

...And Justice for All?

Independents File Voting Rights Complaint with the U.S. Department of Justice

The passage of the Voting Rights Act by Congress in 1965 marked the legislative culmination of the mass movement for civil rights and, as well, the completion of the shift of the African American vote to the Democratic Party. Texas Democrat Lyndon Baines Johnson, who won the 1964 presidential election in a landslide over Barry Goldwater, broke ranks with white segregationist southern Democrats like Strom Thurmond, Lester Maddox and Orville Faubus, who led and benefited from a de facto whites-only voting system in the Deep South. Less than 20 years earlier the U.S. Supreme Court had invalidated the de jure all-white primaries conducted by the Democratic Party in the southern states. Smith v. Allwright, 321 U.S. 649 (1944).

Since the Civil War, the federal government had been given (although it did not always accept) the responsibility of ensuring that African Americans, no longer slaves, would be accorded the rights guaranteed to other American citizens by state and local governments. While the federal government's record in this respect has been less than perfect, in the fields of employment, education, housing and voting it has provided important legal weapons in the fight for equal treatment and opportunity.

Alternatively, the change can be submitted to the U.S. Department of Justice and, if the Department does not make an adverse finding in 60 days, the change can take effect.

The Voting Rights Act outlaws the “denial or abridgement of the right of any citizen of the United States to vote on account of race or color.” A particularly powerful – and controversial – legal instrument is contained in Section 5 of the Act, which requires that no change in voting procedures in any covered jurisdiction shall take effect until a court has issued a declaration that it will not deny or abridge the voting rights of minorities. The concern underlying the pre-clearance requirement is that there are many, many ways to deprive racial minorities of their voting rights – not only literacy tests and poll taxes, but more subtle methods, such as relocating polling places to make it more difficult for minority voters to reach them. Thus, meaningful protection means putting the burden to demonstrate non-bias on the state or locality making the change, rather than requiring persons negatively impacted on by the change to demonstrate bias.*

Covered jurisdictions include entire states that, prior to the passage of the Act, maintained “tests or devices” that restricted minority voting rights – Alabama, Alaska, Georgia, Louisiana, Mississippi, South Carolina and Virginia. In addition, coverage can be extended to particular counties. Three counties in New York are covered: the Bronx, Kings (Brooklyn) and New York (Manhattan) counties.

In 1996 the U.S. Supreme Court considered the question of whether or not changes implemented by political parties that impact on the electoral process were covered by the Voting Rights Act and, therefore, had to be pre-cleared. The court held that they were, on the theory that the parties have been delegated critical functions by the states, including the right to nominate candidates and ensure them a place on the general election ballot. *Morse v. Republican Party of VA*, 517 U.S. 186 (1996).

Voting rights issues have until now almost always occurred within the context of the major parties. After all, they control the state and local legislative bodies which have the power to make the changes that the Act is designed to scrutinize. Further, it is the major parties which nominate the candidates who “matter,” i.e. who have a chance of winning.

The complaint which follows is, if not the first, then one of the few instances where the actions of a minor party gave rise to significant voting rights concerns. There are several reasons for this. First, there is the emergence of the independent voter. In 1965, when the Voting Rights Act was passed, approximately 90% of Americans identified with one of the major parties. By 2006, that percentage had dropped to less than 66%, with one-third of all voters self-identifying as independent. In the state of New York, for example, 2.2 million voters have checked a box on the voter registration form next to the statement “I do not want to enroll in a political party.” Another 325,000 have enrolled in the Independence Party. Further, New York is one of the few states that permits fusion, meaning that a candidate can run on the ballot line of more than one political party. In statewide and in New York City-wide elections (as well as in competitive local districts), the Independence Party line can be the margin of victory. Therefore, what goes on within the Independence Party directly impacts on the outcome of elections.

The full details of the events which led to the filing of a complaint to the Justice Department about Voting Rights Act violations perpetrated by the state leadership of the Independence Party of New York, together with accomplices and instigators in the two major parties, are contained in the complaint itself, which begins on page 19. They include: the disbanding of duly constituted and duly elected local county organizations in New York City, where the vast majority of the party’s black, Latino and Asian voting and registration base reside; and the recall of two complainants, Dr. Lenora Fulani and Dr. Jessie Fields, both of

them African American, and both key figures in the effort to create independent political alternatives to the Democratic Party for black voters, from the party’s state executive committee, along with others allied with them.

