No. 06-766

IN THE

# Supreme Court of the United States

NEW YORK STATE BOARD OF ELECTIONS, *et al.*,
*Petitioners*,

*v.*

MARGARITA LÓPEZ TORRES, *et al.*,
*Respondents.*

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT**

## BRIEF OF AMICUS CURIAE CHARLES J. HYNES, DISTRICT ATTORNEY FOR KINGS COUNTY, NEW YORK, IN SUPPORT OF RESPONDENTS

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## TABLE OF CONTENTS

**TABLE OF CONTENTS—Continued**

## TABLE OF AUTHORITIES

### CASES



### STATUTES AND RULES



### OTHER AUTHORITIES

**TABLE OF AUTHORITIES—Continued**

## STATEMENT OF INTEREST OF AMICUS CURIAE[1]

Since 1990, I have served as the elected District Attorney of Kings County (Brooklyn), New York. In that capacity, I have overseen and presently oversee criminal investigations and prosecutions into allegations that the leaders of the Kings County Democratic Party have corruptly used their power to select, influence, and control the state judiciary in Brooklyn. These include the recent (February 2007) successful prosecution of Clarence Norman, who at the time of his crimes was the chairman and the de facto "boss" of the Kings County Democratic County Committee.

As a result of my work as District Attorney and of my long career as an attorney in New York State, I believe I have a distinct insight into the issues presented by this case. In particular, I believe, indeed I know, that New York's uniquely constructed and statutorily-mandated nominating process for the state Supreme Court, which in effect places ultimate control over who becomes a state Supreme Court justice in the hands of powerful county political party leaders, creates and sustains a breeding ground for corruption and malfeasance and undermines the public's confidence in the judiciary. Under the current system, party leaders select Supreme Court nominees based on their political connections and/or contributions to the party or its leaders; voters lack any meaningful opportunity to nominate, let alone elect, an alternative candidate to those nominees; and, once elected, the judges (desiring to be renominated and reelected or, in the case of lower-court judges, desiring to be promoted to the Supreme Court) come under great pressure to carry out their duties in a manner that satisfies party leaders. The result is a system in which only party-chosen candidates attain the Supreme Court bench and in which public confidence in the administration of justice and the rule of law is low.

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[1] The parties consented to the filing of this brief, and copies of the parties' written consents have been filed with the Clerk of the Court. This brief was not authored in any part by counsel for any of the parties, and no person or entity other than the Amicus, the staff of the Kings County District Attorney's Office, or counsel to the Amicus made a monetary contribution to the preparation or submission of this brief. Counsel for Amicus wishes to thank Craig Heeren and Tian Tian Mayimin for their stellar assistance in the preparation of this brief.

I submit this amicus brief to give the Court a practical, ground-level illustration of these problems, in part by recounting official corruption cases that the Kings Country District Attorney's Office has prosecuted. I similarly participated as amicus curiae in the Court of Appeals. I respectfully urge this Court to affirm the decision below.

## SUMMARY OF ARGUMENT

As the record below and the record of prosecutions brought by the Kings Country District Attorney's Office show, for more than a decade, Clarence Norman, who was the leader of the Democratic Party in Kings County, maintained essentially complete control over the nominations for the office of Justice of the New York Supreme Court in Brooklyn.[2] This was not an isolated instance of a party leader's control of the judicial selection process. Instead, it reflected a widely-known fact of life in New York State: to become a justice of the state Supreme Court, one must be selected by party leaders.

In theory, rank-and-file party members are to have a meaningful say in the nominations process for the Supreme Court. Under New York's Election Law, party members vote, at the primary election, for the delegates to judicial district conventions, at which the nominees for the Supreme Court are then chosen. *See* N.Y. Elec. Law § 6-124 ("[a] judicial district convention shall be *constituted by the election at the preceding primary of delegates* and alternate delegates") (emphasis added). In reality, however, the power to select nominees for the Supreme Court has always resided with party leaders, like Mr. Norman. That is because, as the District Court and Court of Appeals below have chronicled, New York's statutory scheme was designed to, and does, place severe and all-but-insurmountable barriers in the path of any aspirant for a Supreme Court judgeship who has not been chosen by party leaders.

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[2] The Second Judicial District encompasses the New York City boroughs of Brooklyn (Kings County) and Staten Island (Richmond County). Because the Second Judicial District, like most of the eleven other judicial districts in New York, has long been dominated by a single party, nomination by the dominant party is tantamount to election.

