, house parties to raise campaign funds and establish support, “lit drops” in which campaign literature is placed under a voter’s door, letter campaigns to develop voter support for a campaign by mailing “dear neighbor” letters from a well-known local neighbor to residents of a community, direct mailings, distribution of campaign literature on the street (“street pieces”), automated recorded phone calls to voters (“autocalls”) in support of a candidate, rallies, press conferences, union and other endorsements for a candidate, and

petitioning drives to place candidates on a ballot.

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 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 250 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 \$1.4 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: New York, New York
August 26, 2004



WILLIAM LIPTON

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**DECLARATION OF THOMAS K.
KEEFE IN RELATION TO
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTIVE
RELIEF**

THOMAS K. KEEFE declares as follows:

1. I am an Albany City Court Judge. Prior to my election, I was an attorney and active in Democratic Party politics. I submit this declaration in relation to Plaintiffs' motion for a preliminary injunction.

Background

2. I reside in Albany and have voted regularly as an enrolled Democrat in the 3rd Judicial District since the voting age was lowered in 1972.

3. I was admitted to the bar in 1983. I served as counsel to the Assembly Environmental Conservation Committee from 1983 until August 1985, when I opened a full-time private law practice in Albany. I remained in full-time private law practice until I was elected as a City Court judge in November 2002.

4. Prior to declaring my candidacy for Albany City Court in March 2002, I was active in politics, first in my home town of Saugerties, Ulster County, New York and then in Albany. At age 16, I organized the town campaign for McCarthy for President. Thereafter I was essentially a full-time politician recruiting, organizing and executing campaigns for a variety of offices. My law practice included an emphasis in election law. Through that experience, I am very familiar with the nominating processes of the Democratic Party.

5. I was elected as a City Court Judge in the 2002 election in a hotly contested primary against the legendary Albany Democratic machine. I petitioned directly onto the primary ballot for that office by gathering signatures.

Supreme Court Selection Process

6. In 1991, I was a principal in the Coalition for Independent Judicial Nominations. We sought to open up the Supreme Court nomination process by running independent slates of delegates for the judicial nomination convention in the Third Judicial District. Through that experience, I am very familiar with how the Democratic Party's judicial delegates and alternates are selected within the Third Judicial District and with the barriers that prevent Supreme Court candidates without the party organization's backing from winning the nomination. The following testimony concerning the current system of judicial conventions used to select justices of the Supreme Court is derived from my experiences as a Democratic Party activist for many years, as a recruiter and organizer of a challenger slate of delegates in 1991, and as a registered Democratic voter in the 3rd Judicial District who has voted regularly in judicial and other elections for over 30 years.

7. Based on my extensive experience, it has become clear that the current Supreme Court selection system was designed to ensure that party leaders, rather than the rank-and-file party members and voters, maintain full control over the choice of who will be a justice and when.

Party Leaders' Control over Delegate Selection

8. The first step in the Supreme Court selection process is the selection of judicial delegates and alternate delegates in each Assembly District ("AD") or portion of an AD pursuant to N.Y. Elec. L. § 6-124. Judicial convention delegates are elected from a district defined by the portion of each AD within a single county. Thus, if an AD is entirely within one county, it forms a single district for electing delegates, but if it crosses a county line, it is divided into multiple districts.

9. In my experience, in most years in the Third Judicial District there have been Supreme Court vacancies to fill. To do so, the county Democratic Party committee members choose delegate candidates to be selected from the judicial delegate districts within their counties, pay for the costs of printing petitions, and gather the necessary signatures to make them delegates. Because the committee members gather signatures for many offices at once, they routinely qualify their chosen delegates.

Barriers to Insurgent Supreme Court Candidates at the Delegate Selection Stage

10. Any candidate for Supreme Court who does not have the support of the county party committees faces insurmountable structural and practical barriers in the current statutory selection system.

11. The Third Judicial District includes 24 of the districts from which delegates are selected (*i.e.*, ADs and portions of ADs that cross county lines) covering

seven counties (Albany, Columbia, Greene, Rensselaer, Schoharie, Sullivan, and Ulster). These districts are not natural units. No other public office or party position is germane to the districts. Recruiting delegate candidates is a formidable task. Recruiting candidates for Congress, city council or dog catcher does not require the recruiter to explain the nature of the job or what the position is. Try recruiting someone to run for judicial delegate and one immediately realizes the difficulties in this step of the process.

12. Next you need to get people to circulate petitions within these arcane districts and petitioning requires care to stay within the district lines for individual or slates of delegates. As indicated earlier, the districts' geography and limited purpose serves or matches no other political boundary or purpose. No one thinks of themselves as a resident of X judicial delegate district.

