Honorable Governor David Paterson

Executive Pardon Petition

John Kennedy O'Hara

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November 2, 2009

The Honorable David Paterson
Governor, State of New York
State Capital
Albany, New York 12224

Re: John Kennedy O'Hara
Request - Executive Pardon

Dear Governor Paterson:

Pursuant to Article IV, Section 4 of the New York Constitution, we respectfully submit this application for an order pardoning the felony conviction of John Kennedy O'Hara. John Kennedy O'Hara is the only person in the history of the State of New York to have been criminally prosecuted for casting his vote, with the exception of civil rights Women's Movement Suffragist ***Susan B. Anthony***.[1] We issue this plea to once and for all remove the heinous ***stain of a felony*** for illegal voting, which was the result of a selective malicious prosecution and political vendetta against John Kennedy O'Hara by the Kings County District Attorney's Office. It is clear, based on the report of his refusal to comport to the mandate of the Democratic Party to bow out of running for office.

WHY THIS PETITION FOR PARDON IS IMPORTANT

On October 6, 2009, a Panel of five Justices of the Supreme Court of the State of New York, Appellate Division, Second Department decided that John Kennedy O'Hara be immediately reinstated to the Bar, and be allowed to practice his profession as a lawyer after 12 years of disbarment. This followed the unanimous support for reinstatement by the 25 members Committee of Character and Fitness of the Second, Tenth, Eleventh and Thirteen Districts of the State of New York.

Despite the fact that John Kennedy O'Hara indeed was readmitted to the Bar and that he previously completed his sentence (of community service) attendant to his felony conviction, this felony remains an indelible stain on John Kennedy O'Hara's professional career and his

[1] New York State Election Law Section 1-104(22)

personal character[2]. The findings of the court and the committee vindicating John Kennedy O'Hara and his many supporters on a local, national and international level (including news outlets and editorial boards), indicates that there was a clear understanding that he was indeed targeted for selective prosecution in retaliation for his political activity not sanctioned by the reigning Democratic Party. The subcommittee of the Committee on Character and Fitness issued a report supporting John Kennedy O'Hara's readmission, which states as follows:

> "Attorney O'Hara was actively involved in politics during this period and ran primaries against organization candidates in Brooklyn. These campaigns were quite successful and for a period of years Attorney O'Hara was able to unseat a number of organization incumbents which, inevitably, angered the local political machine."
>
> "Attorney O'Hara, accurately it appears, claims that the machine went gunning for him and pounced on his change of residency calling it election fraud." (Exhibit A).

John Kennedy O'Hara has exhausted all his appeal options up to and including The Supreme Court of the United States. Your office is indeed his last resort to once and for all remove this ***stain of a felony.***

On October 23, 1996, John Kennedy O'Hara, was arrested in Brooklyn for casting his constitutionally bestowed vote. Previously, Mr. O'Hara had so valued his right to vote that he voted in every single election since his 18th birthday until he was convicted of the felony that is the subject of this pardon application.[3] Even with this ***stain of a felony***, John Kennedy O'Hara never lost faith with the democratic principles that are the bedrock of our nation's founding. It is for this reason that he continued to advocate for those principles in continuing to support like-minded candidates maintained the goal of allowing full and unfettered discussion of issues before the public; not merely the approval of the party organization. Even as Attorney O'Hara continued his long and arduous efforts to clear his name because of this selective political persecution, his record of community achievement remained so noteworthy that he was honored in 2005 by Justice Card Alliance[4] - primarily for his efforts to achieve freedom for Judge John Phillips, who had become confined to a nursing home in the Bronx due to what he considered to be another act of political vengeance on the part of the Kings County Attorney's Office. An

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[2] Mr. O'Hara is committed toward receiving a pardon while his mother, Bernadette O'Hara, who is in her waning years, remains alive. Bernadette O'Hara has supported her son throughout this ordeal, and has remained proud of the fact that her son has stood up through three trials against this political prosecution for a "crime" that was instituted only because he became an irritant to the Brooklyn Democratic Party. Indeed, John Kennedy O'Hara has never had any other brush with the law, and his mother would like to see his name finally cleared.