The District Court and the Court of Appeals were correct to hold that this "Potemkin Village" arrangement, which creates the illusion but lacks the reality of popular sovereignty, violates voters' and candidates' First Amendment rights. Having decided to regulate how political parties select their state Supreme Court nominees, New York was required to erect a selection mechanism that abides by the "limits imposed by the Constitution." *California Democratic Party* v. *Jones*, 530 U.S. 567, 573 (2000). Specifically, because New York has chosen "to tap the energy and the legitimizing power of the democratic process" by mandating a process by which elected delegates choose nominees who then stand in a general election, it must "accord the participants in that process the First Amendment rights that attach to their roles." *Republican Party of Minn. v. White*, 536 U.S. 765, 788 (2002) (internal quotation marks and alteration omitted). As the courts below recognized, the process that New York has statutorily mandated violates two closely related and basic rights protected by the First Amendment: "the right of individuals to associate for the advancement of political beliefs" and "the right of qualified voters . . . to cast their votes effectively." Pet. App. 34 (quoting *Anderson* v. *Celebrezze*, 460 U.S. 780, 787 (1983)).

Petitioners seek to caricature the dispute in this case by asserting that the Court of Appeals' logic would broadly invalidate any method in which nominees to any elective office in any State are chosen by delegates to a party convention. However, as its decision makes clear, the Court of Appeals narrowly ruled on the basis of the unique operation and the dismaying history of the judicial district convention system used to select Supreme Court nominees in New York State. The Court of Appeals inquired whether that system burdens the rights of candidates and voters and held that it did. That was the correct analysis, because, as this Court has emphasized, the First Amendment inquiry is at bottom practical, contextual, and granular, not abstract: "[I]t is essential to examine in a realistic light the extent and nature of [that scheme's] impact on voters." *Bullock* v. *Carter*, 405 U.S. 134, 143 (1972).

As to this inquiry, the record below and the historical record, including prosecutions brought by the Kings Country District Attorney's Office, reveal two things. First, New York's extraordinarily burdensome and opaque petitioning requirements to become a

convention delegate effectively prevent all but those candidates who have been anointed by party leaders from offering themselves as candidates at the party's nominating conventions. Second, even if an independent candidate were improbably to muster the resources to contend for a party's nomination, the judicial conventions are stacked formalities that reliably rubberstamp the party leaders' hand-picked candidates. In effect, a rank-and-file party member's rights of political association and to vote for judicial delegates in the primary are meaningful only if the party member's preferred candidate happens to coincide with the candidate preselected by the party leaders.

This amicus brief reviews the evidence of "boss control" over the nomination process, first in Brooklyn, and then more broadly in New York State, and focuses particularly on the tendency of this system to breed corruption. By ceding to party leaders nearly complete control over who sits on New York's trial-level bench, New York's statutory scheme invites corruption and diminishes the public's confidence in the state judiciary. In Brooklyn, the experience of plaintiff Margarita López Torres, whose experience as a Civil Court judge was chronicled below and in the Kings Country District Attorney's Office's recent successful prosecution of Clarence Norman for grand larceny by extortion, is revealing. In a 2002 direct primary for the Civil Court, Judge López Torres beat the Democratic Party machine's hand-picked candidate and ultimately garnered over 200,000 votes in the general election. Yet because he controlled the nomination process, Clarence Norman was able to single-handedly deny her the nomination to the state Supreme Court. He did so in express retaliation for her earlier refusal to hire the court attorney foisted on her by the party leaders. Similarly, in the recent trial of Mr. Norman, the prosecution demonstrated that another judicial candidate for the Civil Court, cowed by Mr. Norman's ability to "dump her [candidacy]" and to withhold a future Supreme Court nomination, succumbed to his demands that she divert her campaign funds to the coffers of his associates. *See infra*, pp. 15-16.

As this brief further demonstrates, and as the courts below found, New York's Election Law has given party leaders similar control over Supreme Court judicial nominations in other counties throughout the state, a reality that is common knowledge among

judges, judicial aspirants, politicians, and lawyers. As a result, nominations to these important judgeships have been turned into currency with which party leaders bargain. Numerous judicial disciplinary decisions, public inquiries, and news reports make clear that improprieties linked to the Supreme Court nomination process are all too common. The problem of corruption thus is closely interwoven with the constitutional infirmity identified by the courts below.

