

FREDERICK A.O. SCHWARZ, JR.
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BY HAND & ELECTRONIC FILING

June 5, 2006

Honorable Chester J. Straub
Honorable Sonia Sotomayor
Honorable Peter W. Hall
United States Court of Appeals
for the Second Circuit
40 Foley Square
New York, New York 10007

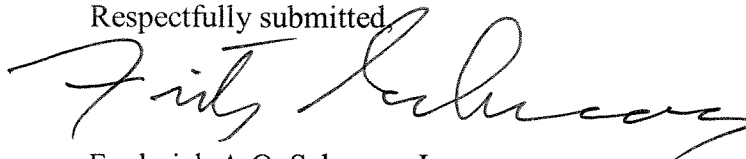
Re: López Torres et al. v. New York State Board of Elections (06-0635cv)

Your Honors:

We have received a copy of the *amicus* brief filed on behalf of the New York State Legislature on Friday, June 2. If the Panel has questions about its substance, we will be pleased to answer them at oral argument. However, we did want to highlight in writing our surprise that the brief did not mention the State Senate's passage of S. 55-A on February 13, 2006, approximately two weeks after the District Court's decision under review. We enclose a copy of that bill—repealing New York's judicial convention system—along with a press release by the Senate Majority Leader, Joseph L. Bruno, announcing its passage. Senator Bruno explained:

This legislation provides much-needed reform to the current process for selecting State Supreme Court Justices. This bill will ensure that candidates to this position are selected just as other candidates for office are—by petitions circulated to the voters before the primary. This will ensure that the public has a strong voice in determining who will represent them on the Court and also, will give access to well qualified candidates who may not have had the support of their party bosses. I urge the Assembly to join us in passing this bill, which will make the selection process more open and accountable.

Respectfully submitted,



Frederick A.O. Schwarz, Jr.

Enclosures

cc: Counsel of Record (with enclosures)

News from
**The Senate
Republican Majority**



Senator Joseph L. Bruno, Majority Leader

Date: 02/13/2006

Office: Bruno

Title: SENATE PASSES LEGISLATION TO AMEND SUPREME COURT
CANDIDATE SELECTION PROCESS

FOR RELEASE: Immediate, Monday, February 13, 2006

<http://www.senate.state.ny.us>

**SENATE PASSES LEGISLATION TO AMEND
SUPREME COURT CANDIDATE SELECTION PROCESS**

The New York State Senate today passed legislation (S.55-A), sponsored by Senator John DeFrancisco (R-C-I-WF, Syracuse) that would amend the way candidates for State Supreme Court Justices are selected by abolishing political party nominations by a judicial district convention and replacing it with a petition process that is similar to the selection process used by judges at the county level.

Passage of the Senate bill comes on the heels of a January 27, 2006 decision by U.S. District Judge John Gleeson that deemed the current selection process unconstitutional because the selection of candidates through political conventions can be tightly controlled by party voices, depriving voters of their say in the process.

"Under the current system, the process is handled by delegates to a judicial district convention," said Senator DeFrancisco. "However, the selection of these delegates is, in many cases, controlled by party leaders. This unfairly removes party voters from having a say in the process and it can potentially put Supreme Court nominations out of reach for several qualified candidates. This bill would preserve the integrity of the process by including the public in the selection process."

"This legislation provides much-needed reform to the current process for selection State Supreme Court Justices," said Senator Bruno. "This bill will ensure that candidates to this position are selected just as other candidates for office are -- by petitions circulated to the voters before the primary. This will ensure that the public has a strong voice in determining who will represent them on the Court and also, will give access to well qualified candidates who may not have had the support of their party bosses. I urge the Assembly to join us in passing this bill, which will make the selection process more open and accountable."

Presently, candidates for Supreme Court Justice are nominated by a judicial district convention. The delegates to that convention are designated by petitions circulated prior to the primary election. The delegates, designated by Assembly District within the judicial district, then meet in late September to designate a particular party's candidate for Supreme Court.

Under this legislation, the direct primary method would be used to designate candidates for nomination, ensuring that qualified candidates who may not have the backing of party leaders have access to the ballot. By eliminating the conventions and allowing party voters to have direct input into who their party's candidate will be, the bill provides a process which is essentially the same as that used for County level judges and protects the constitutional rights of the voters and candidates.

"While reform of the legislative process is important, reform of the judicial process is equally essential," said Senator DeFrancisco. "This bill is supported by the Brennan Center of Justice, which has been a strong advocate for reform in New York State. The Brennan Center is urging passage of the bill as a significant first step towards reform of the State Supreme Court selection process."

The bill was sent to the Assembly.

