

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
WORKING FAMILIES PARTY, as a  
political party and representative of its  
members; ASSOCIATION OF  
COMMUNITY ORGANIZATIONS FOR  
REFORM NOW (ACORN), as an  
organization and representative of its  
members; MARIA MARTINEZ; HECTOR  
MATIAS; PEDRO HAMILTON;  
SEGUNDO REYNOSO; WALTER C.  
NASH; DAVID PEREZ; PRIMITIVO  
MARTY; MARIA POLANCO; and  
JUSTINA ZENA,

Plaintiffs,

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

v.

NEW YORK CITY BOARD OF  
ELECTIONS; NANCY MOTTOLA  
SCHACHER, WEYMAN A. CAREY,  
MICHAEL J. CILMI, MARK B.  
HERMAN, NERO GRAHAM, JR.,  
VINCENT J. VELELLA, DOUGLAS A.  
KELLNER, FREDERIC M. UMANE,  
TERRENCE C. O'CONNOR, and  
STEPHEN H. WEINER, in their official  
capacities as Commissioners of the New  
York City Board of Elections; 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.

-----X

Plaintiffs, by their attorneys, the Brennan Center for Justice at New York  
University School of Law, as and for their complaint against Defendants, allege as  
follows:

## **INTRODUCTION**

1. In the 2000 elections, approximately 60,000 voters in New York City lost their votes because the New York City Board of Elections (the “Board” or “City Board” or the “Commissioners”) chose to disable, and never to reactivate, a device known as a “sensor latch” in each of the City’s 7,000 lever voting machines. Voters in similar numbers have lost, and continue to lose, their votes in New York City elections for years. The New York State Board of Elections (the “State Board”) has knowingly allowed the City Board to use these voting machines without the sensor latches in place. In short, the Boards’ decision to erect and maintain this concrete barrier to voting has robbed thousands of voters of their legal right to vote without justification.

2. In addition to depriving voters of their legal right to vote, the City and State Boards’ actions with respect to the sensor latches have harmed certain voters more than others in further violation of the law. According to statistics reported by the City and State Boards, the frequency of undervotes on election day, also known as the “lost vote” rate, is considerably higher – in some cases twice the rate – in minority communities than in predominantly white areas of New York City. In addition, the lost vote rate in New York City is significantly higher than in counties upstate and on Long Island. These unequal impacts are, in primary part, the direct results of the decision not to reactivate the sensor latches on New York City’s voting machines.

3. When they step into New York City’s voting booths, many voters mistakenly pull the hand lever back to its starting position before voting for any candidates, inadvertently causing a lost vote or “undervote.” New York City’s voting machines were manufactured with built-in “sensor latches” or “springs” designed to

prevent voters from leaving the booth without casting a vote for at least one candidate or affirmatively indicating their intention not to vote for any candidate listed on the ballot. If the sensor latch is in working order, it prevents voters from pulling the hand lever back to its original position to cast their vote without first selecting a candidate for at least one office. Beginning in 1964, however, the City Board affirmatively disabled the sensor latches on all of the City's lever voting machines.

4. After voting to reactivate the sensor latches on all of the City's 7,000 voting machines in March of this year, on April 15 the commissioners voted to reverse their decision and leave the latches disabled. The commissioners made this decision despite their full knowledge that hundreds of thousands of voters were losing their votes because the latches were disabled, and that those lost votes had been and would continue to be concentrated in minority communities. The commissioners also understood that the cost of fixing these latches would be minimal. In short, the commissioners knowingly and intentionally chose to maintain this discriminatory and unjustified barrier to voting.

5. For this reason, Plaintiffs – a political party, an advocacy organization and minority voters from New York City – challenge the decision of the City Board not to remedy this impediment to the casting of votes that count in New York City. Plaintiffs challenge the City Board's decision, and the State Board's failure to require that the sensor latches be reactivated to address the discriminatory disparities in lost votes, as plain violations of the Equal Protection Clause of the Fourteenth Amendment, the Voting Rights Act, and the First Amendment to the U.S. Constitution. In addition, Plaintiffs challenge the City Board's decision as a plain violation of Article 1,

Sections 1 and 11 of New York State's Constitution.

### **JURISDICTION AND VENUE**

6. The Court has jurisdiction of the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1343(a)(3), (4), 1367, 2201, 2202, and 42 U.S.C. § 1983.

7. Venue of this action is properly in this district, pursuant to 28 U.S.C. § 1391(b), on the grounds that a defendant may be found and resides in this district, and a substantial part of the events or omissions giving rise to the claims alleged herein occurred, and threaten to occur, in this district.

### **PARTIES**

8. Plaintiff Working Families Party is a political party under N.Y. Elec. L. § 1-104.3 with local chapters throughout New York State. The goal of the Working Families Party is to inject the issues of lower-income, working people – such as jobs, wages, health care, education, and housing – into the public debate, and to elect candidates who support policies that improve the lives of working families in New York City and State. The Working Families Party was launched in June of 1998 and first obtained official ballot status as a recognized political party by obtaining over 50,000 votes for its gubernatorial candidate that year. Approximately one half of its registered members in New York City are African American and Latino voters. The Working Families Party's headquarters are located at 88 3rd Avenue in Brooklyn, New York.

9. Plaintiff Association of Community Organizations for Reform Now ("ACORN") is the nation's largest community organization of low and moderate-income families, with over 150,000 member families organized into 700 neighborhood chapters in 51 cities across the country. In New York City, ACORN has approximately

25,000 members, over 95 percent of whom are African American or Latino. ACORN advocates for better housing, wages, jobs, health care, and other benefits for low and moderate-income families. ACORN's national headquarters are located at 88 3rd Avenue in Brooklyn, New York.

10. Plaintiff Maria Martinez is a registered voter and member of the Democratic Party and ACORN and resides at 214 Willis Avenue in the Bronx, New York. Ms. Martinez was born in Guatemala, came to the United States of America in 1976, and moved to New York City in 1978. She has lived in the Bronx and in Queens since that time. Currently, she lives in Mott Haven, a low-income community that is predominantly Latino and African American. Her home is in AD 84. She is 48 years of age, and is a buyer for a clothing store in New York City. She was naturalized approximately seven years ago, and has voted regularly since then on the lever voting machines in her neighborhood. Her primary language is Spanish, and she has very limited English language proficiency. Ms. Martinez has had problems understanding and operating the lever voting machines in the past, principally as a result of her inability to understand English language instructions or to obtain assistance from poll workers who speak only English.