The complainants are asking the Justice Department to look at how major party players – Attorney General Eliot Spitzer (currently a Democratic Party candidate for governor), Senator Hillary Rodham Clinton, and State Senator Joseph Bruno, the Republican majority leader of the state senate – have induced the state leadership of the Independence Party to restructure that organization so as to prevent party leaders and organizations in New York City from participating in the nomination of candidates for public office. New York’s fusion system provided them with the necessary leverage, as the Independence Party’s status and position on the ballot depend on how many votes its candidate for governor gets in the November election. Party leaders believe that their prospects will be greatly enhanced by having Mrs. Clinton and Mr. Spitzer at the top of the ticket. It is argued that the impact of what they have done impedes efforts by complainants Fulani and Fields and others across the country to organize African American voters to vote independently, rather than for Democratic Party candidates.

The complaint asks the Justice Department to examine the power dynamics between the major parties and a minor party in a fusion state and how they impact on minority voting rights.

The complaint is reproduced here as filed with the Justice Department, except that the description of the parties has been abbreviated due to space considerations.

— Harry Kresky



Harry Kresky is counsel to the Committee for a Unified Independent Party. During the past 20 years he has represented independent parties and candidates in matters before the Federal Election Commission as well as in federal court and state courts in New York and elsewhere.

PARTIES

Following is a brief description of the parties – complainants and respondents – named in the Justice Department complaint.

COMPLAINANTS

Lenora B. Fulani, an enrolled member of the Independence Party of the state of New York and of its State Committee, and – until her recall earlier this year – a member of the party’s state Executive Committee.

Jessie A. Fields, an enrolled member of the Independence Party of the State of New York and of its State Committee, and – until her recall – a member of the state Executive Committee.

Al Bartell, an independent candidate in Georgia for Lt. Governor and a leader of Georgia’s IMove (Independent Voters).

Sarah Bayer, the chair of the Massachusetts Coalition of Independent Voters.

David Cherry, the leader of United Independents of Illinois.

Wayne Griffin, the chair of the Independence Party of South Carolina.

Jim Mangia, the co-chair of the California Committee for an Independent Voice.

Audrey Mowdy, the chair of IMove in Georgia.

Ron Parker, a longtime civil rights activist, now involved in the efforts of Georgia Independent Voters to realign the black electorate.

Rosemary Whittaker, the initiator of the Maine Committee for Independent Voters.

Committee for a Unified Independent Party, Inc. (CUIP), a not-for-profit organization under Section 501(c)(4) of the Internal Revenue Code that seeks to further the development of a non-ideological independent political movement.

RESPONDENTS

Frank M. MacKay, an enrolled member and the chair of the Independence Party of New York, and the chair of the Suffolk County Independence Party.

Thomas Connolly, an enrolled member of the Independence Party, a vice chair of the state Independence Party, and the chair of the Rensselaer County Independence Party.

Frank Morano, an enrolled member of the Independence Party who was voted onto the state Executive Committee following the recall of Dr. Fulani, Dr. Fields, and three other members.

Hillary Rodham Clinton, the junior U.S. Senator from New York and an enrolled member of the Democratic Party.

Eliot Spitzer, the attorney general of the state of New York and an enrolled member of the Democratic Party.

Joseph L. Bruno, the Majority Leader of the New York State Senate and an enrolled member of the Republican Party.

UNITED STATES DEPARTMENT OF JUSTICE
-----X

LENORA B. FULANI, JESSIE A. FIELDS,
AL BARTELL, SARAH BAYER,
DAVID CHERRY, WAYNE GRIFFIN,
JIM MANGIA, AUDREY MOWDY,
RON PARKER, ROSEMARY WHITTAKER,
COMMITTEE FOR A UNIFIED INDEPENDENT
PARTY, INC.,

Complainants,

—against—

FRANK M. MACKAY, THOMAS
CONNOLLY, FRANK MORANO, HILLARY
RODHAM CLINTON, ELIOT SPITZER,
JOSEPH L. BRUNO

Respondents.

-----X

INTRODUCTION

Recent years have seen the beginnings of a significant shift in the political alignment of black voters. Long considered the most loyal constituency of the Democratic Party, black voters have begun to consider other options, to self-identify as independents, and to vote in significant numbers for candidates and parties other than the Democrats. Complainants ask the United States Department of Justice to investigate whether the actions of respondents which have the effect of limiting the political mobility of African Americans¹ violate the Voting Rights and Civil Rights statutes [sic], 42 U.S.C. Sec. 1973 *et seq.* and 42 U.S.C. Secs. 1983 and 1985. For these statutes to be given their full and intended effect they must guarantee and protect voting rights no matter how those rights are exercised and must be available to insure that African American voters are permitted to seek new political options unimpeded by conduct such as that complained of here.