[3] A community board member from 1990 to 1997, as Land Use committee member, John Kennedy O'Hara was responsible for bringing a Costco, with many accompanying jobs, to the community; and was personally responsible for providing approximately $3.5 million dollars in funding for youth programs as Chairman of the Youth Services Committee. Mr. O'Hara has been recognized as "a crusader for justice," as published in the Institute for Judicial Studies (see "Judicial Reports: Fallen Guardian Angels," Leah Nelson, September 12, 2007). In reporting on Mr. O'Hara's devotion to Judge John L. Phillips, as well as his work to empower voters in the minority and immigrant communities, he was awarded the Justice Card Alliance Community Service Award in 2005.

[4] Justice Card Alliance, Inc. (hereinafter referred to as JCA) is a State of New York non-partisan, not-for-profit organization, particularly with an emphasis on criminal justice issues in bridging the community to the justice system. One of its fundamental goals is increased voter participation, particularly targeting the minority, immigrant community, and younger voters.

online petition at **www.freejohnohara.com** has received support from several entertainment and artistic notables as ***Chris Noth*** and ***Sean Penn,*** who have signed in support of having the subject felony removed from John Kennedy O'Hara's otherwise unblemished record.

The subcommittee of the Committee on Character and Fitness found that "***the machine went gunning for him and pounced on his change of residency calling it election fraud***.[5]" Previously a ***Harper's Magazine*** investigative reporter uncovered incontrovertible evidence, that DA Joe Hynes had indeed targeted Attorney O'Hara as a "***political hit***" for prosecution at the behest of Assemblyman James Brennan of the Brooklyn Democratic Party Machine.[6] (Exhibit E)

The editorial criticism of Brooklyn's justice system regarding John O'Hara's plight has included newspapers throughout the state (including the *Albany Times-Union*, the *New York Daily News*, the *New York Sun*, the *New York Press*, and the *Amsterdam News*). Some of the attacks on District Attorney Joe Hynes for his continued persecution of O'Hara has been blistering, variously calling the prosecution an ***"injustice,"*** a ***"bizarre case,"*** a ***"voting outrage,"*** a ***"grievous wrong," "politically motivated,"*** a ***"farce,"*** and ***"a prosecutorial jihad."***[7] (Exhibit D).

Award-winning documentary filmmaker Alex Gibney[8] is presently producing a film entitled "**The Dissidents,**" centered on Attorney O'Hara's selective malicious prosecution and other instances of prosecutorial malfeasance on the part of the Brooklyn District Attorney's Office. The making of this film has been chronicled by the New York Sun.[9]

John Kennedy O'Hara, Esq. was disbarred as an attorney, and lost his right to vote under the pretext that he registered to vote from a second residence in the same neighborhood where he had lived all of his life. John O'Hara had long been a political activist and a political irritant to the Brooklyn Democratic Machine. He was indicted on six counts of voter fraud, facing a potential of 27 years in prison. Attorney O'Hara was a relentless political irritant that would not be deterred in the exercise of his First Amendment Rights. District Attorney Hynes' political persecution was at an exorbitant cost to our State taxpayers (three trials, nine appeals and a writ of certiorari application before The United States Supreme Court).

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[5] Exhibit A

[6] **Harper's Magazine,** December 2004, Christopher Ketcham, **MEET THE NEW BOSS: MAN VS. MACHINE POLITICS IN BROOKLYN.**

[7] "**Voting isn't a Crime**" July 23, 2003, New York Daily News; "**Democracy Defeated**" September 9, 2003, New York Daily News; "**A Voting Outrage**" May 19, 2001, Times Union – Albany; "**Voters as Convicts**" January 13, 2003, Times Union – Albany; "**Triple Jeopardy**" January 9, 2004, The New York Sun; "**Justice and the Ballot**" December 22, 2003, Times Union – Albany, THE NEW YORK LAW JOURNAL, published a series of articles during the last decade concerning the O'Hara case.