11. Plaintiff Hector Matias is a registered voter and member of the Working Families Party and ACORN and resides at 728 Taylor Avenue in the Bronx, New York. He lives in the Castle Hill area, a low-income neighborhood that is predominantly Latino and African American. His home is in AD 76. He was born on the Lower East Side of Manhattan, moved to Bedford-Stuyvesant in Brooklyn in or around 1972, and moved to the Bronx in or around 1989. Mr. Matias is of Puerto Rican descent.

He is 36 years of age. He has voted regularly as an adult. In the 2000 election, he experienced difficulties operating the lever voting machines and was unable to determine whether his vote was cast as a result.

12. Plaintiff Pedro Hamilton is a registered voter and member of the Working Families Party and ACORN and resides at 385 Palmetto Street in Brooklyn, New York. Mr. Hamilton was born in the Dominican Republic, came to New York in 1979, and has lived in Brooklyn and Queens since that time. He currently resides in Bushwick, a low-income neighborhood that is predominantly Latino and African American. His home is in Assembly District (“AD”) 53. Mr. Hamilton is 53 years of age, and worked as an air conditioning repairman until receiving workers’ compensation for injuries suffered. He was naturalized in 1999 and voted for the first time in the 2000 presidential election. Since that election, he has voted regularly on the lever voting machines in Brooklyn. His primary language is Spanish, and he has very limited English language proficiency.

13. Plaintiff Segundo Reynoso is a registered voter and member of the Working Families Party. He resides at 180 Cooper Street in Bushwick, Brooklyn. His home is in AD 54. Mr. Reynoso was born in Santo Domingo in the Dominican Republic, and came to the United States in 1984. He was naturalized in 1994 and has voted regularly on the lever voting machines in Brooklyn since that time. He is 64 years of age, and reupholsters furniture for his livelihood. His primary language is Spanish, and he has very limited English language proficiency. He believes that he has lost his vote on at least one occasion as a result of not understanding the proper operation of the hand lever and mistakenly pulling that lever to the starting position without selecting any candidates.

14. Plaintiff Walter C. Nash is a registered voter and member of ACORN and resides at 327 Concord Avenue in the Bronx, New York. He is 58 years of age and has lived at the same address all of his life, in Mott Haven, a low-income neighborhood that is predominantly Latino and African American. His home is in AD 84. He votes regularly on the lever voting machines for political candidates endorsed by the Democratic and Working Families Parties. He is African American. He is presently Vice President of the Mott Haven chapter of ACORN. On several occasions he has experienced difficulties voting operating the lever voting machines, and may have lost his vote as a result.

15. Plaintiff David Perez is a registered voter and member of the Democratic Party. He was born and raised in Brooklyn and resides at 273 Linden Street in Bushwick. His home is in AD 53. He is 25 years of age, and is of Puerto Rican descent. He has voted regularly since becoming eligible, and votes on the lever voting machines for candidates endorsed by the Democratic Party. He is currently the office manager at Make the Road by Walking, a social services and advocacy organization in Bushwick, Brooklyn. In three elections, Mr. Perez worked for the City Board of Elections as a poll worker and translator on election day in Brooklyn. He witnessed numerous voters unintentionally losing their votes as a result of pulling the hand lever to the starting position prematurely without selecting any candidates or otherwise improperly operating the lever voting machines.

16. Plaintiff Primitivo Marty is a registered voter and member of the Democratic Party and of ACORN. He resides at 1269 Sheriden Avenue in the Bronx, New York, where he has lived for approximately 22 years. His home is in AD 77, in an

area that is predominantly Latino and African American. Mr. Marty was born and raised in Puerto Rico and came to New York City in 1961. He is 59 years of age, and is self-employed as a food vendor. His primary language is Spanish, and he has very limited English language proficiency. He has voted regularly since he arrived in New York City on the lever voting machines in the Bronx.

17. Plaintiff Maria Polanco is a registered voter and member of the Working Families Party and ACORN. She resides at 390 Grand Concourse in the Bronx, New York, an area that is predominantly African American and Latino. Her home is in AD 84. She was born in the Dominican Republic and came to the Bronx in 1981. She was naturalized in 1999 and has voted regularly since that time for candidates endorsed by the Working Families Party. She is 44 years of age, and works in the accounts payable department of a senior citizen services organization in the Bronx. She has worked as a poll worker on election day in the Bronx in every or virtually every election since 1995. In that capacity, she has seen numerous voters lose their votes unintentionally by pulling the hand lever to the starting position without selecting any candidates or otherwise improperly operating the lever voting machines.

18. Plaintiff Justina Zena is a registered voter and member of the Democratic Party and of ACORN. She resides at 675 East 140th Street in the Bronx, New York. Her home is in the AD 84. She lives in Mott Haven, a low-income neighborhood that is predominantly Latino and African American. Ms. Zena was born in Puerto Rico and came to New York City approximately 16 years ago. She has voted regularly on the lever voting machines in the Bronx since that time. Her primary language is Spanish, and she has very limited English language proficiency. Although

she is uncertain as to whether her vote has ever been lost, she has had problems understanding and operating the lever voting machines in the past.

19. Defendant New York City Board of Elections is responsible for, among other things, purchasing, maintaining, and repairing the voting machines used in elections in New York City to ensure that voters can exercise their right to vote. *See, e.g.,* N.Y. Elec. L. § 3-3201.1. The City Board has its offices at 32 Broadway, New York, New York, and in each county of New York City. The Kings County office is at 345 Adams Street, Brooklyn, New York. As a local board of elections, the City Board operates under the supervision and guidance of the New York State Board of Elections.

20. Defendants Nancy Mottola Schacher, Weyman A. Carey, Michael J. Cilmi, Mark B. Herman, Nero Graham, Jr., Vincent J. Velella, Douglas Kellner, Frederic M. Umane, Terrence C. O'Connor, Stephen H. Weiner, are commissioners of the City Board.