No matter how aggressive and effective law enforcement officials may be in investigating and prosecuting corrupt participants in this system, such after-the-fact efforts are no solution to what is fundamentally a systemic shortcoming that denies voters and candidates their First Amendment rights. These efforts cannot redress the de facto exclusion of rank-and-file party members from the Supreme Court nomination process; they cannot give voters a meaningful say in who the state's judges are; they cannot replace political cronies with able jurists; and they cannot stem the loss of public confidence in the courts. Rather, these problems—the inevitable results of New York's unconstitutional statutory scheme—can be remedied only by the invalidation of that scheme and its replacement by a system that is constitutional. I therefore respectfully urge that the decision below be affirmed.

## ARGUMENT

### I. THE FIRST AMENDMENT REQUIRES NEW YORK TO GIVE RANK-AND-FILE POLITICAL PARTY MEMBERS A MEANINGFUL OPPORTUNITY TO PARTICIPATE IN CHOOSING STATE SUPREME COURT NOMINEES

Whether the process that political parties in New York are required to use for choosing their Supreme Court nominees is constitutional turns on two related questions. First, does the First Amendment protect members of political parties who seek by voting in a statutorily mandated selection process to meaningfully participate in their parties' nomination decisions? Second, if so, does New York's statutory scheme, which effectively precludes party members from associating with candidates not pre-selected by the party leadership, unjustifiably burden the rights protected by the First Amendment?

As the courts below recognized, the answer to both questions is yes. Although the Constitution does not compel New York ab

initio to afford party members an opportunity to vote to select the party's judicial nominees, New York has enacted a comprehensive statutory scheme for the election by such party members of judicial nominating delegates. This in turn requires New York to ensure that this scheme respects the First Amendment right to associate of party members and candidates. New York's statutory scheme abridges those rights. The hurdles it imposes make it all but impossible for a candidate who has not been pre-selected by party leaders to win such a nomination. This burdens the rights both of candidates and of voters, who are denied a meaningful opportunity to participate in the nominating process.

### A. The First Amendment Protects Party Members' Right To Associate To Determine Their Party's Nominees And Direction

The First Amendment protects an individual's right to associate with others to press common political views, including the "basic constitutional freedom" to join together under the aegis of political parties "for the common advancement of political beliefs and ideas." *Cousins* v. *Wigoda*, 419 U.S. 477, 487 (1975) (internal quotation marks omitted). Joining a political party, however, does not extinguish the associational rights of the individual party members or subsume them under the banner of the party's right of association. For a state to demand that a party member acquiesce to every decision of the party's leaders as to the party's objectives could not be squared with the First Amendment. Rather, party members retain an "independent right" of association to determine their party's goals and practices. *See Eu* v. *San Francisco County Democratic Cent. Comm.*, 489 U.S. 214, 225-226 (1989) (in the party primary context, "the State's focus on the parties' alleged consent ignores the independent First Amendment rights of the parties' members [and fails to show] that the members authorized the parties to consent to infringements of members' rights").

The independent associational right of party members is particularly salient when they seek to have their voices heard in a state-sponsored primary, a context in which the preferences of party leaders often "diverge[] significantly from the views of the . . . rank and file." *Tashjian* v. *Republican Party of Conn.*, 479 U.S. 208, 236 (1986) (Scalia, J., dissenting); *see also Kusper* v. *Pontikes*, 414 U.S. 51, 58 (1973) (a "prime objective" to join a

party for many in the rank-and-file is to "gain a voice in [the nominee] selection process"). As this Court recognized in *Anderson* v. *Celebrezze*, "voters can assert their preferences only through candidates or parties or both." 460 U.S. 780, 787 (1983). In the context of an intra-party primary election, rank-and-file party members' associational right would be rendered worthless were they denied any meaningful opportunity to associate with candidates not favored by the party leaders, and were the leader-selected candidate instead assured of the party's nomination. Such a denial would be manifestly inconsistent with the state's duty, in erecting a statutory electoral process that "tap[s] the energy and the legitimizing power of the democratic process," to "accord the participants in that process the First Amendment rights that attach to their roles." *Republican Party of Minn. v. White*, 536 U.S. 765, 788 (2002) (internal quotation marks and alteration omitted); *see also California Democratic Party* v. *Jones*, 530 U.S. 567, 573 (2000).