[8] "**Ready for a Close-Up, Noted Filmmaker Focuses on Hynes, O'Hara**" The Brooklyn Paper, June 25, 2005; "**Documentary Chronicles Brooklyn DA's Alleged Silencing of Democratic Machine Critic O'Hara"** The New York Sun, June 30, 2005; "**Director Eyes Film on Hynes"** Daily News, July 5, 2005; "**Award-Winning Filmmaker turns Focus on Brooklyn D.A."** Brooklyn Daily Eagle, July 7, 2005.

[9] "Documentary Chronicles Brooklyn DA's Silencing of Democratic Machine Critic O'Hara, Daniel Hemel, NEW YORK SUN, Thursday, June 30, 2005.

A pardon[10] of John Kennedy O'Hara would uphold the hope that our democratic system of government should encourage open debate and discussion of matters of public concern without fear of retaliatory criminal prosecution.[11]

CUI BONO **THE PUBLIC'S LEGAL INTEREST**

From a public policy perspective, the chilling effect on those who would otherwise run for elective office but for their fear of retaliatory criminal prosecution, where their manifest intent to reside in a particular voting district is considered wrong *after the fact*, pursuant to this unconstitutional statute. In 2001, Judge Albert Rosenblatt, dissenting[12] in The Court of Appeals' opinion in People v O'Hara, found that his case is a "unique one" in that it was a criminal prosecution as opposed to merely a civil election matter, which is routinely how these types of residency issues had been dealt with before Attorney O'Hara's case.[13]

As Court of Appeals Judge Rosenblatt[14] further states in his harsh dissent:

> "If politically-charged disputes such as this and questions of "residence" are going to be resolved in the criminal arena and decided by juries, with the possibility of criminal conviction and incarceration, we would ensure that the definition of residence is plainly fixed and easily understood."[15] (Exhibit B)

John Kennedy O'Hara, Esq.'s felony conviction for illegal voting erodes the very fiber of security to our citizens' First Amendment Rights in its chilling of the exercise of our right to vote, the bedrock upon which our democratic form of government is based and our right to run for elective office without the consent of the reigning Party.[16]

STATEMENT OF THE LEGAL CASE

John Kennedy O'Hara, Esq., the first person in Brooklyn to be tried three times on the same charge, was convicted of one count of false registration (Election Law §17-104(4)), one count of offering a false instrument for filing this purported false registration (P.L. §175.35) and five counts of illegal voting from that address (Election Law §17-132(3)). The essential element

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[10] **Sometimes a Pardon Is a Good Thing** – states that there appears to likewise be partisan politics as well as a tinge of classism and favoritism in the pardoning process, such that, "***no pardons for nobodies. Somebodies can catch a break***." *The New York Observer*, Roger Simon, June 25, 2007. Indeed, John Kennedy O'Hara is indeed a disbarred lawyer with no political influence, or rather a "***nobody***", if you will, by some people's standards. It is the "nobodies" like John Kennedy O'Hara that more so need the help of the Executive Branch to right wrongs committed by criminal justice personnel whose hearts and souls are governed by **The Presence of Malice**.

[11] Mr. O'Hara is without right of further appeal at this stage under 28 U.S.C. § 2244(b)(3)(E), which provides that an order denying authorization to file a second or successive habeas corpus application shall not be subject of a petition for rehearing or appeal to the United States Supreme Court.

[12] In the Court of Appeals case there were two dissenting votes - in of itself remarkable, when one considers how regularly, in criminal matters, the Court issues a unanimous decision.

[13] People v. O'Hara, 2001 WL 670112 Fn2 (N.Y. 2001)

[14] Of note - Judge Albert Rosenblatt, not known as a pro-defense jurist, yet issued a harsh dissent in favor of reversal of Mr. O'Hara's conviction.