Complainant Fulani and her colleagues in New York have worked to build New York's Independence Party and to make it a viable option for those African

American voters who no longer wish to be aligned with the Democratic Party. In recent years this effort has focused on winning the support of African American voters in New York City to elect (in 2001) and re-elect (in 2005) Mayor Michael R. Bloomberg, who ran on both the Republican and Independence Party lines, and to support reforms such as nonpartisan municipal elections, which would weaken the control of the Democratic Party clubhouse and the party system generally. Others of the complainants support Fulani's efforts and have worked to effect such a realignment nationally and in their respective states.

In order to blunt complainant Fulani's efforts in New York, respondents effected a recall of Fulani and others aligned with her from positions as officers and members of the State Executive Committee of New York's Independence Party and have moved to disempower locally elected leadership in Bronx, Kings and Queens Counties. The latter amounts to a restructuring of the party that must be pre-cleared under 42 U.S.C. Sec. 1973c.

Respondents Clinton and Spitzer undertook this intrusion into the internal affairs of the Independence Party to protect the hegemonic position of the Democratic Party among African American voters. Respondent Bruno, through his agent Thomas Connolly, undertook this intrusion to assure that the Independence Party would aid him in maintaining a Republican majority in the State Senate. In pursuing their unlawful efforts to protect the Democrats' longstanding political monopoly over African Americans and their quest to maintain Republican control over the Senate, respondents have misused New York's unique fusion system, in which minor parties are permitted to run major party candidates on their ballot line. Here respondents have attempted to make the state's most significant minor party, the Independence Party, an instrument for their illegitimate objectives.

FACTS

The Political Realignment of African American Voters

1. It is common knowledge that most black voters have self-identified as Democrats. According to national polls done by the Joint Center for Political and Economic Studies between 2000 and 2004, between 63 percent and 74 percent of the total black population self-identified as Democrats. In many elections, it is common for 85-90 percent of black voters to vote for the Democratic candidate.
2. According to the Pew Research Center, the percentage of blacks who self-identify as independents rather than as either Democrats or Republicans is now 30.9 percent, up from 14.8 percent in 1997. Among younger African Americans, as much as 40 percent now identify as independents.
3. In the 2001 election for mayor of the City of New York, Michael R. Bloomberg, running on the Independence Party and Republican Party lines, secured approximately 25 percent of the African American vote and the Independence Party provided his margin of victory.
4. Mr. Bloomberg won the 2001 election for mayor by 35,000 votes and received 59,091 votes on the Independence Party line, 4 percent of the total vote.
5. Beginning in December 2004, Fulani assembled a vigorous campaign to urge black voters to support Bloomberg for re-election and more specifically to cast their vote for him on the Independence Party line, Column C.
6. Pre-election polls consistently showed Mr. Bloomberg with equal or more support than Fernando Ferrer, the Democratic Party candidate, among African American voters.
7. In 2005 Mr. Bloomberg won re-election and received 74,715 votes on the Independence Party line, 6 percent of the total.
8. Post-election exit polling by Pace University in conjunction with several New York media outlets estimate that Mr. Bloomberg secured 47 percent of the African American vote. *The New York Times* described the Bloomberg victory thusly: "Supporters as well as independent analysts saw Mr. Bloomberg's success as a triumph of competence over the ideology, ethnic politics, and partisan appeals that defined Mr. Ferrer."²
9. The election results reveal a new voter coalition. Political analyst Jacqueline Salit wrote of the Bloomberg election "The key alliance that crystallizes off of the 2005 results is a black and independent alliance, an electoral partnership between independent (largely white) voters and African Americans...Together, black voters and independent voters are in a position to drive an agenda with the second term Bloomberg administration..."³
10. Since the 1980's, complainant Fulani and others of the complainants have worked in the electoral arena with the goal of bringing about a political re-alignment in which African American voters avail themselves of independent political options, become an independent constituency that can fully leverage political power on their own behalf and overcome their status as the most taken-for-granted constituency of the Democratic Party.
11. In furtherance of that goal complainant Fulani and others of the complainants have participated in the building of independent political alternatives to the two major parties, including the New Alliance Party, the Patriot Party, the Reform Party, and the New York Independence Party.
12. Complainant Fulani has run for office and supported campaigns designed to attract African American voters to those organizations and to persuade their members and leaders to reach out to African American voters.
13. Others of the complainants have participated in these efforts.
14. In 1994 complainant Fulani joined with a group of white supporters and advisors of Ross Perot's 1992 presidential campaign in upstate New York to win le-

gal ballot status for the New York Independence Party. This campaign was successful and the Independence Party quickly became the state's fastest growing and most significant minor party.

15. Within the Independence Party, complainant Fulani and those working with her have continued to seek to further the objectives described in paragraph 10 above.