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BILL TEXT:

STATE OF NEW YORK

55--A

2005-2006 Regular Sessions

IN SENATE

(Prefiled)

January 5, 2005

Introduced by Sens. DeFRANCISCO, GOLDEN, MARCHI, MORAHAN, PADAVAN, RATH, SPANO -- read twice and ordered printed, and when printed to be committed to the Committee on Elections -- recommitted to the Committee on Elections in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the election law, in relation to abolishing political party nominations by the judicial district convention for the office of the supreme court and to repeal sections 6-106 and 6-124 of such law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. Paragraphs (k) and (l) of subdivision 2 and subdivision 3
 2 of section 6-136 of the election law, as amended by chapter 79 of the
 3 laws of 1992, are amended and subdivision 2 is amended by adding four
 4 new paragraphs (m), (n), (o) and (p) to read as follows:
 5 (k) For any other office to be filled by the voters of a political
 6 subdivision containing more than one assembly district, county or other
 7 political subdivision, not to exceed the aggregate of the signatures
 8 required for the subdivisions or parts of subdivisions so contained;
 9 [~~and~~]
 10 (l) For any county legislative district, five hundred signatures~~[-]~~;
 11 (m) For the office of the supreme court in a judicial district
 12 containing not more than one million inhabitants, according to the last
 13 preceding federal enumeration, two thousand five hundred signatures;
 14 (n) For the office of the supreme court in a judicial district
 15 containing more than one million and not more than one million five
 16 hundred thousand inhabitants, according to the last preceding federal
 17 enumeration, three thousand seven hundred fifty signatures;

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets
 [-] is old law to be omitted.

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1 (o) For the office of the supreme court in a judicial district
2 containing more than one million five hundred thousand and not more than
3 two million inhabitants, according to the last preceding federal enumer-
4 ation, five thousand five hundred signatures; and

5 (p) For the office of the supreme court in a judicial district
6 containing more than two million inhabitants, according to the last
7 preceding federal enumeration, seven thousand five hundred signatures.

8 3. ~~The~~ Notwithstanding subdivisions one and two of this section, the
9 number of signatures on a petition to designate a candidate or candi-
10 dates for the position of delegate or alternate to a state ~~or judicial~~
11 ~~district~~ convention or member of the state committee or assembly
12 district leader or associate assembly district leader need not exceed
13 the number required for member of assembly, and to designate a candidate
14 for the position of district delegate to a national party convention
15 need not exceed the number required for a petition for representative in
16 congress.

17 § 2. Paragraph (i) of subdivision 2 of section 6-142 of the election
18 law, as amended by chapter 79 of the laws of 1992, is amended and four
19 new paragraphs (j), (k), (l) and (m) are added to read as follows:

20 (i) for any office to be filled by the voters of any political subdivi-
21 sion contained within another political subdivision except as herein
22 otherwise provided, not to exceed the number of signatures required for
23 the larger subdivision[-];

24 (j) for the office of the supreme court in a judicial district
25 containing not more than one million inhabitants, according to the last
26 preceding federal enumeration, five thousand signatures;

27 (k) for the office of the supreme court in a judicial district
28 containing more than one million and not more than one million five
29 hundred thousand inhabitants, according to the last preceding federal
30 enumeration, seven thousand five hundred signatures;

31 (l) for the office of the supreme court in a judicial district
32 containing more than one million five hundred thousand and not more than
33 two million inhabitants, according to the last preceding federal enumer-
34 ation, ten thousand signatures; and

35 (m) for the office of the supreme court in a judicial district
36 containing more than two million inhabitants, according to the last
37 preceding federal enumeration, twelve thousand five hundred signatures.

38 § 3. Subdivisions 5 and 6 of section 6-158 of the election law, subdivi-
39 sion 6 as amended by chapter 79 of the laws of 1992, are amended to
40 read as follows:

41 ~~[5. A judicial district convention shall be held not earlier than the~~
42 ~~Tuesday following the third Monday in September preceding the general~~
43 ~~election and not later than the fourth Monday in September preceding~~
44 ~~such election.]~~

45 6. A certificate of a party nomination made other than at the primary
46 election for an office to be filled at the time of a general election
47 shall be filed not later than seven days after the fall primary
48 election, except that a certificate of nomination for an office which
49 becomes vacant after the seventh day preceding such primary election
50 shall be filed not later than fourteen days after the creation of such
51 vacancy and except, further, that a certificate of party nomination of
52 candidates for elector of president and vice-president of the United
53 States shall be filed not later than fourteen days after the fall prima-
54 ry election~~[-, and except still further that a certificate of party nomi-~~
55 ~~nation made at a judicial district convention shall be filed not later~~
56 ~~than the day after the last day to hold such convention and the minutes~~

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1 ~~of such convention, duly certified by the chairman and secretary, shall~~
2 ~~be filed within seventy two hours after adjournment of the convention].~~

3 A certificate of party nomination for an office to be filled at a
4 special election shall be filed not later than ten days following the
5 issuance of a proclamation of such election.