[15] Clearly, Judge Rosenblatt early on recognized that Mr. O'Hara had been singled out as a political hit and that this case was one of Selective Prosecution. *People v. O'Hara,* 2001 WL 670112 Fn2 (N.Y. 2001)

[16] See fn 11 , *supra*

of each count was that Attorney O'Hara, a lawyer with ***no prior criminal record,***[17] chose the wrong one of his two residences from which to register to vote because it was not a legal "residence" under the Election Law. Election Law §1-104(22) defines "residence" as "that place where a person maintains a fixed, permanent and principal home and to which he, wherever temporarily located, always intends to return." Attorney O'Hara[18] maintained that inasmuch as he had legitimate, significant and continuing attachments with both residences, in accordance with New York seminal cases he was legally entitled to choose either of his two multiple residences as his voting address.[19] However, the trial court's jury charge was effectively the literal reading of Election Law §1-104(22), which has been found unconstitutional. The state courts and the courts below in this instant case failed to rule on the constitutionality of this statute charged to the jury, but rather ruled on the 6th Amendment issues as to ineffective assistance of counsel. The courts never considered the constitutionality of the statute because said objections were unpreserved.

NEW YORK STATE ELECTION LAW §1-104(22) DEFINITION OF RESIDENCE IS UNCONSTITUTIONAL

A. The Strict Statutory Standard of Review For Restraints On The Right To Vote

Where a statutory restraint on a residence requirement for voting purposes is not necessary to further a compelling state interest, it has been found to be unconstitutional in that it violates the Fourteenth Amendment. *Dunn v. Blumstein, 405 U.S. 330, 336-337 (1972*). To survive strict constitutional scrutiny, the restrictions imposed by such a statute must advance a compelling governmental interest by the least drastic means. *See, e.g., Dunn v. Blumstein,* 405 U.S. 330, 336-337 (1972). Absent a compelling state interest, a state may not statutorily restrain the right of a resident to move from one jurisdiction to another. *Id*. Accordingly, the definition of residence in New York State Election Law §1-104 is unconstitutional where it denies the right to choose of multiple or non-traditional residences.

The right to vote is an expression of our most basic of rights, freedom of speech. As the Supreme Court states in *Wesberry v. Sanders,* 376 U.S. 1, 17-18 (1964): No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined. Our constitution leaves no room for classification of people in a way

[17] It was admitted by DA Hynes that all of Mr. O'Hara's financial information during his criminal trials, including 20 years worth of credit card slips, cancelled checks and tax returns, showed nothing improper. Furthermore, Mr. O'Hara had never been the subject of any disciplinary actions as an attorney prior to this politically charged criminal conviction.

[18] Mr. O'Hara consistently maintained that he had two residences to which he had physical presence and an intention to remain at the time.

[19] *Matter of Gallagher v. Dinkins*, 41 A.D.2d 946, 343 N.Y.S.2d 960 (2nd Dep't 1993) aff'd 32 N.Y.2d 839, 346 N.Y.S.2d 268, 299 N.E.2d 681 (1973) and See, *Matter of Ferguson v. McNab*, 60 N.Y.2d 598, 467 N.Y.S.2d 192, 454 N.E.2d 532. In *Matter of Gallagher v. Dinkins*, the rule of law was stated as follows: There is no rule which prohibits a candidate for public office from having two residences; and, where the record is clear, as at bar, that both residences are places where he maintains significant and legitimate attachments, it is for him to decide which address he considers as his voting address. Id.,41 A.D.2d at 947, 343 N.Y.S.2d at 961. In *Matter of Ferguson v. McNab*, New York's Highest Court stated: "Respondent candidate having two residences may choose one to which she has legitimate, significant and continuing attachments as her residence for purposes of the Election Law." *Id.,* 467 N.Y.S.2d at 193, 60 N.Y.2d at 600, 454 N.EW.2d at 533.

that unnecessarily abridges this right. Accordingly, where a statute places restraint on a person's right to vote, the statute is subject to strict constitutional scrutiny. *Carrington v. Rash,* 380 U.S. 89 (1965)*; Harper v. Board of Elections,* 383 U.S. 663 (1966)*, Kramer v. Union Free School District No. 15,* 395 U.S. 621 (1969)*; Cipriano v. City of Houma,* 395 U.S. 709 (1969)*; Evans v Cornman,* 398 U.S. 419 (1970); *Phoeniz v. Kolodziejski,* 399 U.S. 204 (1970).