13. There are essentially three types of people who circulate petitions:

1. Members of political party committees who circulate petitions for the party organization every year for all candidates for public office and party position,
2. Political activists who have experience circulating petitions for candidates outside the regular party structure, and
3. Novices who get interested in a candidate but have not petitioned before.

It is extremely difficult to recruit petitioners for judicial delegate candidates if you are not part of the party organization. The members of the regular party committee are not going to help. Even most political activists do not know what a judicial delegate does and have little interest in gathering signatures for such an effort.

14. In 1991, I recruited petitioners for the slates in two of Albany County's largest districts. I had to spend an inordinate amount of time explaining what a judicial

delegate was and the purpose of running delegates to a one-day judicial convention. It is really impossible.

15. I had more than one regular party committee member tell me that they had never heard of such a position and were sure that they had never circulated such petitions in the past when they had in fact circulated judicial delegate petitions almost every year they had been committee members. These people were not lying, they just had not been aware of the existence of judicial delegates or the purpose of their prior efforts.

16. In order to obtain a meaningful majority of delegates willing to support a Supreme Court candidate not chosen by the party leaders, a candidate has to organize, petition, and run slates of delegate and alternate delegate candidates in most of the 24 districts throughout the seven county judicial districts. The petitioning rules with which a challenger Supreme Court candidate must comply to run delegate candidates in each district are prohibitive. A candidate for delegate needs 500 signatures from members of the individual's political party within the delegate's district. In my experience in petitioning candidates onto ballots, including my own campaign for City Court Judge, you must gather at least twice and most often three times the number of signatures required by law to withstand the inevitable legal challenges to such petitions from opponents or, in this case, from the party leadership.

17. Even assuming that challenger delegate candidates were able to gather petitions as a slate, a challenger Supreme Court candidate would thus need to gather at least 1,500 signatures per district, or 36,000 signatures across the entire Judicial District, from registered party members in order to resist successful legal challenges.

18. In 1991, we were unable to gather enough signatures to qualify our slates for the ballot in either of the districts we targeted. Gathering signatures for delegates was much more difficult than for other positions. In contrast, gathering signatures for judgeships that are nominated through direct primaries is no more difficult than for any other office. Based on the amount of effort that we invested in comparison with other, successful petitioning drives I have worked on (including my own), I am confident that we could have easily gathered 5,000 signatures for a Supreme Court candidate if Supreme Court candidates petitioned directly onto the ballot.

19. Even if a challenger succeeded in petitioning delegates onto the ballot, it would be tremendously difficult to win the primary. The current system prevents voters from choosing delegates based upon an indication on the ballot of which Supreme Court candidates they intend to support at the convention. As a result, a Supreme Court challenger attempting to run delegates to support his candidacy at the convention would be required to inform the voters of a particular delegate's or slate's allegiance through campaign literature or advertising across the judicial district and for different delegate candidates.

20. In sum, the barriers to insurgent Supreme Court candidates at this stage in the process are overwhelming.

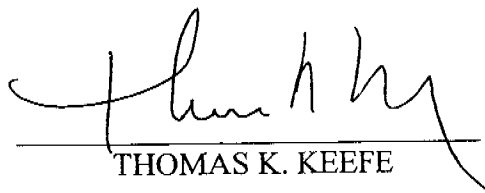
21. For all of these reasons, not only is opposition to the anointed candidates extremely rare in my experience, but most judicial delegates and alternates never even appear on any ballot because they are not opposed. In my experience, outsiders cannot successfully run slates of delegates in the Third Judicial District. They have never produced sufficient challenges to the overall composition of the Third Judicial District's

delegates at the judicial convention to mount a successful challenge to the party leaders' control over Supreme Court nominations. The current system structurally prevents such successful challenges in all of the ways I have described.

22. In most general elections, the two major parties make cross-endorsement deals and the voters then have no choice among candidates at the general election, despite the fact that the Third Judicial District includes substantial numbers of both Democratic and Republican voters.

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

Dated: Albany, New York
August 25, 2004


THOMAS K. KEEFE

Sworn & before me
this 25th day August 2004

Gloria Vernon Arthur
Notary Public
Commission Albany County
expires 7/06

RECEIVED

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**REPLY DECLARATION OF
JEREMY CREELAN IN SUPPORT
OF PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTIVE
RELIEF**

Index No. CV 04-1129 (JG)

JEREMY CREELAN declares as follows:

1. I am an attorney at the Brennan Center for Justice at New York University School of Law and counsel to Plaintiffs in this action. I submit this reply declaration in support of Plaintiffs' motion for a preliminary injunction.