16. This created conflict with certain other Independence Party leaders, including some members of the founding group from upstate New York, who saw the party as a vehicle for primarily white centrist voters. Most clearly articulated by pollster Gordon Black, one of the earliest architects of the Independence Party, this concept rested on leaving black voters in the Democratic Party and recruiting white Democrats to join with white Republican moderates in the Independence Party.⁴

17. Complainant Fulani and her supporters articulated an alternative vision for the Independence Party as one of racial inclusion and reform-oriented populism, bringing together a cross-section of New Yorkers who have a shared interest in reforming government and the electoral process. Fulani's view came to be accepted over time, particularly as the party's base and success in black areas grew, New York City being a prime example.

18. In or about 1999 complainants Fulani and Fields joined forces with Independence Party members from across New York seeking to democratize the structure of the Independence Party, to unhinge it from the top-down control concentrated in the hands of upstate party operatives, and to insure that the party maintained its integrity and independence.

19. In 2000, in an alliance with respondent MacKay and other leaders of the Independence Party, Fulani and her colleagues restructured the Independence Party to place political power in the hands of local county organizations, including decisions regarding which candidates to support for local office.

20. This was accomplished by allowing local party leaders to establish Interim County Organizations (ICO's) even if they were unable to meet the stringent requirements of New York Election Law for the establishment of autonomous county committees.

21. In 2001, and again in 2005, the five counties that comprise the Independence Party organization in New York City gave the party's line to Michael R. Bloomberg in his campaign for mayor. The Independence Party was crucial to Bloomberg's fortunes. It provided his

margin of victory in 2001 and in 2005 catalyzed the "electoral revolution" in which 47 percent of black voters who traditionally vote for Democrats, instead voted for the mayor.

22. The Independence Party organizations in New York City antagonized the Democratic Party leadership by aggressively urging African American voters to vote for Mr. Bloomberg on the Independence Party line.

23. Complainant Fulani was instrumental in the effort to convince African American voters to support Mr. Bloomberg, including offering them the opportunity to vote for him on the Independence Party line.

24. In the months leading up to the 2005 mayoral election, Fulani organized a coalition of African American leaders, most of whom were enrolled Democrats, to support and campaign for Mr. Bloomberg on the Independence Party line. The battle over the black vote in the context of the mayoral election was intense. Major national black Democrats such as the Rev. Jesse Jackson, Rev. Al Sharpton, and Senator Barack Obama campaigned in the black community for the Democratic nominee. These spokespersons urged black voters to "stay on their side of the field."

25. On the eve of the 2005 election New York's leading African American newspaper ran an article headlined, "Polls note changes in African American vote."⁵ The opening paragraph of the article stated:

African Americans, who have historically voted Democratic, are no longer a block to be taken for granted, according to a recent Marist Poll and polling results from Quinnipiac University.

The polls collectively indicate that in the New York City mayoral race, 53 percent of Blacks were considering voting for someone other than a Democrat. Mayor Michael R. Bloomberg is running in Column "C" on the Independence Party line, the third largest party in New York State. Bloomberg is also a registered Republican.

26. Fusion thereby has become a powerful tool for politically realigning or dealigning core constituencies of the major parties.

New York's Fusion System

27. New York is one of a handful of states allowing fusion, a system in which a candidate for public office can run on more than one party line. Votes for that candidate on each line are aggregated.

28. Therefore, in an election in which the candidates of the two major parties are closely balanced, the nomination of a minor party can be crucial.

29. Under Sec. 6-120 of the New York Election Law, a party must authorize a member of another party to run on its line.

30. In statewide elections this is accomplished by majority vote of the party's state committee.

31. The state committee also has the authority under Sec. 6-104 of the Election Law to designate a candidate to be on its ballot in a primary election (or if there is no primary contest, then in the general election) by 25 percent vote of its state committee, thereby obviating the need to meet New York's onerous petitioning requirements.

32. In the case of candidates who are members of another party, however, it is still necessary to obtain the majority vote authorizing such a designation.

33. The fusion system in New York necessarily plays a role in minor parties maintaining their party status and in the relative ranking among them.

34. In order to achieve and maintain party status and, thereby, to be able to participate in the fusion process as described above, a party's candidate for governor must receive 50,000 votes in each election cycle.

35. Moreover, position on the New York State ballot is determined by the number of votes a party polled for its candidate for governor in the last gubernatorial election.

36. Given the disparity in power between major and minor parties, minor parties often seek to have a major party candidate run on their line – most particularly for governor – to insure the maintenance of party status and to maximize prospects for achieving the best ballot position.

37. Given this disparity in power, the courts of the State of New York have attempted to protect minor parties against manipulation by the major parties and interference in their affairs:

However objectionable the principles or policies or management of a particular party may be to one who is not a member thereof, as long as its actions are lawful, it is entitled to function, free from unwarranted interference with or intrusion into its affairs. It is entitled to equal protection of the laws.