These principles were reiterated and reinforced in *Dunn v. Blumstein,* 405 U.S. 330, 336-337 (1972), a law professor who was denied the vote because of the move to another geo-political district, where the Supreme Court made it unquestionably clear that all substantial restrictions upon the right to vote, including the imposition of "residence requirements," must be closely scrutinized in constitutional terms:

> In decision after decision, this Court has made clear that a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction. *See, e.g., Evans v. Cornman,* 398 U.S. 419, 421-22, 426 (1970)*; Kramer v. Union Free School District* No. 15, 395 U.S. 621 (1969)*; Cipriano v. City of Houma,* 395 U.S. 709 (1969)*; Harper v. Board of Elections,* 383 U.S. 663 (1966), *Carrington v. Rash,* 380 U.S. 89 (1965); *Reynolds v. Sims, supra*. This 'equal right to vote', *Evans v. Cornman, supra,* 398 U.S. at 426, is not absolute; the States have the power to impose qualifications, and to regulate access to the franchises in other ways. *See, e.g., Carrington v. Rash, supra,* 380 U.S. at 91*, Oregon v. Mitchell,* 400 U.S. 112, 144 (opinion of Justice Douglas), 241 (opinion of Justices Brennan, White and Marshall), 294 (opinion of Justice Stewart, in which Chief Justice Berger and Justice Blackmun joined). But as a general matter, 'before the right [to vote] can be restricted, the purpose of the restriction and that assertedly overriding interests served by it must meet close constitutional scrutiny.' *Evans v. Cornman,* 398 U.S. 419, 422 (1970); *see Bullock v. Carter,* 405 U.S. 134 at 143 (1972).

Election Law § 1-104(22), the cornerstone of the court's charge on residence in People v O'Hara, clearly places restraint and abridges a citizen's right to vote. Because the statute requires a voting address to be a "permanent" home and the place to which a person "always intends to return," persons living in multiple or non-traditional residences are effectively disenfranchised. The body of case law makes clear that this state's restriction renders this statute unconstitutional on its face. The United States Court of Appeals examined whether a state could require a voting address to be a "permanent" home in a case concerning the rights of college students to vote from their dormitory rooms. The court concluded such a requirement was unconstitutional, stating:

> The District Court correctly noted that, as a matter of state law, this definition - - particularly the requirement that the

> home be "permanent" - - should not be read literally but rather "is intended to approximate the test for domicile, i.e., physical presence and an intention to remain for the time at least."

Auerbach v. Rettaliata, 765 F.2d 350,351 (2nd Cir. 1985) *(citations omitted).*

Justice Friendly stated in the majority opinion in that case: "[W]e think the only constitutionally permissible test is the one which focuses on the individual's present intention and does not require him to pledge allegiance for an indefinite future:

> We think therefore that, in determining bona fide residence for a person physically present, the state cannot constitutionally go further than the test set out in the Restatement (Second) of the Conflict of Laws § 18 (1971), namely, that he "**must intend to make that place his home for the time at least**." *Ramey v. Rockefeller,* 348 F. Supp. 780 at 788 (E.D.N.Y. 1972).

Auerbach v. Kinley, 594 F. Supp. 1503, 1507 (N.D.N.Y. 1984) further examined this issue of permanence, in which again the rights of college students to vote from their dormitory rooms were at issue. Relying on *Ramey v. Rockefeller,* the Court found:

> The word "permanent" as used in the statute is not meant to be taken literally, but rather, is intended to approximate the test for domicile, i.e. physical presence and an intention to remain for the time at least. In discussing this point New York Jurisprudence states: To satisfy constitutional requirements the test of a student's intention to remain in a college community must focus on his present intention; he is not required to pledge that he will remain permanently or indefinitely. 18 N.Y. Jur, Elections @ 145 at 195 (1979).

Id. at 1507, n5.

