

Steven M. Pesner, P.C. (SP-7021)
Andrew J. Rossman (AR-0569)
James P. Chou (JC-2629)
James E. d'Auguste (JD-7373)
Jamison A. Diehl (JD-1972)
Akin Gump Strauss Hauer & Feld LLP
590 Madison Avenue
New York, New York 10022
(212) 872-1000

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IN THE UNITED STATES DISTRICT COURT
FOR THE 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,

Civil Action No. 04cv1129 (JG)

Plaintiffs,

v.

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

Defendants.

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**LOCAL RULE 56.1 STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF
INTERVENOR-DEFENDANT NEW YORK COUNTY DEMOCRATIC COMMITTEE'S
MOTION FOR SUMMARY JUDGMENT**

Intervenor-Defendant New York County Democratic Committee submits this statement of
undisputed facts in support of its motion for summary judgment pursuant to Local Rule 56.1.

The undisputed facts of the motion for summary judgment are as follows:

1. Intervenor-Defendant New York County Democratic Committee (the “Democratic Committee”) is a local Democratic county committee created and operated pursuant to and by virtue of the New York Election Law.

2. In 1921, the New York State legislature adopted New York’s convention system for making party nominations for statewide offices and for Justice of the New York State Supreme Court.

3. For the purposes of selecting State Supreme Court justices, New York State is divided into twelve judicial districts comprised of one or more counties. *See* N.Y. Jud. L. Section 140; *see also* Plaintiffs’ Complaint (“Cmplt.”) at ¶¶ 31-32. Each judicial district is comprised of a number of assembly districts. *See* Cmplt. at ¶ 31. Nominees for Supreme Court Justices are selected at judicial nominating conventions by delegates from within a particular judicial district. *See* N.Y. Elec. L. Section 6-106. Each delegate may be called upon to vote for multiple judicial nominees to fill multiple seats.

4. Delegates are selected separately from each assembly district within a particular judicial district. *See* N.Y. Elec. L. Sect. 6-124; *see also* Cmplt. ¶ 32. Each candidate for judicial delegate requires a minimum of 500 signatures. N.Y. Elec. L. Section 6-136(2)(i). If multiple candidates satisfy the 500 signature petition requirement, then they run against each other in the primary in September.

5. During the assembly district election in which delegates are elected, each delegate candidate’s name on the ballot is not linked to any individual judicial candidate.

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

7. Any candidate, including so-called “challenger” candidates who fail to win a major party nomination, can petition to appear on the ballot as an independent candidate. *See* N.Y. Election Law Sections 6-138 and 6-142.2. To enable their name to appear on the general election ballot, a candidate for Supreme Court Justice in the First Judicial District has the option of collecting 4,000 signatures and filing an independent nominating petition. *Id.* at Section 6-142.2(c). Candidates for Supreme Court Justice in all other judicial districts outside of New York City are required to collect only 3,500 signatures. *Id.* at Section 6-142.2.

8. Furthermore, even candidates who belong to a major political party are not precluded by reason of such party affiliation from seeking a place on the general election ballot as the nominee of a minor political party. *See* Election Law Sections 1-104 and 6-106. That is precisely what Plaintiff Margarita Lopez Torres did in 2003 after failing to win the Democratic Party’s nomination. She successfully gained access to the 2003 general election ballot by running on the Working Families Party ticket. In this fashion, every eligible voter had the opportunity to vote for Ms. Lopez Torres.

Dated: New York, New York
August 25, 2004

AKIN GUMP STRAUSS HAUER & FELD LLP

By: 

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*Attorneys for Intervenor-Defendant New York
County Democratic Committee*