### B. The Constitutionality Of New York's Unique Statutory Judicial-Nominating Scheme Requires A Realistic Assessment Of That System's Effect On Party Members, Candidates, And The Judiciary

In order to determine whether the system that New York has mandated for nominating candidates for Supreme Court judgeships accords candidates and party members their First Amendment rights, this Court must conduct a concrete, tangible inquiry into the operation and effects of that particular system. Petitioners posit that this case presents the generalized issue of whether all electoral systems in which convention delegates rather than party members make the ultimate nomination decision are constitutionally infirm. *See, e.g.*, Pet. Br. of N.Y. County Democratic Comm., *et. al.* 15-16, 20; Pet. Br. of N.Y. Att'y Gen. 29; Pet. Br. of N.Y. State Bd. of Elections, *et. al.* 29. But that is a straw man. The proper inquiry is instead at the level of the specific nominee-selection system under review. The Court must consider "the character and magnitude of the asserted injury to the [First Amendment] rights" by this system, "identify and evaluate the precise interests [asserted] by [New York State] as justifications," and "weigh[] all these factors" together. *Anderson*, 460 U.S. at 789; *see also Tashjian*, 479 U.S. at 234 (Scalia, J., dissenting) (balancing between ordinary party members' associational right and states' regulatory authority "re-

quires careful inquiry into the extent to which the one or the other interest is inordinately impaired under the facts of the particular case"). At base, then, "it is essential to examine in a realistic light the extent and nature of [New York's electoral scheme's] impact on voters." *Anderson*, 460 U.S. at 786 (quoting *Bullock* v. *Carter*, 405 U.S. 134, 143 (1972)).

The courts below conducted the requisite realistic assessment of the burdens on the associational right of party members imposed by New York's statutory scheme. As the District Court and Court of Appeals each concluded, the ballot access requirements for the judicial delegate election are baroquely designed (for no purpose other than to allow party leaders to exercise complete control over the judicial district convention) and uniquely stringent. The signature collection process alone requires candidates to collect a minimum of 500 valid signatures—realistically, between 1,000 and 1,500 signatures, in order to withstand the cost-prohibitive signature challenges that are financed by the party—from party members *within each assembly district* within the candidate's judicial district. Pet. App. 12-13, 108. Judicial districts contain anywhere from nine to twenty four assembly districts. *Id.* at 13, 104. Further, because each party member may sign only one petition, the candidate faces a shrinking pool of potential signatories within each assembly district and must expend resources to defend against subsequent signature challenges from competitors. *Id.* at 12, 108. After obtaining the necessary signatures to run a slate of delegates, candidates face a further hurdle, in that the primary ballot does not identify which candidate a putative delegate favors. *Id.* at 13, 107. Candidates must therefore find a way to educate the voters in each assembly district not only about themselves but also about which delegate candidates will support them. After the judicial delegates are elected—and if there are no challenger delegates, as is more often than not the case, the uncontested delegates are "deemed elected" and do not even appear on the ballot—only two weeks, at most, remain for a judicial candidate to learn the identities of the delegates and to lobby for their support. *Id.* at 18, 116-117. Even assuming that the party leaders are willing to turn over the names of the delegates, holding meaningful meetings with anywhere from 64 to 248 delegates within this short time period is all but impossible. *Id.* Given these seemingly Kafkaesque hurdles, it is no surprise that the judicial nominating conventions are, in the

words of a long-time delegate to the Ninth District Republican Party judicial convention, "merely a formality" to rubber-stamp the party leaders' choices. JA 242. At the ensuing general election, the candidates presented to the voters at large are thus those selected by party leaders.

The balance of this brief focuses on the statutory system's practical operation and impact on voters, judicial aspirants, and the judiciary. It focuses first on Brooklyn, where it spotlights several notorious case studies of "boss control," the evidence relating to which was developed both below and in criminal prosecutions brought by the Kings County District Attorney's Office. It then canvasses materials relating to "boss control" statewide. This evidence confirms the dynamic found by the District Court, in which local party leaders exert nearly total control over the state Supreme Court nomination process, shut out rank-and-file party members from any meaningful participation in choosing their nominees for judicial office, and choose candidates on the basis of loyalty or quid pro quo, rather than purely on merit. And it illustrates a system in which the proper administration of justice takes at best a back seat and the public justifiably loses confidence in the judicial system.