Further, in *Levy v. Scranton,* 780 F. Supp. 897 (N.D.N.Y. 1991), again the Court, examining the rights of college students to vote from dormitory rooms, found:

> Several courts in this Circuit, and the Court of Appeals itself, have recognized that such a literal reading of this definition would be an unfair and unconstitutional interpretation of the word "residency." Therefore, these courts have given section 1-104(22) a much broader construction enabling them to save the statute from constitutional invalidity.

The body of case law makes clear that a literal application of Election Law § 1-104(22) is both unfair, but moreover, unconstitutional. A State simply cannot require a voting address to be "permanent", a requirement that is inconsistent with the ambulatory society in which we live, and that is especially punitive to forced moves because of financial hardship. *Wit v. Berman*, 306 F.3d 1256 (2002). It is well-settled law that the state can go no further than to require a voting address to be a place where a person physically lives and intends to remain for at least the time being. This is where the New York State statute runs afoul of the constitutional standards for restraint or abridgement on the voter's rights, particularly in a criminal prosecution. The statute deprives the voter of her intent to remain for at least the time being, where it requires permanency. The constitutional violation is in failing to provide for the right to choose of multiple or non-traditional residences that cannot comport to the definition of permanence.

B. The 14th Amendment Classification of Voters living in Non-traditional or Multiple residences are Disenfranchised by the Unduly Burdensome Statutory Restraint, which violates The Equal Protection Clause

In *Ramey*, citing *Dunn v. Blumstein*, the Court ruled that the meaning of this election law provision on residence remains uncertain. Surely, to require a permanent home where one always intends to return is too restrictive particularly with the ambulatory nature of our society, particularly in the urban areas, where the housing crisis has resulted in many sorts of multiple and non-traditional residential arrangements. Should that voter be the subject of criminal charges because of already strained unfortunate financial circumstances, or, similarly because of affluence that affords multiple residences?

C. The Remedial Cure

The overriding interest of a statutory residency requirement is to prevent fraud. *Dunn v. Blumstein,* 405 U.S. 330, 336-337 (1972), but, if there are other reasonable ways to achieve those goals with a lesser burden on constitutionally protected activity, a state may not choose the way of greater interference. If it acts at all, it must choose the less drastic means. *Id*. It is indeed important that the state has an interest in the prevention of fraud, but in this technologically advanced era, there are much less restrictive methods to ensure against fraud – such as dual voting, while still complying with the constitutional standard as enunciated by Justice Marshall in *Dunn v. Blumstein*. The codification of the case's standard as enunciated would indeed cure the problem that exists for the class in non-traditional and multiple residences. The constitutionally viable standard for residence as per case law should be physical presence with intent to stay for at least the time being. [20]

FACTUAL BACKGROUND

John Kennedy O'Hara, now 48 years old, has lived in the same neighborhood in Brooklyn his entire life. Prior to his arrest, O'Hara was a practicing Wall Street attorney with no prior criminal record and a proud product of our public school system and CUNY Law School. In the

[20]On November 18, 2003, it was reported that the board of elections planned to carry out a massive purging of hundreds of thousands of voters, "many of who are temporary residents [*sic*, with an intent to remain for at least the time being] who will return to another address," from the voters rolls based upon this state's unconstitutional definition of residence. *The New York Sun*, *11/18/03.*

early 1990's, John Kennedy O'Hara ran unsuccessfully for the public offices of New York State Assembly and New York City Council, as a political "maverick" – that is, without the consent of the Brooklyn Democratic Party machine.

The indictment alleged that O'Hara registered to vote from 553 47th Street, where he sometimes lived with his ex-girlfriend in Brooklyn. O'Hara's principal residence was at 579 61st Street, his rent-stabilized apartment some fourteen blocks away – which he did not want to completely leave. Accordingly, he argued that he could lawfully register to vote from either address – which has been the state of the law until this criminal case was brought against O'Hara.

John Kennedy O'Hara was tried in New York Supreme Court, Kings County, three times by District Attorney Hynes. At his first trial, he was convicted on all counts, but the conviction was reversed on direct appeal, on the grounds that the trial court erred in giving the jury an erroneous missing witness charge. *People v. O'Hara*, 253 A.D.2d 560 (2d Dep't 1998). The retrial ended in a mistrial.