If its management is objectionable, that is an

internal matter for the party members to dispose of; if its principles and practices are objectionable, we can trust to the good sense of the American voter to take care of such matters in an orderly fashion at the ballot box on election day.

Zuckman v. Donahue, 191 Misc. 299, 408 (Sup. Ct. Albany Co. 1948); *modified on other grounds*, 274 A.D.2d 216 (3d Dept. 1948); *aff'd*, 298 N.Y. 627 (1948). (Concerning Democratic Party interference in the internal affairs of the American Labor Party).

38. This principle has been reiterated in the cases of *Wydlar v. Christenfeld*, 25 N.Y.2d 719 (1974); *Rose v. Smith*, 220 A.D.2d 922 (3d Dept. 1995).

39. The Independence Party, as the state's largest and most successful minor party, is particularly sought after as an additional ballot line by major party candidates.

40. Further, the Independence Party has a direct relationship to New York's 2.2 million non-aligned voters (those who check the box on the registration form next to "I do not wish to enroll in a party"), having opened its primary to these voters.

41. The Independence Party is unlike traditional minor parties which have maintained a small enrollment in order to better control the use of the party's line to influence the major party toward which they regularly orient. (The Independence Party has 331,295 registered members, while the Conservative Party has 155,092 and the Working Families Party has 30,391.)

42. The Independence Party has been distinct from other minor parties in that it has not oriented towards a particular major party, whereas the Conservative Party has oriented towards the Republican Party and the Working Families Party has oriented toward the Democratic Party.

43. The Independence Party has designated and nominated candidates for statewide and local office who are Republicans, Democrats, members of the Independence Party and non-aligned.

44. Further, until the events giving rise to this complaint, leaders of the Independence Party have stated the intention to become a major party, thereby replacing either the Democratic Party or Republican Party from that status inasmuch as under New York law there can be only two major parties.

45. It is the preference of both major parties to keep the Independence Party small, and predictable

to keep African Americans within the Democratic Party and to maintain white, upstate dominance of the Independence Party.

46. On information and belief respondents MacKay and Connolly are working in concert with the other respondents in an effort to accomplish these objectives.

The Structure of the Independence Party

47. In addition to the local control reform described in paragraphs 18 through 20 above, a rule was enacted which allowed for recall of officers and members of the Executive Committee of the state Independence Party to be effected, without cause, by a 55 percent vote of the party's State Committee.

48. Voting at the State Committee is by weighted vote with each delegate casting the number of votes (in person or by proxy) that the Independence Party's candidate for governor received in the last election in the district that delegate represents.

49. B. Thomas Golisano, the Independence Party's candidate for governor in all three elections in which it ran candidates, oriented his campaigns towards predominantly white areas of upstate New York with the result that the State Committee vote is heavily weighted against residents of New York City.

50. For example, a State Committee member from Monroe County (where Golisano's business is located and near where he lives) casts between 4,176 and 20,574 votes while one from Bronx County casts between 306 and 1,699 votes.

51. New York City has the largest concentration of African American voters in the state, and three of its counties are covered by Section 5 of the Voting Rights Act.

52. Of the 34 African Americans on the Independence Party State Committee, 32 are from the counties in New York City, including the counties covered under Section 5.

Respondents' Actions to Manipulate Fusion for Illegitimate Ends

53. For a candidate with presidential ambitions such as respondent Clinton, a place on the ballot line of the Independence Party is of great value as a means of connecting to independent voters, an increasingly important swing constituency in national politics.

54. The Pew Research Center reports that approximately one-third of American voters self-identify as independents.

55. Given the dynamics of fusion in New York State,

having proven vote-getters such as respondents Spitzer and Clinton at the top of the ticket in a gubernatorial year is of great value to a minor party.

56. Navigating the needs and desires of major party candidates can be treacherous for a minor party.

57. On or about April 13, 2005 complainant Fulani appeared on the cable TV station NY1 where she expected to be interviewed by host Dominic Carter about the Independence Party. Two days prior to her appearance, Mayor Bloomberg had appeared with Fulani at the annual gala of her youth charity, The All Stars Project, at Lincoln Center, where \$1 million was raised from the business community for the All Stars programs.

58. Instead of interviewing her about the Independence Party, Carter confronted her with a statement from a theatre review written in 1989 of an Off-Off-Broadway play in which she wrote the Jewish people "had to sell their souls to acquire Israel and are required to do the dirtiest work of capitalism – to function as mass murderers of people of color – in order to keep it" and insisted that she disavow the statement as anti-Semitic.