21. Defendant New York State Board of Elections has “jurisdiction of, and [is] responsible for, the execution and enforcement of . . . statutes governing campaigns, elections and related procedures.” N.Y. Elec. L. § 3-104(1). The State Board has the

*power and duty to . . . issue instructions and promulgate rules and regulations relating to the administration of the election process . . . visit boards of elections, examine their procedures and records and direct that any such procedures be modified in any manner consistent with the provisions of [the election law]; conduct any investigation necessary to carry out the provisions of [the election law]; conduct private or public hearings; . . . study and examine the administration of elections within the state, . . . recommend such legislation or administrative measures as it finds appropriate to promote fair, honest and efficiently administered elections, . . . monitor the adequacy and effectiveness of the election laws . . . [and] take all appropriate steps to encourage the broadest possible voter participation in elections . . . .*

*Id.* at § 3-102 (emphasis added). If the State Board has reason to believe that any election law or regulation has been violated, it must expeditiously investigate such violation and take action to remedy it, including but not limited to instituting judicial proceedings or referring for criminal prosecution. *See id.* at § 3-104.

22. The State Board is responsible for testing and approving the machines used by every county and jurisdiction in the State prior to their use. N.Y. Elec. L. §§ 7-200(1), 7-206. In addition, under the State Board’s regulations, “[a]ny prospective modification to a previously approved voting system shall be submitted to the State Board.” Rules of Bd. of Elec. § 6209.8. Moreover, “[n]o modification of a previously approved voting systems equipment shall be used in any election until such modification has been approved by the State Board.” *Id.* Accordingly, the State Board’s extensive responsibilities include reviewing and approving any and all modifications to the voting machines used in New York City, and requiring such modifications if necessary to avoid or to remedy violations of the election law.

23. Defendants Carol Berman, Neil W. Kelleher, Helena Moses Donohue, Evelyn J. Aquila, are commissioners of the New York State Board of Elections.

## **FACTS**

### **Sensor Latches and Undervoting**

24. Like many jurisdictions within New York State, New York City has used lever voting machines for many years. Since the early 1960s, New York City and the City of Albany have used lever machines manufactured by the Shoup Voting Machine Company (the “Shoup lever machines”).

25. New York City's machines are owned and maintained by the City Board.

26. Most, though not all, jurisdictions outside New York City use lever machines manufactured by the Automatic Voting Machines Company (the "AVM Model 61 lever machines"). Upon information and belief, most if not all jurisdictions that use the AVM Model 61 lever machines use them with a built-in device that is similar to and serves the same purpose as the sensor latches built into the Shoup lever machines.

27. Upon information and belief, approximately 94 percent of all votes cast in New York State are cast on these two models of lever machine.

28. Upon information and belief, many voters who vote on the Shoup lever machines enter the voting booth, pull the hand lever to the right to close the curtain, and then mistakenly pull the hand lever back to the left to register their vote (*i.e.*, return it to its original position) without first flipping the individual candidate levers to choose a candidate. Alternatively, they flip a candidate lever (or levers) but then flip the candidate lever(s) back to its default position before returning the hand lever back to its original position so that no vote is registered. The result of either action is that the voter's vote is lost, *i.e.*, not cast or counted. Such scenarios are also referred to as "undervotes."

29. The Shoup lever machines were manufactured, however, with built-in "sensor latches" (also known as "springs") designed to prevent voters from leaving the booth without casting a vote for at least one candidate or affirmatively indicating their intention not to vote for any candidate listed on the ballot.

30. If the sensor latch is in working order, it prevents the voter from pulling the hand lever back to its original position without first flipping a candidate lever

to choose a candidate for at least one office. Voters who intend not to vote for a listed candidate – *i.e.*, an intentional undervote – must flip a special lever designed to allow the voter to “write in” a candidate or, if the “write in” panel (also known as the “personal choice slide”) is left blank, not to vote for any candidate.

31. The operational training manual issued in 1979 and used by the City Board to train election workers in the set-up and handling of the Shoup lever machines summarizes the functional effect of the sensor latch as follows: “At least one voting lever must be voted or a personal choice slide must be open before machine can be operated to curtain open position.”

32. The City Board first voted to disable the sensor latches on all of the Shoup lever machines used in elections in New York City in 1964, less than two years after the Board purchased the first shipment of these machines.

33. The State Board did not take any steps to overrule the City Board’s decision to modify the Shoup lever machines by disabling the sensor latches or, in the 39 years since that decision, to require that the City Board reactivate the sensor latches.

34. The City Board’s policy of disabling (and choosing not to reactivate) the sensor latches in the City’s voting machines has denied hundreds of thousands of voters their right to cast a valid vote. Moreover, as detailed below, voters in districts with high percentages of minority voters have lost their votes at considerably higher rates than voters in predominantly white districts.

35. The Board’s history of erecting and maintaining this artificial barrier to voting was documented in a series of articles published in *Newsday* since the presidential election of 2000 by the investigative reporter, Stephanie Saul. The

commissioners have long been aware of the disfranchising impact of their decisions to disable the sensor latches and leave them disabled.

### **The City Board's Recent Decisions**

36. Contrary to their ultimate decision at issue in this case, on March 18, 2003, the City Board voted to reactivate the sensor latches on the City's 7,000 Shoup lever machines. They made the March 18 decision after discussing the impact and extent of lost votes due to the absence of working sensor latches on those machines.

37. Prior to voting, the Board also received a cost estimate of \$275,000 for repair of the sensor latches on all of the City's 7,000 voting machines from the Board's Chief Voting Machine Technician, John O'Grady. The Board then voted to "go forward with the re-activation" of the sensor latches and authorized Mr. O'Grady to develop an implementation plan and proceed to schedule the reactivation work immediately.

38. The March 18 motion passed by a vote of six to two, with the five Democratic commissioners and the Republican commissioner from Staten Island voting for the motion to reactivate the sensor latches and Nancy Mottola-Schacher and Frederic Umane, the Republican commissioners from Brooklyn and Manhattan respectively, voting against it.<sup>1</sup> The decision was immediately hailed by civic organizations because of its predicted impact of reducing lost votes in New York City.

39. At the commissioners' next meeting on March 25, Mr. O'Grady proposed a 16-day project schedule that would include not only reactivation of the sensor latches for all 7,000 lever voting machines but also time to train Board technicians to

---

<sup>1</sup> Two of the commissioners, Vincent J. Velella (R-Bronx) and Stephen Weiner (R-Queens), were not in attendance at the March 18 meeting.

perform the task in the future as well. At that time, Commissioner Mottola-Schacher, one of the two Republican commissioners who had originally voted against repairing the sensor latches, requested that a committee be formed to review Mr. O’Grady’s proposal and that the decision on the sensor latches be tabled until April 8, 2003. Commissioner Kellner, the Democratic Commissioner who originally made the motion to repair the latches, requested that Mr. O’Grady plan to reactivate the sensor latches in July of 2003.

