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March 10, 2006

Hon. John Gleeson
United States District Judge,
Eastern District of New York
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Lopez Torres v. N.Y.S. Board of Elections
E.D.N.Y. 04 Civ. 1129 (JG) (SMG)

Honorable Sir:

We are writing on behalf of defendants and defendants-intervenors in response to plaintiffs' application to amend the complaint in this action, for the sole purpose of adding one line to the Wherefore Clause of the complaint dated March 18, 2004, namely: "To award plaintiffs damages in an amount to be determined at trial."

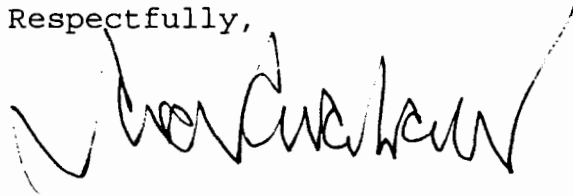
Plaintiffs have not shared with the Court or with defendants and defendants-intervenors any reason for this proposed amendment. However, plaintiffs' notice of motion, dated February 24, 2006, refers to leave "to add a prayer for nominal damages." One of two cases cited by plaintiffs in support of the motion, Robinson v. Cattaraugus County, 147 F. 3d 153, 162 (2d Cir. 1998), appears to hold that plaintiffs pursuing constitutional claims may generally be entitled to \$1 nominal damages if such damages have been specifically alleged and claimed.

We therefore interpret plaintiffs' proposed amendment as being for the purpose of seeking "nominal damages." As such, it appears to be unexceptionable. There has never been in this action, and there is not now, any claim for compensatory damages on behalf of any of the individual plaintiffs or on behalf of the organizational plaintiff. Beyond that, there has never been an award of compensatory damages in a voting case in this Circuit, so far as the reported cases reveal.

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We have no objection to an amendment to add a claim for nominal damages, but reserve our right to seek dismissal of the complaint against plaintiff Judge Margarita Lopez Torres on the ground of mootness as she at the time of the amendment no longer seeks to run for the office of Supreme Court Justice.

Respectfully,

A handwritten signature in black ink, appearing to read "Joel Graber", written over a horizontal line.

JOEL GRABER (JG-3337)
Assistant Attorney General
Special Litigation Counsel

cc:

ATTORNEYS-OF-RECORD