59. Complainant Fulani responded that she did not consider the statement to be anti-Semitic and, further, that Mr. Carter's approach to the subject did not allow for serious discussion of important issues concerning U.S. and Israeli policy in the Middle East.

60. In the days following, leaders of the Democratic Party ramped up a campaign to pressure Mr. Bloomberg to refuse to run on the Independence Party line.

61. While Mr. Bloomberg stated that he found complainant Fulani's statements "reprehensible," he continued to seek the Independence Party line and became its nominee.

62. The New York City Independence Party stated that the party took no positions on the Middle East or foreign policy and that individual members of the party have the right to their opinions.

63. In the weeks that followed, respondent Chairman Frank MacKay expressed his public disagreement with complainant Fulani's statements but also contended that they were inconsistent with the views and positions of the Independence Party, despite the fact that it has long been the practice and policy of the Independence Party to not take positions on foreign policy.

64. On or about April 16, 2005 a spokesperson for respondent Spitzer told the media that he would evaluate complainant Fulani's role in the Independence Party in deciding whether to seek its line in 2006.

Members of the People of Color Democracy Caucus of the Independence Party of New York in Albany, New York. March 25, 2006.



PHOTO: DAVID BELMONT

65. Respondent Spitzer had a prior history with the party, including the New York City wing of the party, having appeared at the latter's public events on two occasions. In 2002, Spitzer ran on the Independence Party line in his campaign for Attorney General, polling 256,915 votes.

66. Moreover, in his efforts to cultivate a positive relationship with the leadership of the Independence Party, respondent Spitzer had met with complainant Fulani and certain of her colleagues at the home of Fred Newman and Jacqueline Salit, members of the Independence Party State Committee.

67. Two such meetings took place, the first on or about May 17, 2002, and the second in or about December, 2003.

68. At these meetings, there was discussion of the need to repair the rift between the Democratic Party and the Independence Party's New York City leadership, in particular complainant Fulani.

69. Respondent Spitzer, due to his interest in cultivating Independence Party leadership in order to receive the party's endorsement in 2006, expressed an interest in doing so and, in particular, indicated that he would discuss this with respondent Clinton, who had antagonized party leaders by actions in her 2000

run for the U.S. Senate.

70. During her first campaign for the U.S. Senate, respondent Clinton sought guarantees from the leadership of the Independence Party that she could have the Independence Party line without having to face an Independence Party primary against then New York City Mayor Rudy Giuliani, an enrolled member of the Republican Party, who was then contemplating a run for U.S. Senate.

71. Respondent Clinton was told that she would receive no such guarantee. Nonetheless, she appeared at an Independence Party candidate forum in Buffalo in April of 2000 but stated that she would not seek the line because of the "extremist" views of complainant Fulani and the party's association with Republican Patrick Buchanan.⁶ Party leaders, including respondent MacKay, publicly criticized Senator Clinton for her efforts to dictate terms to the party. It was this rift that respondent Spitzer in 2002 and 2003 had said he would attempt to repair.

72. On or about July 5, 2005 a spokesperson for respondent Spitzer stated that he would not accept the Independence Party line if complainant Fulani was involved.

73. On August 12, 2005 respondent MacKay was

quoted in the *New York Daily News* that complainant Fulani would play no role in the selection of statewide candidates in 2006.

74. Respondent Connolly joined with respondent MacKay in this effort to disempower the New York City Independence Party to curry favor with respondents Clinton and Spitzer.

75. This was a distinct change from MacKay's previous position when he urged all candidates seeking the Independence Party line in statewide elections to meet with complainant Fulani and other Independence Party leaders aligned with her in New York City.

76. In an editorial entitled "Is this the End of Lenora" on September 12, 2005, the *New York Post* stated:

But sources within the party say that McKay (sic) has come under pressure from the camps of Sen. Hillary Clinton and Attorney General Eliot Spitzer (both of whom would like to run next year on the Independence Party line) and from some upstate Republicans to purge the party of its Fulani taint. Will he have the votes to do so? We'll know in a few days.

As for Mike Bloomberg, he'll probably breathe a sigh of relief – though he doesn't deserve to.

For he has been deep in bed politically with Lenora Fulani.

77. On September 6, 2005 respondent MacKay wrote to members of the State Committee of the Independence Party initiating recall of complainant Fulani and those aligned with her to be voted on at the upcoming State Committee meeting on September 18, 2005.

78. The letter alluded to charges of "bigotry and hatred" made against the Independence Party as a result of the "disturbing social commentary" by Fulani and her allies and efforts to "continue to portray themselves as the leadership of the Independence Party..."

79. Enclosed with the letter were copies of a number of newspaper articles and letters to the editor about complainant Fulani's controversial 1989 remarks.