40. On April 8, the commissioners heard additional details from Mr. O’Grady concerning the sensor latch repair project, including the need for revisions to the poll worker training manuals and for additional maintenance requirements associated with using the sensor latches. The Board then requested that Mr. O’Grady prepare a proposal for a demonstration project that would reactivate the sensor latches in select City Council districts initially, and the item was then adjourned until April 15.

41. On April 15, 2003, however, the commissioners reversed their earlier vote to reactivate the sensor latches in its entirety and voted not to repair any of the sensor latches on the City’s machines. The minutes of that meeting reflect no statement of justification for the vote, except the motion by Republican commissioner Umane, one of the sensor latch repair project’s original opponents, “to table the program of installing the sensor link for a couple of years with the hope that new machines will be available.” The vote to leave the sensor latches disabled was 6 to 3, with all five Republican commissioners and the Democratic commissioner from the Bronx voting in favor and the Democratic commissioners Douglas Kellner, Terrence O’Connor, and Mark Herman voting against the motion.<sup>2</sup>

42. Upon information and belief, the debate at that meeting and in

---

<sup>2</sup> Commissioner Weyman Carey (D-Kings) was not present at the April 15 meeting.

earlier meetings on this issue featured discussion of the higher lost vote rates in minority districts in the City, and the resulting unequal impact of the disabled sensor latches on voters.

43. The commissioners were familiar with and discussed the findings of several articles authored by Stephanie Saul for *Newsday* that analyzed the lost vote rates for the 2000 presidential and 2001 mayoral elections and demonstrated the impact of the disabled sensor latches on these lost vote rates, particularly in minority communities. In addition, Ms. Saul had published an article in response to the commissioners' March 18 vote to repair the sensor latches of which the commissioners were also aware.

44. The commissioners who voted against repairing the sensor latches were fully aware of the past and future impact of the lost votes, and the failure to reactivate the latches, upon all voters in New York City and, in particular, upon minority voters. The commissioners also were fully aware that minority voters disproportionately register and vote as Democrats or Working Families Party members and choose candidates endorsed by the Democratic and Working Families Parties, so that choosing not to repair the sensor latches would likely cost these voters, candidates, and parties many more lost votes than Republicans.

45. According to published statistics and exit polls, when facing a choice between Democratic and Republican candidates, approximately 90 percent of African American voters in New York State voted for Democratic candidate Al Gore for President in 2000; 89 percent voted for Democratic President Bill Clinton in 1996; 75 percent voted for Democratic gubernatorial candidate Peter Vallone in 1998; and 86

percent voted for Democratic senatorial candidate Charles Schumer in 1998. Similarly, as of June 2002, approximately 74 percent of New York City's registered Latino voters were Democrats, while only 11 percent were Republicans. Moreover, approximately one half of the registered members of the Working Families Party in New York City are African American and Latino voters.

46. The commissioners were also fully aware that New York City voters would continue to lose their votes at substantially higher rates than voters in other communities outside New York City.

47. With this knowledge, the commissioners voted to reverse themselves and ensure that thousands of New York City voters, and disproportionately minority voters, would lose their votes.

48. This April 15 vote was not supported by any sound justification.

### **The State Board's Inaction**

49. The New York State Board of Elections has broadly defined duties and responsibilities to ensure that election laws are enforced and that voters' rights to cast their votes and have them counted are protected. Among many enumerated duties, the election law provides that the State Board "shall have jurisdiction of, and be responsible for, the execution and enforcement of . . . statutes governing campaigns, elections and related procedures." N.Y. Elec. L. § 3-104.1. The State Board acts pursuant to and under color of state law to ensure that local boards of elections across the state comply with and implement the election laws of the State of New York, including those laws governing maintenance of the voting machines and administration of elections by county boards of elections.

50. To that end, the State Board has the

*power and duty* to . . . issue instructions and promulgate rules and regulations relating to the administration of the election process . . . visit boards of elections, examine their procedures and records and *direct that any such procedures be modified in any manner* consistent with the provisions of [the election law]; conduct any investigation necessary to carry out the provisions of [the election law]; conduct private or public hearings; . . . study and examine the administration of elections within the state, . . . *recommend such legislation or administrative measures as it finds appropriate to promote fair, honest and efficiently administered elections*, . . . monitor the adequacy and effectiveness of the election laws . . . [and] *take all appropriate steps to encourage the broadest possible voter participation in elections* . . . .

*Id.* at § 3-102 (emphasis added). If the State Board has reason to believe that any election law or regulation has been violated, it must expeditiously investigate such violation and take action to remedy it, including but not limited to instituting judicial proceedings or referring for criminal prosecution. *See id.* at § 3-104; *see also* § 3-107 (granting State Board powers to appoint special investigators, issue subpoenas, and confer peace officer powers upon such investigators to enforce the election laws and otherwise address “crimes against the elective franchise”).

51. The county boards of elections, including the City Board, are responsible in the first instance for ensuring that the voting machines function properly in allowing voters to cast their votes and in counting them. *See id.* at § 3-506.3 (“All voting machines and appliances and equipment relating to or used in the conduct of elections shall be in the care, custody and control of the board of elections. Such board may cause all necessary repairs and alterations to be made and employ such help as may be necessary in making such repairs and in moving, setting up and caring for all election materials, equipment and appliances, including voting machines.”); *see also* § 3-302.1 (“The board of elections shall appoint as many voting machine technicians and voting

machine custodians as shall be necessary for the proper preparation and repair of voting machines.”) As noted, the State Board is responsible to ensure that the county boards of elections, including the City Board, comply with these and other provisions of the election law.

52. Upon information and belief, the State Board has been aware of the City Board’s use of the Shoup lever machines with disabled sensor latches for many years, and, at least after the 2000 presidential election, has been aware of the impact of the disabled sensor latches on lost vote rates in New York City, both as compared with communities in the rest of the state and between minority and white communities within New York City.

53. In addition, the State Board’s regulations indicate that the State Board must not only be apprised of any changes to the voting machines that the City Board makes but must approve of any such changes. *See* Rules of Bd. of Elec. § 6209.8 (“No modification of a previously approved voting systems equipment shall be used in any election until such modification has been approved by the State Board.”) Moreover, the State Board itself publishes the election results for each election, including the undervotes for every county.