## II. NEW YORK'S SYSTEM FOR ELECTING STATE SUPREME COURT JUDGES INVITES CORRUPTION AND IMPROPRIETY: THE EVIDENCE RELATING TO BROOKLYN

The domination by political party leaders of the judicial-selection system in Brooklyn is revealed by the history of lead plaintiff Margarita López Torres, a former Brooklyn Civil Court Judge (and current Brooklyn Surrogate's Court Judge) who was long stymied in her efforts to gain a Supreme Court nomination. Judge López Torres's history was developed below, and was further fleshed out in testimony during the Brooklyn District Attorney's Office's recent prosecution of former party leader Clarence Norman for grand larceny by extortion and coercion. More broadly, the evidence in the Norman criminal trial, and also in a second prosecution by the Kings Country District Attorney's Office (of Gerald Garson, a long-time power in the Democratic Party in Brooklyn and a former Justice of the Kings County Supreme Court), underscores how party leaders' control over nominations to the King County Supreme Court have fostered corruption in the

nomination process and corruption on the bench. Consistent with this evidence from court proceedings, many public reports and news stories have recounted the ways through which influence, favors, and money have played an inappropriate role. Drawing on those sources, this section provides an account of "the way it works"—to quote Mr. Norman—in Kings County under the judicial district nominating system. JA 173.

### A. The History Of López Torres's Attempts To Obtain A Supreme Court Seat

When Judge López Torres won a seat on the Civil Court in Brooklyn with the support of the Kings County Democratic Party in 1992, she did not expect that the party's endorsement indebted her to the party during her tenure on the bench. As the District Court's findings demonstrate, she was wrong. As Judge López Torres testified, shortly after she was elected, she was instructed by a party functionary to make a patronage hire.[3] JA 172. In a letter "congratulating" her on her election, a party official explained that Clarence Norman and Vito Lopez, the state assemblyman (and current leader of the Democratic Party in Brooklyn) through whose primary sponsorship Judge López Torres had obtained her endorsement, wanted her to hire a particular lawyer as her court attorney. *Id.* Judge López Torres testified that she reviewed the resume attached to the letter, interviewed the candidate, and followed up on his references. She was unimpressed—the candidate's prior employer, a Brooklyn Supreme Court justice for whom he had served as law secretary, called his work mediocre and stated that he spent too much time on the phone doing political work—and so she hired a more qualified attorney. JA 172-173.

While the choice of her court attorney was a professional employment decision from the perspective of Judge López Torres, the leaders of the Brooklyn Democratic Party saw it as an act of ungrateful betrayal, disqualifying her from ever again receiving the party's support for any judgeship. As Judge López Torres testi-

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[3] Under the District Court's procedure for receiving testimony, Judge López Torres submitted a sworn declaration and was then subject to cross-examination. In the interests of simplicity, both the declaration and the cross-examination are referred to herein as "testimony."

fied, Mr. Norman was "extremely upset" by her refusal to comply with his demands, and he called Judge López Torres to explain that she did not "understand the way it works." JA 173 Mr. Norman instructed Judge López Torres that the "way it works" is that court attorney positions are handed out as rewards to those attorneys who work hard for the party. *Id.* Mr. Norman further told her that she had obtained her Civil Court judgeship "for nothing," and he demanded that she "unhire" the individual she had selected over the party's choice and instead hire a candidate of the party's bidding. *Id.* When Judge López Torres refused, Mr. Norman made the stakes clear: he told her that the party would not forget her actions when it came time for her to seek a seat on the Supreme Court, as many Civil Court judges do. As Judge López Torres testified, Mr. Norman reminded her that without the "County's"—that is, his own—support, her nomination for the Supreme Court "will not happen." JA 173-174.

Mr. Norman was not alone in expecting patronage favors from Judge López Torres. As Judge López Torres testified, Assemblyman Lopez also chastised her for her refusal to hire the candidate recommended by Mr. Norman. He complained that she had "made him look bad" in the Brooklyn party organization, given his support of her candidacy. JA 174. He, too, demanded that she fire her court attorney and make a patronage hire instead. Once more, she refused. *Id.* Notwithstanding her refusal, party leaders continued to try to influence her hiring decisions. Judge López Torres testified that, after she had been on the bench for several years, Assemblyman Lopez reached out again and dangled the prospect of a Supreme Court position for her if she would hire his daughter, who was fresh out of law school, as her new court attorney. *Id.* She again refused. Tellingly, Assemblyman Lopez's daughter was hired by another Brooklyn Civil Court judge, who ultimately was nominated and elected to the Supreme Court. *Id.*