80. The packet did not contain the newspaper articles about the conditions set by respondents Spitzer and Clinton for taking the Independence Party line, nor did the letter contain any mention of them.

81. At its September 18, 2005 meeting the State Committee voted to initiate recall and to recall complainant Fulani and those aligned with her from their positions.

82. A motion to divide the question and vote on each person separately was defeated.

83. The weighted vote to recall was 74 percent in favor and 26 percent against.

84. Other persons were then elected as a slate to take over the offices and seats on the Executive Committee from which complainants were recalled, one of whom was respondent Morano, now a close ally of MacKay with ties to both the Republican and Democratic Parties, and who has operated on MacKay's behalf in New York City where he resides in Richmond County, one of the City's five counties.

85. As a result of the recall all but one black person was removed from the Executive Committee. All Jewish members of the Executive Committee were removed. All but one member from New York City, where an estimated 85 percent of the party's black membership resides, were removed.

86. Respondent MacKay chaired the meeting and cast his vote, and that of the proxies he held, against Fulani and her allies on each question as did respondents Connolly and Morano.

87. An editorial in the November 5, 2005 issue of the *New York Times* noted that respondent MacKay has little say over the operation of the New York City party, and stated that:

The state organization finally ousted Fulani from its executive committee in the face of boycott threats by state politicians.

The December 7, 2005 issue of the *New York Post* stated:

A number of high profile politicians, including Sen. Hillary Clinton, have said they would not seek Independence support if Fulani played a major role in the state party.

88. On information and belief, subsequent to the November, 2005 mayoral election respondents MacKay, Connolly and Morano in furtherance of the objectives described herein, and in light of the significant showing by the New York City Independence Party in the mayoral election and the political realignments manifest therein, embarked on a plan to disenfranchise the Interim County Organizations in Bronx, Kings and Queens Counties, in violation of the rules of the Independence Party and requirements of New York law.

89. These counties have the largest minority populations in New York City.

90. At a meeting of the Independence Party State Committee on February 4, 2006, respondents MacKay,

Connolly and Morano organized the passage of a resolution that placed the Bronx, Kings and Queens County organizations in a form of receivership whereby all decisions as to authorizing and nominating candidates in those counties would be controlled by the State Executive Committee.

91. Recognizing that such action is in violation of the existing party rules, said respondents took the position, ratified by the Independence Party State Committee, that the resolution effecting the aforesaid, "shall have the force and effect of a party rule."

92. The sole articulated basis for this action was that the leaders of these county organizations were aligned with complainant Fulani and shared her views.

93. On information and belief, no effort has been made to obtain pre-clearance of this change in party structure as required under 42 U.S.C. Sec. 1973c.

94. Respondents MacKay, Connolly and Morano were unable to move against New York and Richmond Counties in that way because leaders there had organized autonomous county committees under the election law.

95. However, on February 12, 2006 respondent Morano attempted to displace Sarah Lyons, Chair of the Richmond County Committee and an ally of complainant Fulani.

96. The following day the *New York Post* ran an editorial entitled "Losing Lenora," that stated, *inter alia*:

What's behind the "Dump Fulani" drive? Most likely, the party fears for its future. It has to attract 50,000 votes in November to keep its permanent line on the ballot, and Democratic front-runner Eliot Spitzer reportedly has told the party he won't accept its nod if Fulani remains a key player.

97. On February 20, 2006, the Rochester *Democrat and Chronicle*, in an article entitled "Golisano's decision leaves party at crossroads; Independence Party now facing decisions on its political future" reported that Ms. Clinton is now looking favorably on the Independence Party and that Mr. Spitzer is "encouraged by the steps the party has taken."

LEGAL CLAIMS

Count 1

98. The actions of respondents were designed to and had the effect of reconfiguring the leadership of the Independence Party. The objectives were to make it

acceptable to respondents Clinton, Spitzer and Bruno by removing from leadership complainant Fulani and others. Fulani and others have sought to and contributed significantly to the weakening of the hold of the New York State Democratic Party on African American voters; presented the Independence Party as a better alternative for them; and worked to maintain the Independence Party as free of undue influence and intervention by the Republican and Democratic Parties.

99. The actions of respondents were designed to and had the effect of disempowering the counties in the City of New York with the largest minority populations.

100. In so doing, respondents hope to keep the Independence Party a predominantly white party and keep African American voters within the Democratic Party.

101. Two of aforesaid counties, Bronx and Queens, are covered counties under 42 U.S.C. Sec. 1973b.

102. Respondents have acted under color of state law insofar as their actions have attempted to and have had the effect of determining the outcome of the process by which the Independence Party designates, nominates and authorizes statewide candidates to run on its line in the 2006 election.