2. Attached as Exhibit 1 to this declaration is a true and accurate copy of the expert report of Michael Hechter, Ph. D., expert witness for Intervenor-Defendant Attorney General of the State of New York.

3. Attached as Exhibit 2 to this declaration are true and accurate copies of excerpts from the deposition transcript of Justice Gangel-Jacob, taken on Aug. 23, 2004.

4. Attached as Exhibits 3(2002) and 3(2003) are true and accurate

copies of the New York City Board of Elections Certification Lists for 2002 and 2003, obtained since Plaintiffs' Motion for Preliminary Injunction was served, showing the judicial delegates and alternates by county and party. Exhibit 3 (2002) supersedes Exhibit 9 (2002) to the Creelan Declaration in Plaintiffs' original submission. Based upon the data in the final Certification List, certain of the delegate and alternate totals for 2002 in New York City listed in Creelan Declaration ¶ 17 must be corrected. According to the final certification list, the Democratic Party had 137 delegates and 133 alternates in the 2nd Judicial District in 2002. The Democratic Party in the 11th Judicial District had 105 delegates and 102 alternates. The Democratic Party had 70 delegates and 70 alternates in the 12th Judicial District. The Republican Party had 75 delegates and 73 alternates in the 2nd Judicial District. A revised version of the chart in Creelan Declaration ¶ 17 follows:

Judicial District	Democratic		Republican		Number of Assembly Districts within the Judicial District	
	Total Number of Delegates	Total Number of Alternates	Total Number of Delegates	Total Number of Alternates		
Non-NYC	3*	38	38	53	54	11
	4*	27	25	55	54	10
	5	30	30	92	92	12
	6 ¹	NA	NA	70	69	9
	7*	38	38	49	43	11
	8	59	59	65	64	13
	9	73	73	140	137	17
	10*	115	117	194	194	21
NYC	1	104	104	43	43	12
	2	137	133	75	73	24
	11	105	102	59	55	18
	12	70	70	26	25	11

* No Supreme Court election in this district in 2002, data from 2001 election.

¹ No Supreme Court election in this district in 2002, data from 2001 election when there were no Democratic candidates.

Based on the information in the final Certification List, certain corrections to Mr.

Lipton's Declaration were also needed. A corrected version of his Declaration is included with this submission.

5. Attached as Exhibit 4 to this declaration are true and accurate copies of excerpts of the deposition transcript of New York County Democratic Party Committee County Leader Herman D. Farrell, Jr., in *France v. Pataki*, 71 F. Supp. 2d 317 (S.D.N.Y. 1999), taken on March 18, 1993, April 29, 1993, and May 6, 1993.

6. Attached as Exhibit 5 to this declaration is a true and accurate copy of New York Times, *Asks Legislature to Act on Courts*, New York Times, Feb. 28, 1944, at 12. The article describes a report issued by the Committee on Law Reform of the Chamber of Commerce of the State of New York criticizing the convention nomination system.

7. Attached as Exhibit 6 to this declaration is a true and accurate copy of New York Times, *For Better Judges*, New York Times, Dec. 22, 1952, at 24.

8. Attached as Exhibit 7 to this declaration is a true and accurate copy of Richard S. Childs, Vice Chairman of Citizens Union of New York City, *Letter to The Times: Selecting Judges*, New York Times, Oct. 6, 1954, at 24.

9. Attached as Exhibit 8 to this declaration is a true and accurate copy of New York Times, *Un-Boss the Judiciary*, New York Times, Nov. 16, 1983, at A30.

10. Attached as Exhibit 9 to this declaration is a true and accurate copy of the New York State Board of Elections County Enrollment Totals as of March 1, 2004, available online at http://nysboewww01.elections.state.ny.us/enrollment/county/county_mar04.htm.

11. The following chart summarizes the registered voter enrollment

figures and number of resident Supreme Court justices by county for the five judicial districts that Defendants' expert, Dr. Hechter, identified in his report as "the most geographically diverse." Hechter Rept. ¶ 94. The information contained in this chart is derived from Dr. Hechter's report, included as Exhibit 1, at 64, and the New York State Board of Elections County Enrollment Totals, included as Exhibit 9.