54. In 2003, the New York State Assembly considered legislation to require the use of sensor latches on all lever voting machines in the state – just one of many indications of widespread knowledge that the City’s voting machines are operated without the sensor latches.

55. Despite the State Board’s knowledge of the impacts of the failure to reactivate the City’s sensor latches and the State Board’s duties under the law to

require any changes necessary to enforce the election law and allow voters to cast their votes, the State Board has taken no action to require repair of those latches at any time.

**The Impact of Disabled Sensor Latches on New York City Voters**

**A. The 2000 Presidential Election**

56. Upon information and belief, in the 2000 presidential election 88,835 of the 2.2 million voters who went to the polls in New York City – *i.e.*, 4.2% – did not select a candidate for president. The City's lost vote rate for that office was 50 percent higher than the national average, and more than three times higher than the rest of New York State.

57. Upon information and belief, the lost vote rates for the 2000 presidential election were as follows:

Bronx	5.1%
Brooklyn	4.3%
Queens	3.7%
Manhattan	4.8%
Staten Island	1.8%
New York City	4.2%
New York State (outside NYC)	1.2%
Nationwide	2.8%

58. Upon information and belief, according to studies of elections approximately two thirds (66-70%) of such undervotes are unintentional errors rather than intentional omissions to protest the absence of a desirable presidential candidate. Applying these estimates, roughly 60,000 New York City voters in the 2000 presidential election lost their vote due in principal part to the fact that sensor latches had not been repaired to prevent such undervotes.

59. The City of Albany, which uses the same Shoup lever machines as

New York City but uses the sensor latches to prevent lost votes, had a lost vote rate of only 1.5% in the 2000 presidential election – only slightly more than one third of New York City’s lost vote rate.

60. The Assembly Districts with the highest percentage of lost votes in the 2000 presidential election in New York City were overwhelmingly minority districts. Specifically, seven of the ten districts with the highest lost vote rates had less than 15% non-Hispanic white residents of voting age. Nine of those same ten districts were majority-minority districts, and even the single district with a majority of white voters had 43% minority residents of voting age. Seven of the ten districts had over 20% African American residents of voting age, and six of ten had over 50% Hispanic residents of voting age.

61. By comparison, the Assembly Districts with the ten lowest percentages of lost votes in the 2000 presidential election were overwhelmingly white. In all ten of these districts, white non-Hispanic residents of voting age constituted at least two-thirds (66.7%) of the voting age population, and in seven of ten over 75%. Only two of the ten districts had over 15% African American residents of voting age, and not a single district had over 14% Hispanic residents of voting age.

## **B. The 2001 Mayoral Election**

62. Upon information and belief, analysis of the run-off election in the mayoral race of 2001 reveals a similar pattern of widespread and unequally distributed undervotes.

63. Upon information and belief, the lost vote rates for the 2001 mayoral election were as follows:

Bronx	3.3%
Brooklyn	3.1%
Queens	2.7%
Manhattan	2.4%
Staten Island	1.7%
New York City	2.7%

64. The Assembly Districts with the highest percentage of lost votes in the 2001 mayoral election in New York City were overwhelmingly majority-minority districts. Specifically, seven of the ten districts with the highest lost vote rates had less than 15% non-Hispanic white residents of voting age, and all of them had less than 33%. Seven of those same ten districts had more than 25% African American residents of voting age, and seven of ten had at least 45% Hispanic residents of voting age.

65. By comparison, the Assembly Districts with the ten lowest percentages of lost votes in the 2001 mayoral election were overwhelmingly white. In all of the ten districts non-Hispanic white residents constituted at least 63% of the voting age population, and in nine of ten at least 75%. Only one of the ten districts had more than 10% African American residents of voting age (10.55%), and that same district was the only one of the ten with more than 20% Hispanic residents of voting age (21.02%).

**C. The 2002 Gubernatorial Election**

66. Upon information and belief, as in earlier New York City elections, the 2002 gubernatorial election produced significant lost vote rates, particularly in minority communities.

67. Upon information and belief, the lost vote rates for the 2002 gubernatorial election were as follows:

Bronx	4.3%
Brooklyn	2.8%
Queens	2.9%

Manhattan	2.6%
Staten Island	2.1%
New York City	3.0%

68. The Assembly Districts with the ten highest lost vote rates in the 2002 gubernatorial election in New York City were all majority-minority districts. Eight of these ten districts had less than 15% non-Hispanic white residents of voting age, and all of them had less than 21%. Nine of these ten districts had more than 50% Hispanic residents of voting age. The only district with less than 50% Hispanic residents of voting age was AD 22, which had 53% Asian residents of voting age and the highest lost vote rate in the City (10.7%).

69. By comparison, the Assembly Districts with the ten lowest percentages of lost votes in the 2002 gubernatorial election were overwhelmingly white. In eight of the ten districts non-Hispanic white residents constituted over 50% of the voting age population. Only one of the ten districts had more than 18% Hispanic residents of voting age (18.00%).

70. The City of Albany, which uses the same Shoup lever machines as New York City but has chosen to use the sensor latches to prevent lost votes rather than disable them, had a lost vote rate of only 1.4% in the 2002 gubernatorial election – less than one half of New York City’s lost vote rate.

#### **D. The Injuries to New York City Voters**

71. Without the sensor latches in working order, voters in New York City suffer four distinct injuries. First, thousands of voters in New York City are denied access to the ballot, as their votes are neither cast nor counted because of the absence of a sensor latch to prevent their undervotes. This policy and practice of using the machines

without sensor latches thus ensures that fewer voters are able to vote, and this impact is particularly significant in minority communities in New York City.

72. Second, the voters who live in election districts with higher lost vote rates and higher minority populations suffer a significant dilution of their own votes, even if they themselves successfully cast their ballots without undervoting. Voting in New York City has been and continues to be racially polarized. Minority voters in the City are politically cohesive in their voting patterns and preferences. As a result, even voters who successfully cast their ballots on election day suffer dilution of their voting preferences because their neighbors are losing their votes at higher rates than those voters who live and vote in white majority districts. The strength and value of each vote in those minority districts is thus reduced relative to those votes in white majority districts.

