BRENNAN CENTER FOR JUSTICE
AT NYU SCHOOL OF LAW

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August 16, 2006

Honorable Chester J. Straub
Honorable Sonia Sotomayor
Honorable Peter W. Hall
United States Court of Appeals
for the Second Circuit
40 Foley Square
New York, New York 10007

Re: *López Torres et al. v. New York State Board of Elections* (06-0635-cv)

Your Honors:

We respond to the Attorney General's submission enclosing a letter from the New York State Bar Association. The letter does not help appellants. It states: "we recognize and support the need for improvements in the convention process to address the practical ***and constitutional infirmities which exist.***" (Emphasis supplied.)

The letter supports the Feerick Commission's recommended reforms. It thus reflects agreement with the Commission's predicate factual finding, credited by the District Court, that "across the state, the system for selecting candidates for the Supreme Court vests almost total control in the hands of local political leaders." HE-5047. Others agree, including gubernatorial candidate Spitzer, who in a recent speech described New York's courts as "hopelessly compromised" and "dominated by cronyism and backroom deals."[1]

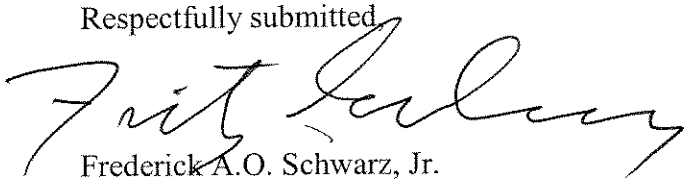
Three things might reasonably be said about the Commission's recommendations. *First*, they are legislative in character. It would be quite extraordinary for a court to make them. *Second*, they would not be sufficient (standing alone) to solve the constitutional infirmity for the reasons we explained at page 67 of our merits brief. *Third*, the Legislature plainly has other alternatives. It might, in addition to adopting the Feerick Commission's recommendations, convert the judicial convention system into one with the timing and open access of the state-wide designating convention system that allows for subsequent petitioning onto a primary ballot. As the undersigned responded to Judge Straub at oral argument, such a system would solve the

[1] The speech, delivered to the Rockefeller Institute of Government in November 2005, is reproduced at www.spitzer2006.com, under the heading, "Speeches." http://www.spitzer2006.com/main.cfm?actionId=globalShowStaticContent&screenKey=cmpSpeeches&htmlId=4928.

constitutional infirmity. Or, the Legislature might enact a statute like S-55A, which the Senate passed in February 2006. These are but a few of numerous legislative alternatives.

A *court*, of course, has narrower options. Judge Gleeson's decision and order adopted the least intrusive interim remedy available to a court, simply striking down the unconstitutional provision and leaving in place the state's default nominating system, N.Y. Elec. L. § 6-110.

Respectfully submitted,



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cc: Counsel of Record