103. The actions of respondents are actionable under 42 U.S.C. Sec. 1983 as violative of complainants' First Amendment freedom of association under the U.S. Constitution and their right to equal protection of the law under the Fourteenth Amendment of the U.S. Constitution to participate in the political process and further political objectives including, but not limited to, seeking to increase the participation of African Americans in the Independence Party.

104. They also constitute a "denial or abridgement of the right of any citizen of the United States to vote on account of race or color" under 42 U.S.C. Sec. 1973 *et seq.* inasmuch as they are intended to and have the effect of limiting the political mobility of African American voters by reconfiguring the leadership of the Independence Party to make the party inhospitable to them.

105. Traditionally, these statutes have been used to secure a place for African Americans within the Democratic Party.

106. However, if their intent – insuring the political rights and freedom of African American voters – is to be fulfilled it is imperative that they be construed and applied to secure the rights and protect the efforts of these voters to seek other political affiliations.

107. Moreover, the actions of respondents have

altered the manner in which candidates of other parties for statewide office seek the Independence Party's designation from one where leaders of the party from all areas of the state were courted to one where leaders in New York City, most of whom are aligned with complainant Fulani and are reaching out to the African American community, are bypassed.

108. Further, the actions taken to disempower the county organizations in Bronx and Queens counties, which amount to a restructuring of the Independence Party by severely curtailing local autonomy, and which respondents MacKay, Connolly and Morano characterized as having the force and effect of a party rule, are illegal inasmuch as they were undertaken without pre-clearance pursuant to 42 U.S.C. Sec. 1973c.

Count 2

109. The integrity of the fusion system as it exists in the State of New York depends on the autonomy of the political parties that participate in it.

110. Without such autonomy, fusion is arguably a mechanism for manipulating the voters of the state of New York who are tricked into supporting the agenda of a major party through the vehicle of a seemingly independent minor party.

111. Such autonomy is of particular importance in light of the growing block of non-aligned voters, many of whom look to the Independence Party for leadership even if they do not choose to join.

112. In the actions complained of respondents have compromised the autonomy of the Independence Party by seeking to transform it from an independent organization competing for the votes of African Americans (and others) into one whose voting base and decision-making process is compatible with and strengthens the respective interests of the Democratic Party and the Republican Party, circa 2006.

113. Moreover, such actions limit the political options of African American voters in violation of 42 U.S.C. Sec. 1973 *et seq.* and 42 U.S.C. Secs. 1983 and 1985.

Count 3

114. As the elected Chair and a Vice Chair of the Independence Party and a member of the Executive Committee of the state Independence Party respondents MacKay, Connolly and Morano have a fiduciary duty to act in the interests of the Independence Party.

115. In colluding with respondents Clinton, Spitzer and Bruno as set forth herein, respondents MacKay,

Connolly and Morano have breached that duty by acting at the behest of and in the interests of other political parties, the Democratic and Republican Parties.

116. By so doing, they have led a reconfiguration of the leadership of the Independence Party and a restructuring of the party organization to make the party inhospitable to African American voters.

117. At a time when African American voters are seeking other political options than the Democratic Party and, for many, options that are independent of both major parties, the actions of respondents MacKay, Connolly and Morano, as set forth herein, constitute an abridgement of the civil and voting rights of African Americans both within and outside of the Independence Party.

WHEREFORE complainants respectfully request that an investigation be opened and appropriate findings be made and remedies implemented to vindicate complainants' rights and those of African American voters under the applicable statutes, regulations and judicial holdings.

Dated: New York, NY
February 28, 2006

Respectfully submitted,
Harry Kresky
Gary Sinawski
Attorneys for Complainants

by Harry Kresky
250 West 57th St. (Ste. 2017)
New York, NY 10107
(212) 581-1516

Notes

1. In this complaint, the terms "Black" and "African American" are used interchangeably and are meant to include Caribbean Americans as well.
2. "Democrats Are Locked Out of City Hall for 4 Straight Terms," by Patrick D. Healy, *The New York Times*, November 9, 2005.
3. "The Black and Independent Alliance," by Jacqueline Salit, January 2, 2006.
4. Black, Gordon S., and Benjamin D. Black, *The Politics of American Discontent: How a New Party Can Make Democracy Work Again*, New York, NY: John Wiley & Sons, Inc., 1994.
5. *Amsterdam News*, November 3-9, 2005, p.6.
6. For a brief period which ended in June, 2000, complainant Fulani, a major leader in the national Reform Party in addition to her role in the Independence Party, endorsed the effort of Mr. Buchanan to become the nominee of the Reform Party for President of the United States. The Independence Party of New York never endorsed Buchanan.