District	County	Registered Voters	Voters as Percentage of Judicial District	Proportionate Distribution of Justices*	Current Distribution of Justices	Surplus or Deficit of Justices
Second	Kings	1,238,257	83.20%	69	63	-6**
	Richmond	250,109	16.80%	14	7	-7**
	Other	0	0.00%	0	12	12
	Unknown	0	0.00%	0	1	1
	Total	1,488,366	100.00%	83	83	0
Fifth	Onondaga	287,277	45.43%	12	14	2
	Oneida	126,063	19.93%	5	5	0
	Oswego	90,677	14.34%	3	3	0
	Herkimer	43,684	6.91%	2	1	-1
	Jefferson	66,943	10.59%	3	1	-2
	Lewis	17,745	2.81%	1	1	0
	Other	0	0.00%	0	1	1
	Total	632,389	100.00%	26	26	0
Seventh	Monroe	435,228	58.54%	13	19	6
	Wayne	57,412	7.72%	2	1	-1
	Seneca	20,751	2.79%	1	0	-1
	Yates	15,180	2.04%	0	0	0
	Ontario	68,804	9.25%	2	0	-2
	Steuben	57,396	7.72%	2	1	-1
	Livingston	38,815	5.22%	1	1	0
	Cayuga	49,848	6.71%	1	0	-1
	Total	743,434	100.00%	22	22	0
Eighth***	Erie	651,400	60.79%	23	33	10
	Chautauqua	90,306	8.43%	3	1	-2
	Orleans	25,603	2.39%	1	0	-1
	Niagara	157,891	14.73%	5	3	-2

	Genesee	38,602	3.60%	1	0	-1
	Allegheny	29,088	2.71%	1	0	-1
	Wyoming	26,875	2.51%	1	0	-1
	Cattaraugus	51,849	4.84%	2	0	-2
	Total	1,071,614	100.00%	37	37	0
Ninth	Westchester	564,319	48.76%	21	23	2
	Putnam	61,380	5.30%	2	2	0
	Dutchess	163,134	14.09%	6	4	-2
	Orange	196,467	16.97%	7	4	-3
	Rockland	172,125	14.87%	6	6	0
	Unknown	0	0.00%	0	3	3
	Total	1,157,425	100.00%	42	42	0

* The number of judgeships each county would hold if judgeships were distributed proportionately according to the number of registered voters, is rounded to the nearest whole number with the following exceptions: Oswego's 3.73 judges is rounded down to 3, Erie's 22.49 is rounded up to 23, and Westchester's 20.45 judges is rounded up to 21. These three exceptions were necessary in order to avoid changing the total number of judgeships in the district.

** Kings and Richmond are both listed as having fewer judges than their population would entitle them to because 12 of the 83 justices from the Second Judicial District reside outside the district. Out of the 70 justices who live within the Second Judicial District, 63 (90%) live within Kings County, which includes 83.2% of the District's registered voters, while only 7 (10%) live within Richmond County, which includes 16.8% of the registered voters.

*** Mr. Ward testified at his deposition that the justice living in Chautauqua County and one of the justices living in Niagara County have since retired, reducing the number of justices living within the Eighth Judicial District outside Erie County to two, and increasing the number of counties in the District without resident justices to six. Ward Dep. at 122:1-17 and 123:20-23.

12. Attached as Exhibit 10 to this declaration are true and accurate excerpts from the deposition transcript of Dennis E. Ward, taken on August 26, 2004.

13. Attached as Exhibit 11 is a true and accurate copy of the Report to the Chief Judge of the State of New York from the Commission to Promote Public Confidence in Judicial Elections (the "Feerick Commission"), issued on June 29, 2004. The Report is available online at <http://law.fordham.edu/commission/judicialelections/>.

14. Attached as Exhibit 12 is true and accurate copy of Robert J. McCarthy and Michael Beebe, *Courting Big Money*, Buffalo News, July 14, 2002, at A1.

15. Attached as Exhibit 13 is a true and accurate copy of the


Determination of the Commission on Judicial Conduct *In re Farrell*, issued on June 24, 2004, and available at <http://www.scjc.state.ny.us/Determinations/F/Farrell.htm>.

16. The New York State Commission on Judicial Conduct publishes annual reports that describe the numbers and types of disciplinary actions administered to judges, with separate tables recording the data by court. The 2004 Annual Report is available online at <http://www.scjc.state.ny.us/Publications/2004.AnnRep.Full.Color.pdf>, while annual reports for 2000 to 2003 are available at <http://www.scjc.state.ny.us/Publications/annual.htm>. Public discipline is reserved for serious misconduct. Dividing the number of instances of public discipline by the number of judges produces a measure of how likely a judge of a given court is to be disciplined. Between 1999 and 2003, the years covered by the available annual reports, Supreme Court justices were 62% more likely to be disciplined than other full-time judges in the Unified Court System. In 2003, the most recent year with available statistics, one Supreme Court justice per 67 was publicly disciplined. The next worst average for any court, the City Court, was one judge publicly disciplined per 288.

17. Attached as Exhibit 14 are true and accurate copies of sample campaign literature for Civil Court primary election races in Kings County this year.

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

Dated: New York, New York
August 27, 2004



JEREMY CREELAN