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Cyrus R. Vance, Jr.
Manhattan District Attorney
One Hogan Place
New York, New York 10013

Re: Dismiss Charges against Nora Anderson

Dear Mr. Vance,

Today I write to urge you to drop the charges against Nora Anderson, who is the voters' choice for Manhattan Surrogate Judge. Ms. Anderson is facing an ongoing jury trial in Manhattan for two counts of offering a false instrument for filing. I have observed portions of this trial over the last few days. I have come to the conclusion that the prosecution of this case is a violation of the basic fairness and justice that you promised for New Yorkers when you ran for district attorney.

Ms. Anderson ran for New York Surrogate in 2008, against Judge Milton Tingling and John Reddy. Judge Tingling was endorsed by the New York County Democratic Party Leader Denny Farrell. John Reddy, an attorney for the Public Administrator, had the support of the estates lawyers. Ms. Anderson, who served as chief clerk of the Manhattan surrogate and who, as a trial lawyer, had tried over 20 cases in Surrogate's court, was found most qualified by the New York Times.

In the election, Ms. Anderson handed a humiliating defeat to her opponents, receiving almost twice as many votes as Reddy, and more than twice as many votes as the party favorite, Judge Tingling.

Ms. Anderson has been prevented from taking office for over one year. She has been accused of concealing the source of the funds that she used to make contributions to her own campaign. She obtained these funds from personal gifts or loans from Brooklyn attorney Seth Rubinstein.

During the election race, I initially supported her opponent, Milton Tingling. Eventually, I informed Judge Tingling that I would withdraw my endorsement and remain neutral for the remainder of the campaign. Although I am not a supporter of Ms. Anderson's campaign, what I have seen in this trial causes me to speak in support of her rights to

fairness.  She has the right to take her seat as the winner of a fair election, and to be freed of these unjust and unsubstantiated charges.

## Prosecuting for Legal Activity

Ms. Anderson is being prosecuted for utilizing a loophole in the election law, namely, that contributors are not required to disclose the source of the funds they use to make contributions. It is well known that experienced political contributors use this loophole to avoid the contribution limits under the election laws, by setting up LLC's (who are "persons" under the Election Law), giving their moneys to the LLC's, which in turn, make contributions to candidates. Under current law, this practice is legal. A bill to require disclosure of intermediaries and limit contributions from recently-formed LLC's was proposed but died in the New York legislature.

Ms. Anderson is not a political insider. She engaged in this same practice, but in a much more transparent way: she received a perfectly legal personal gift from Mr. Rubinstein, and then made a contribution to her own campaign, again, perfectly legal. Her treasurer reported the contribution in accordance with the election laws.

Although it is commendable that Ms. Anderson was more overt in her actions than the regular method of contributing through anonymous LLC's, the perfectly legal practice of funneling money through LLC's is morally indistinguishable from the practice which Ms. Anderson employed.

It can be argued that there ought to be laws which require contributors to disclose the source of the funds that they are using to make their contributions, and more laws to consider the funding source to be the contributor for the purpose of the complying with the contribution limits. Perhaps there should be a law that comports with the federal election laws, requiring that an intermediary funding source be disclosed. Although it is true that there would be benefits to such laws, there is no benefit is selecting a candidate for prosecution based on a legal standard that does not yet exist, for failing to place information on an official disclosure form which the form does not call for.

## The Fact that the Evidence is Strong on Motive, Will Not Make Up for the Lack of a Criminal Act (Actus Reus) or Intent (Mens Rea).

It is becoming clear throughout this trial that the district attorney will prove that Ms. Anderson had a motive to raise moneys and make contributions under the most generous legal limit. This motive is no different from the taxpayer who has a motive to employ every loophole to pay as little taxes as possible. But there will be no proof that there was a criminal act or criminal intent. Proof of motive in a competitive election race is not sufficient for a criminal prosecution, any more than proof that a taxpayer wishes to avoid taxes is proof of tax evasion.

In a competitive election race, all candidates have a motive to gain any advantage that the law allows. In such a situation, a candidate cannot be expected to enforce their own campaign finance reform unilaterally. To do so would give an unfair advantage to the opponent who is free, under the existing law, to engage in activities that skirt the

contribution limits. In campaign finance, if a candidate plays the good guy, the bad guy would win every election.

Ms. Anderson followed the same rules that were followed by all New York candidates. The only difference is that, as a political outsider, the method she used to report the funds differed from the methods employed by political insiders. Aside from that, what she did bears no moral or legal difference whatsoever from what other candidates have traditionally done.

If I am correct, then why shouldn't you simply wait for the jury to decide? Because the very prosecution of this case smells of political motivation and unfairness. This criminal investigation did not begin with a policy objective, it began with a political target.

## Grand Jury as Political Weapon

After Ms. Anderson's resounding election victory, the Board of Elections urged your office under Robert Morgenthau to hold a grand jury investigation. The commissioners of the Board of Elections are politically appointed – not by elected officials, but directly by bosses of the major political parties. As a result, the employees of the Board of Elections tend to owe their jobs to their political connections as well.

At that point, if it is appropriate to investigate the source of political contributions, then an investigation should have been conducted as to the source of moneys given by all persons who gave large sums to their own political campaigns, and all LLC's and companies that may have acted as a shell to avoid campaign limits. All large contributors and recently-formed LLC's should have been questioned as to where they obtained the money used to make their contributions. The reason for this is that there is no reporting requirement that the contributors report the source of their contributions. As such, Ms. Anderson's reports were filled out in identical fashion to all the other reports filed with the Campaign Finance Board that year.

Instead of investigating the practice that they claim to condemn, and discovering who else may be engaged in this practice, the politically-appointed Elections Board limited the investigation just to Ms. Anderson, and the motivation is clear: Ms. Anderson, as the political outsider, is targeted by those in the democratic party machine who were embarrassed by her defeat of Judge Tingling. And by limiting the investigation to Ms. Anderson, the Board of Elections ensures that the investigation does not go too far, protecting politically-connected contributors who are engaged in similar or the same practice.

Ms. Anderson's political opponents were quite skillful in pointing out Ms. Anderson's alleged wrongdoing, because they are experts in engaging in the wrongdoing themselves. The only difference is that Ms. Anderson chose not to hide behind an anonymous LLC, but employed a method that, although legal, was more transparent than the method employed by political insiders.

Because of the selective nature of this investigation, the prosecution will accomplish no grand purpose. On the contrary, it creates a scapegoat for the problem, and in doing so,

supports the kind of corrupt system that created the problem. It sanctions the use of the grand jury as a political weapon, to be used in the future to deny the voters of New York County their choice in an election.

## Drop the Charges Against Nora Anderson

Making Ms. Anderson a scapegoat for the weaknesses in New York's campaign finance laws will not solve the problem. On the contrary, this prosecution will serve the interests of the machine politicians, who will use it as an argument that the problems are already being solved. The solution is to advocate for stronger laws, rules that everyone should abide by. Instead, the district attorney's office is allowing the Board of Elections to use the grand jury as a political weapon to eliminate political enemies in a discriminatory fashion and strengthen machine politics in New York County.

Should Ms. Anderson be acquitted, justice will be served, but at the cost of keeping a duly elected judge off the bench for over a year.

Should Ms. Anderson be convicted, your office will have been responsible for a selective prosecution to serve the political ends of a party machine.

As a result, I urge you to drop the charges against Nora Anderson, and tell the political appointees on the Board of Elections that if they want a grand jury, they have to do a fair investigation without targeting candidates that the political bosses dislike.

Please call or write with any questions or concerns.

Yours,

Steven De Castro
Attorney