

**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.

Index No. CV 04-1129 (JG)

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

Defendants,

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-Intervenors,

ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Statutory Intervenor.

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**DEFENDANTS' REPLY MEMORANDUM OF LAW
IN FURTHER SUPPORT OF MOTION TO STAY**

<p>AKIN GUMP STRAUSS HAUER & FELD LLP 590 Madison Avenue New York, NY 10022 <i>Counsel for the New York Democratic Committee</i></p>	<p>ARTHUR W. GREIG, ESQ. 401 Broadway, Suite 1902 New York, NY 10013 <i>Counsel for the New York County Democratic Committee</i></p>	<p>ATTORNEY GENERAL OF THE STATE OF NEW YORK 120 Broadway – 24th Floor New York, NY 10271-0332 <i>Statutory Intervenor</i></p>
<p>ROBERT ALAN MUIR ASSOCIATES LLP 205 Montague Street, Suite 400 Brooklyn, NY 11201 <i>Counsel for New York Republican Committee</i></p>	<p>SPECIAL COUNSEL TO STATE BOARD OF ELECTIONS 40 Steuben Street Albany, NY 12223-1650 <i>Counsel for the State Board of Elections</i></p>	<p>STROOCK & STROOCK & LAVAN LLP 180 Maiden Lane New York, NY 10038 <i>Counsel for Associations of New York State and New York City Supreme Court Justices</i></p>

Plaintiffs acknowledge that “it would [not] be an abuse of discretion to conclude that defendants should have an opportunity to present their case to the Second Circuit before the Court implements a remedy.” (Plaintiffs’ Memorandum of Law in Response To Defendants’ Motion for A Stay And Other Relief (“Resp.”), at 8). Thus, while Plaintiffs contend that Defendants “have failed to demonstrate that a stay should be imposed *indefinitely*,” (*id.* at 2) (emphasis added), they effectively concede the propriety of the Court granting a stay for the 2006 election cycle. In particular, Plaintiffs *agree* that:

- (1) “the Court does have discretion to postpone the effectiveness of its preliminary injunction for one election cycle, taking into account
 - [i] the harm that an unexpected change in the process might have on incumbents,
 - [ii] the relatively short time available for appellate review before the relevant events in the upcoming election cycle, and
 - [iii] the broad public importance of the issues in the case[,]” (*id.* at 2);
- (2) “the [effect of the] timing of the imposition of the remedy [on incumbents] . . . is [a harm that is] cognizable in the Court’s consideration of the propriety of entering a stay *and should be weighed* by the Court in its evaluation of the motion for a stay[,]” (*id.* at 3) (emphasis added);
- (3) “the Court has discretion to give the Legislature more time to craft a statute narrowly tailored to advance the interests that the defendants identified” (*id.*); and
- (4) “the loss of an election would be irreparable” (*Id.* at 4).

Plaintiffs apparently are willing to embrace a stay on two conditions, namely, that there is an expedited briefing schedule in the Second Circuit, and an agreement that the parties will jointly request the Second Circuit for expedited argument.

Defendants agree. Should the Court grant a stay, Defendants will move the Second Circuit for an expedited appeal within 5 business days of this Court’s order. Defendants also agree to jointly request expedited argument from the Second Circuit. Moreover, Defendants

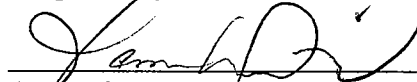
agree that a stay should be of limited duration and should apply only until the Second Circuit renders a decision on the appeal, which we believe can be accomplished so as not to effect the 2007 election cycle.

As Plaintiffs do not respond on the merits to many of the arguments advanced by Defendants concerning the complex and difficult legal questions presented in this case, we refrain from burdening the Court with further briefing on these matters.

For the foregoing reasons and those set forth in Defendants' moving brief, Defendants respectfully request that this Court stay the injunction granted by this Court for the 2006 judicial election cycle, or, in the alternative, to modify and stay the injunction pending appellate review, together with such other and further relief that this Court deems just and proper.

Dated: March 3, 2006

Respectfully submitted,



AKIN GUMP STRAUSS HAUER & FELD LLP
Steven M. Pesner, PC (SP-7021)
Andrew J. Rossman, Esq. (AR-0569)
James P. Chou, Esq. (JC-2629)
James E. d'Auguste, Esq. (JD-7373)
Vincenzo A. DeLeo, Esq. (VD-0092)
Jamison A. Diehl, Esq. (JD-1972)
590 Madison Avenue
New York, New York 10022

*Counsel for The New York County Democratic
Committee*

ARTHUR W. GREIG, ESQ. (AG-2755)
401 Broadway, Suite 1902
New York, New York 10013

*Counsel for The New York County Democratic
Committee*

ELIOT SPITZER, ATTORNEY GENERAL
OF THE STATE OF NEW YORK

Joel Graber, Esq. (JG-3337)
Robert H. Easton, Esq. (RE-2183)
Mariya S. Treisman, Esq. (MT-7677)
120 Broadway - 25th Floor
New York, New York 10271-0332

Statutory Intervenor

ROBERT ALLEN MUIR & ASSOCIATES LLP

Robert A. Muir, Esq. (RM-8003)
205 Montague Street, Suite 400
Brooklyn, New York 11201

Counsel for New York State Republican Committee

SPECIAL COUNSEL TO STATE BOARD
OF ELECTIONS

Todd D. Valentine, Esq. (TV-5304)
40 Steuben Street
Albany, New York 12223-1650

*Counsel for the State Board of Elections, Carol
Berman, Neil W. Kelleher, Helena Moses Donohue and
Evelyn J. Aquila*

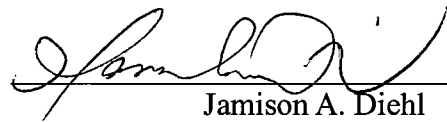
STROOCK & STROOCK & LAVAN

Joseph L. Forstadt, Esq. (JF-0398)
Ernst H. Rosenberger, Esq.
Kevin J. Curnin, Esq.
David Sifre, Esq.
Mary A. Gorman, Esq.
180 Maiden Lane
New York, New York 10038

*Counsel for Associations of New York State Supreme
Court Justices in the City and State of New York,
Honorable David Demarest, J.S.C.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Reply Memorandum of Law in Further Support of Motion to Stay was served by electronic notification upon Frederick A.O. Schwarz, Jr., Brennan Center for Justice at NYU School of Law and Kent Yalowitz, Arnold & Porter LLP, on this 3rd day of March, 2006.



Jamison A. Diehl