73. Third, the Working Families and Democratic Parties, and their members, suffer more significantly than the Republican Party or its members from votes lost as a result of the sensor latches being disabled. The residents of districts with the highest lost vote rates are disproportionately registered as members of, and vote for candidates endorsed by, the Working Families and Democratic Parties. In the 2001 mayoral election, for example, more residents voted for the Democratic mayoral candidate than for the Republican candidate in all ten of the ten districts with the highest lost vote rates. By contrast, in eight of the ten districts with the *lowest* lost vote rates more residents voted for the Republican mayoral candidate than for the Democratic candidate.

74. Those voters who wish to vote for candidates endorsed by these two political parties but instead unintentionally lose their votes as a result of the sensor

latches being disabled suffer not only the direct loss of their vote but also the weakening impact of such lost votes on their party's strength. These two political parties also suffer from this lost voting strength, as organizations and as representatives of their members, in their efforts to support their candidates and promote their policy priorities.

75. A fourth injury stems from the unequal lost vote rates of New York City compared with other parts of New York State. As noted, in the 2000 presidential election 4.2% of New York City's voters lost their votes while only 1.2% of voters in the rest of the state lost their votes. Similarly, in the City of Albany the use of the sensor latches on that city's Shoup lever machines ensured that only 1.5% of Albany's voters lost their votes. In short, voters in New York City are considerably more likely – more than three times more likely in the 2000 presidential election – to suffer the loss of their votes than voters in other parts of the state that use different procedures. Despite these predictable geographic and racial disparities, the State and City Boards have not only chosen to refrain from addressing this unequal treatment of voters in different parts of the state, but have in fact chosen to perpetuate the higher lost vote rates in New York City by disabling and not repairing the sensor latches. Defendants thus have ensured that a person's vote is valued more highly in one portion of the state than in another portion.

76. The neighborhoods in which Plaintiffs reside and vote are among the hardest hit by Defendants' decision not to repair the sensor latches because both the lost vote rates in their areas and the proportion of minority residents, particularly Latino and African American residents, are among the highest in New York City.

77. In Bushwick, for example, AD 53 and AD 54 have some of the highest lost vote rates and minority populations in the City. Upon information and belief,

in the 2000 presidential election AD 53 had a lost vote rate of 6.17%, the eighth highest rate out of the 57 ADs in New York City. In the 2001 New York City mayoral election, AD 53 had a lost vote rate of 6.59%, the highest of any AD in the City. In the 2002 gubernatorial election, the redistricted AD 53 had a lost vote rate of 6.14%, the fifth highest rate in the City. Throughout this period, AD 53 (both before and after redistricting) has included a Latino population of 68-70%, an African American population of 9-10%, and a white population of only 13-16%.

78. Similarly, in Mott Haven and other parts of the South Bronx (*e.g.*, AD 84 and 77) that are predominantly Latino and African American, voters suffer extremely high lost vote rates. To understand this pattern, it is necessary to note that, among other changes, in the 2002 Assembly redistricting process, what had been AD 74 covering much of the South Bronx was redistricted to become AD 84. In the 2000 presidential election AD 74 (now AD 84) had a lost vote rate of 7.57%, the second highest rate out of the 57 ADs in New York City. In the 2001 mayoral election, AD 74 had a lost vote rate of 4.78%, the third highest rate in the City. Similarly, AD 77 had a lost vote rate of 4.72%, the fourth highest rate in the City. In the 2002 gubernatorial election, AD 84 (formerly AD 74) had a lost vote rate of 7.57%, the third highest rate in the City. In that same election, AD 86, which was formed in the 2002 redistricting process and covers many of the Bronx communities formerly covered by AD 77, had a lost vote rate of 5.28%, the sixth highest rate in the City.

79. The individual minority voters who are plaintiffs here, as well as the thousands of voters who live in their communities, have lost their votes or face a high likelihood of losing their votes in the future as a direct result of the City Board's decision

not to repair the sensor latches. In addition, the threat of lost votes in minority communities in New York City means the dilution of voting strength that will injure even those minority voters who successfully cast their votes and do not undervote. These threats are both predictable and easily avoidable. Still, the Board has knowingly chosen to continue to use the lever voting machines without reactivating the built-in sensor latches designed and manufactured expressly to prevent voters from losing their votes.

80. The Working Families Party and ACORN also suffer significant injury as a direct result of the Board's decision. As noted already, many of the individual Plaintiffs here are active members of the Working Families Party or ACORN, or both. For the Working Families Party, lost votes among minority voters means a disproportionate losses in the party's voting strength and the success of its endorsed candidates. This injury is exacerbated by the fact that approximately one half of the Party's members are African American and Latino voters and the Party explicitly endorses candidates who seek to improve the lives of these voters and their communities through fairer wages, union organizing and benefits, and other policies for low- and moderate-income families. The Party thus not only loses actual votes because of the absence of working sensor latches, but also loses strength in advocating for the policies embraced by its members.

81. Similarly, ACORN is a grassroots advocacy organization whose 25,000 members in New York City are virtually all minority voters. ACORN is devoted to organizing its members to fight for policies that help low- and moderate-income residents of New York City, such as affordable housing, fairer wages, and better schools. With each vote lost, therefore, ACORN's members lose not only their own votes but also

the concomitant strength in advocating in the political arena for their policy priorities.

82. Plaintiffs and millions of other New York City residents will continue to suffer the threat of losing their votes for years to come unless the Board's decision is reversed. Although the federal Help America Vote Act ("HAVA") promises substantial funds to replace New York State's lever voting machines and requires such replacement, upon information and belief the New York State Board of Elections does not intend to comply with the Act's requirements until the 2006 elections. As stated in the New York State Board's Help America Vote Act State Implementation Plan issued in draft form in the middle of June, HAVA "provides for a three-year implementation period" and does not contemplate replacement of the lever voting machines until the 2006 elections.

83. Voters in New York City will vote in *at least seven separate elections* prior to the replacement of the Shoup lever machines, even without including any special elections that may occur during that period. Accordingly, the promise of new machines with better protections against undervotes in no way obviates the need to repair the sensor latches for the intervening elections. Without such repair, hundreds of thousands of voters will unquestionably lose their votes despite the fact that such losses are both predictable and easily preventable.

### **A History of Discrimination in Voting Practices and Procedures**

84. During the state's history, New York State and governmental jurisdictions within the state have used a wide variety of practices and procedures to limit access to the polls by minority voters, including literacy tests, English-only election procedures, and racially discriminatory rules for purging voters from registration lists.