6 § 4. Subdivisions 1 and 2 of section 9-200 of the election law, subdi-
7 vision 1 as amended by chapter 250 of the laws of 1984 and subdivision 2
8 as amended by chapter 29 of the laws of 1983, are amended to read as
9 follows:

10 1. The board of elections shall canvass the returns of primary
11 elections filed with it. [~~It shall canvass first the votes of the deleg-~~
12 ~~ates and alternates to judicial district conventions and complete such~~
13 ~~canvass at the earliest time possible.] It shall complete the canvass
14 otherwise within nine days from the day upon which the primary election
15 is held. Upon the completion of the canvass the board shall make and
16 file in its office tabulated statements, signed by the members of such
17 board or a majority thereof, of the number of votes cast for all the
18 candidates for nomination to each public office or for election to each
19 party position, and the number of votes cast for each such candidate.
20 The candidate receiving the highest number of votes for nomination for a
21 public office or for election to a party position voted for wholly with-
22 in the political unit for which such board is acting, shall be the nomi-
23 nee of his party for such office or elected to such party position and
24 the board, if requested by a candidate elected to a party position,
25 shall furnish to him a certificate of election.~~

26 2. The board forthwith upon the completion of the canvass for members
27 of a state committee and delegates and alternates to a national[~~or~~
28 ~~state [or judicial district]~~ convention, shall transmit to the state
29 board of elections a certificate stating the name and residence of each
30 member of a state committee and delegate and alternate elected from a
31 district wholly within the jurisdiction of such board[~~, except that, in~~
32 ~~respect to a judicial district convention in the first, second, eleventh~~
33 ~~and twelfth judicial districts, the board of elections, instead of tran-~~
34 ~~smittng such certificate, shall compile the roll of the convention and~~
35 ~~transmit it to the chairman or secretary of the committee which, by~~
36 ~~party rules, is empowered to fix the time and place of the convention].
37 The board of elections shall send by mail to each delegate and alternate
38 elected a notice of his election. The certificate or roll of the conven-
39 tion shall list the delegates and alternates elected at a primary in the
40 order of the votes received by each delegate or alternate, with the
41 delegate or alternate receiving the highest number of votes listed
42 first. Tie votes shall be indicated in a manner prescribed by the state
43 board of elections. If there shall have been no contested election for
44 alternates, the names of the alternates shall appear on the certificate
45 or roll in the order in which their names appeared on the petition which
46 designated them.~~

47 § 5. Section 9-202 of the election law, as amended by chapter 218 of
48 the laws of 1992, is amended to read as follows:

49 § 9-202. Canvass of primary returns by state board of elections;
50 convention rolls. The state board of elections upon receipt by it from
51 boards of elections of the tabulated statements of votes at a primary
52 election required to be filed with it shall proceed forthwith to canvass
53 such statements. Upon the completion of the canvass it shall make,
54 certify and file in its office tabulated statements of the number of
55 votes cast for all the candidates for nomination to each public office
56 or for election to each party position, and the number of votes cast for

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1 each such candidate. The candidate receiving the highest number of votes
2 shall be the nominee of his party for such office or shall be elected to
3 such party position, as the case may be, and the board, if requested,
4 shall furnish to the elected candidates a certificate of election. From
5 such certified statements of the votes for delegates and alternates
6 elected to a state [~~or judicial district~~] convention of any party,
7 [~~either than a judicial district convention in the first, second, elev-~~
8 ~~enth and twelfth judicial districts,~~] the state board shall forthwith
9 compile the roll of each such convention in duplicate and transmit it[~~,~~
10 ~~if for a state convention,~~] to the chairman and secretary of the state
11 committee of the party[~~,~~ and if for a judicial district convention, to
12 ~~the chairman and secretary of the committee which, by party rules, is~~
13 ~~empowered to fix the time and place of the convention]. The roll of the~~
14 convention shall list the candidates elected at a primary in the order
15 of the votes received by each candidate together with the number of
16 votes received by each such candidate. If there shall have been no
17 contested election for alternates, the names of the alternates shall
18 appear on the roll in the order in which their names appear on the peti-
19 tion which designated them. The state board of elections shall transmit
20 copies of the certified statements of the votes for delegates and alter-
21 nates to a national convention of a party to the chairman and secretary
22 of the state committee of such party.

23 § 6. Subdivision 5 of section 14-124 of the election law, as added by
24 chapter 8 of the laws of 1978, is amended to read as follows:

25 5. The provisions of sections 14-104 and 14-112, and subdivision [a]
26 one of section 14-118 shall not apply to any candidate for member of a
27 county committee of a political party [~~or any candidate for delegate or~~
28 ~~alternate delegate to a judicial district convention]~~ if the campaign
29 expenditures made by or on behalf of such candidate do not exceed fifty
30 dollars.

31 § 7. Sections 6-106 and 6-124 of the election law are REPEALED.

32 § 8. This act shall take effect immediately.