At his third trial, O'Hara was convicted on all of the counts against him and was sentenced to a three-year period of conditional discharge, 1500 hours of community service, restitution of $9,192, and a fine of $6,000. The court also imposed a civil penalty of $5,000 payable to the New York City Campaign Finance Board, which penalty was later vacated by the trial court. On direct appeal to the Appellate Division of the New York State Supreme Court, Second Department, and on appeal by permission to the New York Court of Appeals, the conviction was affirmed. *People v. O'Hara*, 274 A.D.2d 486 (2d Dept. 2002), *aff'd*, 96 N.Y.2d 378 (2001).

There were two dissenting votes to the Court of Appeals decision. The harsh dissent by Judge Albert Rosenblatt took note of the "politically charged" nature of the dispute, and opined that if "questions of 'residence' are going to be resolved in the criminal arena, and decided by juries, with the possibility of criminal conviction and incarceration, we should ensure that the definition of residence is plainly fixed and easily understood." (Exhibit B)

Nowhere in any of the trials was the jury to consider an issue of a sham address. Rather, the fact-finders, to wit, the jury, were to consider which of both addresses would be John Kennedy O'Hara's principal and permanent address, rather than whether either address was not really a place where he resided. There was never an issue as to whether either of the addresses was a sham. O'Hara remains as the only person ever to have been convicted in the state for the failure to establish a legal residence inside a voting district. *People v. O'Hara*, 96 N.Y.2d 378, 390 n.3 (2001).

On October 8, 2002, Attorney O'Hara filed a petition for habeas corpus in the United States District Court for the Eastern District of New York, claiming that his judgment of conviction should be vacated on the grounds of ineffective assistance of trial and appellate counsel. The court, by oral opinion on March 7, 2003, denied the petition and further denied O'Hara a certificate of appealability.

On August 26, 2003, the United States Court of Appeals for the Second Circuit denied Attorney O'Hara a certificate of appealability. Thereafter, new evidence came to Attorney O'Hara's attention demonstrating that he was selected for prosecution. In or about December 2004, *Harper's Magazine* published a lengthy article on the prosecution of Attorney O'Hara, entitled "Meet the New Boss: Man vs. Machine Politics in Brooklyn." (Exhibit E) Within this article, investigative reporter Christopher Ketcham concluded after numerous background interviews that Attorney O'Hara's indictment and prosecution of O'Hara was selective and malicious, and that he had been targeted for his challenges to the Brooklyn political establishment. In particular, Ketcham concluded, District Attorney Hynes had brought charges against O'Hara as a favor to an incumbent New York State Assemblyman, who O'Hara had repeatedly opposed in election contests. This, and other accounts in New York newspapers, formed the basis of his appeals in the New York State and federal courts through 2006. (Exhibit F)

As has been discussed herein, on October 6, 2009, John K. O'Hara was reinstated to the Bar of the State of New York, as an attorney and counselor-at-law by the Supreme Court. He is now without right of further appeal to any court, as 28 U.S.C. § 2244(b)(3)(E) provides that an order denying authorization to file a second or successive habeas corpus application shall not be subject of a petition for rehearing or appeal to the United States Supreme Court.

Conclusion

The Governor is empowered with the sole authority to right the injustice that was perpetrated upon the Applicant, John Kennedy O'Hara, due to the avarice of the Brooklyn District Attorney's Office and the political establishment he was beholden to. It is respectfully submitted that this indelible ***stain of a felony*** that remains attached to the Applicant should finally be removed. For all of the foregoing reasons, we plead that the Honorable Governor David Paterson grant an Official Pardon of the Applicant, John Kennedy O'Hara, and finally correct the historical injustice referred to herein.

EXHIBITS

A – Decision on Reinstatement – Appellate Division - Second Department (2009)

B – New York State Court of Appeals, People v O'Hara (2001)

C – News Articles

D – Editorial Boards

E – Harper's magazine article, "Meet The New Boss – Man vs Machine Politics in Brooklyn," by Christopher Ketcham, December 2004

F – Affidavit of Journalist Christopher Ketcham