85. At New York's Constitutional Conventions, the framers expressly discriminated against minority voters in designing the parameters of suffrage.

86. In 1777, the framers excluded minorities from the polls by limiting suffrage for residents of Albany and New York City to free men and, for residents of New York State outside those cities, to property holders. See N.Y. Const. art. VII (repealed 1826).

87. In 1801 the legislature eliminated the property restrictions from the suffrage requirements for the election of delegates to New York's first Constitutional Convention, but expressly excluded African Americans from participating in that election.

88. At the second New York Constitutional Convention in 1821, the delegates debated the question of African American suffrage and put in place new voting requirements to strip African American citizens of their right to vote. Specifically, Article II of the Constitution of 1821 contained new, unusually high property ownership requirements that expressly applied only to men of color. N.Y. Const. art. II, § 1 (repealed 1870). Upon information and belief, only 298 African Americans out of 39,701, or .0075% of the free African American population, met these new requirements. Article II also required additional citizenship requirements for voting that applied only to men of color. *Id.*

89. In an 1826 amendment, New York State abolished all property qualifications for white male suffrage, but preserved the onerous property requirements for persons of color. These and other qualifications remained fully intact until voided by the passage of the Fifteenth Amendment to the United States Constitution in 1870.

90. Even after the changes forced on the states by the Fifteenth Amendment, New York State enacted new barriers to voting by minority voters, including literacy tests.

91. In 1921, New York State instituted an English literacy test with a grandfather clause that exempted those persons already eligible to vote. Even as late as the mid-1960s, this requirement disenfranchised roughly 100,000 New Yorkers. According to a study prepared by Mayor John Lindsay's office, fewer than 40 percent of eligible African American residents of New York City were registered to vote while, as of 1970, over 67 percent of African Americans in Mississippi were registered. Similar registration levels had been reached in other Southern states that did not impose literacy requirements.

92. New York City elections were conducted in English alone until 1973, despite the presence of thousands of Puerto Rican and other eligible Latino voters.

93. In or around 1974, New York's history of discrimination in voting procedures – in particular its literacy test, English-only elections, and restrictive registration requirements – resulted in coverage of three of its counties (Bronx, Brooklyn, and Manhattan) under Section 5 of the Voting Rights Act. Congress passed Section 5 to require states or their subdivisions with a history of voting discrimination to submit any law or procedure that affects voting to the federal government for review and approval. Since the passage of the Voting Rights Act, Congress has extended New York's Section 5 coverage status twice: first in 1975 for a seven-year period, Voting Rights Act of 1965-Extension, Pub. L. No. 94-73, 89 Stat. 400 (1975), and then a second time in 1982, for a 25-year period until 2007. Voting Rights Act Amendments of 1982, Pub. L. No. 97-205,

96 Stat. 131 (1982).

94. The City Board's decision not to repair the sensor latches on the City's voting machines thus represents just the latest chapter in the discriminatory treatment of minority voters in New York City.

### **CLAIMS FOR RELIEF**

#### **(COUNT ONE)**

#### **(against all defendants)**

#### **First and Fourteenth Amendments –** **Burden on Right to Vote**

95. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1-94 as if set forth herein at length.

96. As detailed above, the State and City Boards' decisions to use the City's lever voting machines without the sensor latches has imposed a severe burden on the voters' fundamental right to vote, to wit, has deprived thousands of voters of their right to cast their votes and have them counted. If it is not enjoined, the City Board's current policy of operating the Shoup lever machines without the sensor latches will continue to impose such severe burdens on the voters' right to vote.

97. By reason of the foregoing, Defendants, acting under color of state law, have deprived and will deprive Plaintiffs of the rights, privileges, and immunities secured to them by the First and Fourteenth Amendments to the United States Constitution and protected under 42 U.S.C. § 1983.

98. Defendants have no compelling or important interest that justifies this severe and unequal burden upon Plaintiffs' fundamental right to vote.

99. Plaintiffs have no adequate remedy at law for such deprivation of their rights, privileges, and immunities.

**(COUNT TWO)**  
**(against all defendants)**  
**First and Fourteenth Amendments –**  
**Equal Protection**

100. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1-99 as if set forth herein at length.

101. As detailed above, the State and City Boards' decisions to use the City's lever voting machines without the sensor latches has caused voters in minority communities to lose their votes at rates that are disproportionately high compared with lost vote rates in white communities in New York City. Similarly, voters in New York City are more likely to lose their vote than voters in communities outside the City. Moreover, voters who are registered as Democratic or Working Families Party members are more likely to suffer a lost vote than Republican voters in New York City. In other words, voters in different jurisdictions are knowingly and intentionally subjected to substantially different lost vote rates due to Defendants' decision not to reactivate the sensor latches within New York City while the latches are used in other jurisdictions such as the City of Albany.

102. This disparate treatment of similarly situated voters, based solely on their race, their place of residence, or their political viewpoint, deprives Plaintiffs of the equal protection of the laws and burdens their fundamental right to vote guaranteed under the Fourteenth Amendment.

103. Under color of state law, Defendants have denied and continue to deny Plaintiffs the rights, privileges, and immunities secured to them by the First Amendment and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and protected by 42 U.S.C. § 1983.

104. Defendants have no compelling or important interest that justifies this severe and unequal burden upon Plaintiffs' fundamental right to vote.

105. Plaintiffs have no adequate remedy at law for such deprivation of their rights, privileges, and immunities.

**(COUNT THREE)**  
**(against all defendants)**  
**Voting Rights Act –**  
**Vote Denial**

106. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1-105 as if set forth herein at length.

107. By their April 15 vote not to repair the sensor latches on New York City's voting machines, the commissioners of the City Board of Elections affirmatively and knowingly chose to maintain an electoral practice that results in a denial of the voting rights of New York City's minority residents and language minorities. To wit, the commissioners' decision rendered the City's polls "not equally open to participation by members of a class of citizens protected by [Section 2(a) of the Voting Rights Act] in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 42 U.S.C. § 1973(b). In short, the commissioners have denied Plaintiffs their right to vote.