Consistent with his threats, Mr. Norman had the power to punish the judges who did not "play ball," and he used that power to block Judge López Torres from advancement. In 1997, Judge López Torres decided to seek a Democratic nomination for Supreme Court justice, and she sought out Mr. Norman for a meeting on that issue. JA 175. At that meeting, Judge López Torres testified, Mr. Norman told her that her failure to hire his candidate five

years earlier had been a "serious breach of protocol." *Id.* She expressed her willingness to consider a qualified applicant from the party, and he told her that she now needed to get the support of the "Latino" district leaders. *Id.* She did not have much opportunity to seek this support, however, because several weeks later Mr. Norman placed "an urgent phone call" to her while she was on the bench, demanding that she remove her name from consideration at the convention. JA 175-176. She refused. Ultimately, her efforts failed: although several party officials had originally asked her if she would be willing to seek the party nomination, not one dared to propose her name at the convention itself. *Id.* Judge López Torres's efforts in 1998 to obtain the party's nomination to the Supreme Court were similarly thwarted: after she was interviewed by the Kings County Judicial Screening Committee—which was under party control—both the chair of that committee and Mr. Norman himself refused to inform her whether the committee had found her qualified. JA 176.

In 2002, Mr. Norman endorsed another candidate to oppose Judge López Torres in the primary election for the Civil Court seat she held, leading her to mount an independent campaign for the Democratic nomination for that seat. She simultaneously again sought the party's nomination for the Supreme Court, writing both to Mr. Norman and to the chair of the judicial screening committee to declare her interest in a Supreme Court seat. JA 180, 189-190. The chair of that committee responded that the committee reviewed only those applications that had been referred by Mr. Norman. JA 180, 191. Judge López Torres then met with Mr. Norman to request his support. He told her that, while she was qualified, he would not support her because she had been "disloyal." JA 180. At the judicial nominating convention, the need for Mr. Norman's backing was apparent. A supportive delegate did submit Judge López Torres's name for consideration, and she received a number of votes. However, with the delegates having been handpicked by party leaders, the slate backed by Mr. Norman unsurprisingly won by a landslide. JA 180-181.

Meanwhile, the Brooklyn party leaders mobilized the party organization to actively work against her candidacy for reelection to the Civil Court. Indeed, as Judge López Torres and others testified at the Norman criminal trial, on the eve of the meeting at

which the party's district leaders would select which candidates to endorse for Civil Court, Mr. Norman's own choices were invited to wait inside the diner in which district leaders were conferring so that the candidates could thank the district leaders after the endorsements were made official. Norman Tr. 780-786, 1023-1028, 1152-1156, 1290-1292.[4] Judge López Torres, having been cut out of the process by Mr. Norman, nonetheless learned of the date, time, and place of the meeting, and stood outside the diner in a fruitless attempt to garner support. *Id.* at 780-783, 785-786, 1025, 1153-1154, 1290-1291. The difference between the candidates' experiences—for Mr. Norman's hand-picked candidates, showing up to a meeting whose favorable outcome was clear; for the candidate who had refused to grant Mr. Norman the patronage position he demanded, handing out leaflets in vain—demonstrated Mr. Norman's power. Yet notwithstanding Mr. Norman's retaliatory efforts, Judge López Torres (aided by an army of supporters frustrated by party control over the Civil Court bench) won the primary. This was possible because, for Civil Court seats, unlike for Supreme Court seats, rank-and-file party members had the opportunity to vote directly for candidates in a primary.[5] JA 181.

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[4] "Norman Tr." refers to the transcript from the most recent criminal trial of Mr. Norman, prosecuted by the Kings County District Attorney's Office in January and February 2007. *See People* v. *Norman*, Indictment No. 7189/03. A letter request to lodge this transcript with the Court has been filed with the Clerk pursuant to Rule 32.3.

[5] While the primary system for the Civil Court, in contrast to the primary system for the Supreme Court, permits party members to have a voice in the selection of the party's nominee, party leaders like Mr. Norman have nonetheless been able to leverage their control over the Supreme Court nomination process into power over candidates for and judges on the Civil Court. This is so because New York has come to have an "informal [chain] of judicial promotion" from state courts of more limited or specialized jurisdiction (such as the Civil Court) to the state Supreme Court bench, of which candidates, judges, and party leaders are all well aware. *See* Testimony of James A. Gardner to The New York State Commission to Promote Public Confidence in Judicial Elections 7, *available at* http://law.fordham.edu/commission/judicialelections (hyperlinks: Public Hearings Information > Buffalo > Sept. 23, 2003); *see also* Sections II.B and III.B *infra*. (This Commission was formed in 2003 by New York State Chief Judge Judith S. Kaye, in part based on "[r]eports of undignified judicial campaign activity in local elections around the State, connections drawn between campaign contributions and judicial decision-making, and attacks on political party control of