108. Defendant New York State Board of Elections has "jurisdiction of, and [is] responsible for, the execution and enforcement of . . . statutes governing campaigns, elections and related procedures." N.Y. Elec. L. § 3-104(1). The State Board also has the power and duty to "issue instructions and promulgate rules and regulations relating to the administration of the election process . . . visit boards of elections, examine their procedures and records and *direct that any such procedures be modified in any*

*manner consistent with the provisions of [the election law]; . . . recommend such legislation or administrative measures as it finds appropriate to promote fair, honest and efficiently administered elections, . . . monitor the adequacy and effectiveness of the election laws . . . [and] take all appropriate steps to encourage the broadest possible voter participation in elections . . . .* *Id.* at § 3-102 (emphasis added). Moreover, “[a]ny prospective modification [by a county board of elections] to a previously approved voting system shall be submitted to the State Board.” Rules of Bd. of Elec. § 6209.8.

Moreover, “[n]o modification of a previously approved voting systems equipment shall be used in any election until such modification has been approved by the State Board.”

*Id.* Despite these powers and duties to ensure that the voting machines used in New York City are maintained and operated properly and in such manner as to allow voters to cast their votes and have them counted, the State Board has expressly or tacitly approved of the City Board’s decision to disable, and then leave disabled, the sensor latches on all of New York City’s lever voting machines.

109. Voting in New York City has been and continues to be racially polarized. Minority voters in the City are politically cohesive in their voting patterns and preferences.

110. By reason of the foregoing, Defendants, acting under color of law, have violated Section 2 of the Voting Rights Act and 42 U.S.C. § 1983.

111. Plaintiffs have no adequate remedy at law for such denial of their voting rights.

**(COUNT FOUR)**  
**(against all defendants)**  
**First and Fourteenth Amendments – Viewpoint Discrimination**

112. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1-111 as if set forth herein at length.

113. By their April 15 vote not to repair the sensor latches on New York City's voting machines, the commissioners of the City Board of Elections affirmatively and knowingly chose to maintain an electoral practice that results in a denial of the rights of New York City's minority residents and language minorities to vote. The commissioners' decision was made with full knowledge that these voters are overwhelmingly registered as members of the Democratic Party or vote disproportionately for candidates endorsed by the Democratic or Working Families Parties in national, state, and local elections.

114. In voting not to repair the sensor latches, the Board discriminated against Plaintiffs – Democratic and Working Families Party members and the Working Families Party itself – on the basis of their political viewpoint, to wit, the commissioners deprived these voters of their opportunity to cast a valid and canvassed vote based on their political affiliation, viewpoint, and voting patterns.

115. The commissioners' decision thereby violated Plaintiffs' rights under the First Amendment to the U.S. Constitution to express their political viewpoint – *i.e.*, to vote – free from discrimination and purposeful obstruction by the State and City Boards of Elections based upon the content of that viewpoint.

116. Plaintiffs have no adequate remedy at law for such deprivation of their rights, privileges, and immunities.

117. By reason of the foregoing, Defendants, acting under color of law, have violated the First and Fourteenth Amendments to the U.S. Constitution and 42 U.S.C. § 1983.

**(COUNT FIVE)**  
**(against City Board and Commissioners)**  
**Article 1, Section 1 of New York State Constitution –**  
**Disfranchisement**

118. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1-117 as if set forth herein at length.

119. Article 1, Section 1 of the New York State Constitution provides, in relevant part, that:

No member of this state shall be disfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his or her peers, . . . .

N.Y. Const. art. 1, § 1.

120. The City Board's decision not to reactivate the City's sensor latches has disenfranchise hundreds of thousands of voters and, if not remedied by this Court, will directly disenfranchise hundreds of thousands of New York City voters in the future.

121. That decision was unnecessary, did not serve any important interest, and was made without any sound justification.

122. By reason of the foregoing, Defendants have violated the first right enumerated in the New York State's Bill of Rights, namely the right to vote.

123. Plaintiffs have no adequate remedy at law for such deprivation of their right to vote under the New York State Constitution.

**(COUNT SIX)**  
**(against City Board and Commissioners)**  
**Article 1, Section 11 of New York State Constitution –**  
**Equal Protection**

124. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1-123 as if set forth herein at length.

125. The New York State Constitution provides:

No person shall be denied the equal protection of the laws of this state or any subdivision thereof. No person shall, because of race, color, creed or religion, be subjected to any discrimination in his or her civil rights by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision of the state.

N.Y. Const. art 1, sec. 11.

126. As detailed above, the State and City Boards' decisions to use the City's lever voting machines without the sensor latches has caused voters in minority communities to lose their votes at rates that are disproportionately high compared with lost vote rates in white communities in New York City. Similarly, voters in New York City are more likely to lose their vote than voters in communities outside the City. Moreover, voters who are registered as Democratic or Working Families Party members are more likely to suffer a lost vote than Republican voters in New York City.

127. The disparate treatment of similarly situated voters, based solely on their race or on where they live or on their political viewpoint, deprives Plaintiffs of the equal protection of the laws guaranteed by the New York State Constitution. In particular, the City Board's actions discriminate against the voters by placing unequal burdens upon their voting rights based on race, place of residence, and political viewpoint.

128. Defendants have no compelling interest or reasonable justification

to support this unequal burden upon Plaintiffs' fundamental right to vote.

129. Plaintiffs have no adequate remedy at law for such deprivation of their rights under the New York State Constitution.

### **PRAYER FOR RELIEF**

Wherefore, Plaintiffs respectfully ask this Court:

(1) To enter a judgment declaring and determining that the City Board's April 15 vote not to repair the sensor latches on New York City's Shoup lever machines and the State Board's failure to require the repair of the sensor latches violated Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, and the United States Constitution, specifically the First and Fourteenth Amendments, and Sections 1 and 11 of Article 1 of the New York State Constitution, both facially and as applied to Plaintiffs,

(2) To enjoin Defendants from implementing and enforcing the City Board's April 15 vote not to repair the sensor latches on New York City's Shoup lever machines and to require Defendants to repair and place the sensor latches on all of New York City's lever voting machines into operation immediately,

(3) To award Plaintiffs their costs and disbursements associated with the filing and maintenance of this action, including an award of reasonable attorneys' fees pursuant to 42 U.S.C. § 1988; and

(4) To award such other equitable and further relief as the Court deems just and proper.

Dated: July 30, 2003

---

Jeremy Creelan (JC7222)  
BRENNAN CENTER FOR JUSTICE  
at New York University School of Law  
161 Avenue of the Americas, 12<sup>th</sup> Floor  
New York, NY 10013  
Ph: (212) 998-6730

Attorneys for Plaintiffs