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 PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE MID-MANHATTAN BRANCH OF THE NAACP AND THE METROPOLITAN BLACK BAR ASSOCIATION AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

In *American Party of Texas* v. *White*, 415 U.S. 767 (1974), this Court held that the Constitution does not "necessarily forbid" party conventions "in preference to" party primaries as the means for political parties to choose their candidates for elective office. In the decision below, the Second Circuit affirmed a ruling requiring New York's political parties to nominate candidates for trial-court judge by party primaries rather than conventions. In so doing, the Second Circuit invalidated the statute governing judicial elections *in its entirety*, even though only certain portions of the statute were deemed unconstitutional.

The question addressed by *amici*, which is subsumed within the question presented by petitioners, is this:

> Did the Second Circuit err in replacing the party-convention statute with a party-primary system rather than severing the offending provisions?

This question was addressed by the courts below and is "not foreign to the parties." *Teague* v. *Lane*, 489 U.S. 288, 300 (1989) (considering retroactivity argument raised only by *amici*).

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INTRODUCTION AND INTERESTS OF *AMICI CURIAE*[1]

The severability analysis in the decision below independently warrants this Court's review. As the Court is by now aware, that decision affirmed the invalidation, on First Amendment grounds, of New York State's statutory system for selecting party candidates for judicial elections. The courts below found that system to impose severe burdens on the rights of voters and candidates to have a meaningful choice of candidates, and struck down the statute in its entirety.

Prior to striking down the entire statute, however, the lower courts were required by this Court's long-standing precedent to perform a severability analysis to determine whether the non-defective portions of the statute could be preserved. Had the lower courts performed that analysis, they would have found that the severe burdens they found were traceable to an isolated portion of the statute; that the Legislature had clearly expressed its desire to maintain the current system even without the burdensome provisions; and that a more limited remedy was appropriate.

Review is warranted to preserve, at a minimum, a significant portion of an important state election statute, and to prevent the erosion of this Court's severability jurisprudence. The methodology used below, if followed nationally, would signal an enormous expansion of judicial remedial power of which this Court has repeatedly disapproved.

The severability issue discussed here is of particular concern to *amici curiae* Mid-Manhattan NAACP and Metropolitan Black Bar Association, which support equal pro-

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[1] The parties have consented to the filing of this brief. In accordance with Rule 37.6, *amici* state that no counsel for any party has authored this brief in whole or in part, and no person or entity, other than *amici* and its counsel has made a monetary contribution to the preparation or submission of this brief.

tection for African-Americans and other minorities in New York City. Both organizations include sitting black Supreme Court Justices in their membership, and both have representatives on the judicial screening panel which evaluates the merit of candidates for Supreme Court Justice for the First Judicial District, a panel recognized by the district court as "the best in the state." *Lopez Torres* v. *New York State Bd. of Elections*, 411 F. Supp. 2d 212, 231 (E.D.N.Y. 2006). A more detailed description of these organizations can be found in the Appendix.

As organizations with a long history of championing the equal access of blacks and other minorities to elective office in New York, *amici* are strong proponents of New York's judicial convention system. *Amici* are especially proud of the record of minority participation that convention system has produced in New York City.

Amici believe that the decisions below unnecessarily compromise the success of New York's judicial election procedures. Even if portions of the relevant statutes could not be upheld, wholesale rejection of the convention system was inappropriate. As this Court recently made clear, the solution to a constitutional problem should be limited to that problem. *Ayotte* v. *Planned Parenthood of Northern New England*, 126 S. Ct. 961, 967 (2006). *Amici* thus urge the Court to review and reverse the decision below (either summarily or through plenary review), to ensure that the remedy in this case does not needlessly sacrifice the diversity benefits of the existing convention system.

STATEMENT

1. In 1921, the people of New York, acting through their duly elected legislators, expressed a clear preference for selecting nominees for the office of New York State Supreme Court Justice through a convention system, rather than direct primary elections.

Over its 85-year history, this convention system has promoted the public welfare by enabling minority candi-

dates to seek and obtain the office of Supreme Court Justice to a degree that direct primary elections could not have. For example, as a result of the convention system, the Supreme Court bench in New York County is currently 44.7 percent minority and 57.9 percent female.[2] Of the 38 Supreme Court justices in New York County, 22 are women, nine are African-American, four are Hispanic, and two are Asian-American.[3] In 2002, the First Judicial District convention nominated:

- Rolando Acosta, a Dominican man;
- Carol Edmead, an African-American woman;
- Troy Webber, an African-American woman;
- Rosalyn Richter, a disabled woman;
- Doris Ling-Cohan, an Asian-American woman; and
- Richard Price, an Orthodox Jewish man.[4]

In the district court, petitioners presented voluminous testimony that a primary system could never achieve the type of diversity that the convention system does, mainly because "[t]he best single determinant of success in a direct election is the size of the candidate's campaign chest," and minorities tend to have disproportionately smaller fundraising resources.[5] One of petitioners' experts testified that without the convention system "you would have a bunch of rich people [elected] to the bench and there would

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[2] Defendants' Corrected Proposed Findings of Fact in Opposition to Plaintiffs' Motion for Preliminary Injunction, *Lopez Torres* v. *New York State Bd. of Elections*, No. 04-cv-1129-JG-SMG (E.D.N.Y. January 26, 2005) (Docket No. 112) ("Defendants' Proposed Findings"), ¶ 241.

[3] *Ibid.*

[4] Defendants' Proposed Findings, ¶ 239.

[5] *Id.* ¶ 247.

be no minorit[ies] sitting up there at all."[6] According to this expert, the existing convention system is "a little fairer to ordinary people."[7] Another expert testified that primaries would result in "an entirely white bench."[8]

2. Although the convention system was democratically enacted and has done much to foster diversity on the bench, the courts below held that New York's judicial election statute violates the First Amendment and cannot be applied in its current form. The district court ruled that New York's judicial convention system imposed severe burdens on the First Amendment rights of voters and candidates to have some meaningful choice in the election of Supreme Court Justices, without the justification of sufficiently compelling state interests. 411 F. Supp. 2d at 243-255. The district court based this ruling primarily on anecdotal evidence of respondents' difficulties in obtaining the nomination of their parties without the support of party leadership. *Id.* at 231-239.

According to the district court, several features of the judicial election statute were responsible for respondents' alleged difficulties, including: (1) the number of assembly districts from which a candidate must field delegates to the conventions; (2) the number of delegates each candidate must run within each assembly district; (3) the number of signatures each candidate must obtain for each delegate within a 37-day period; (4) the prohibition of identifying the candidate each delegate supports on the ballot; and (5) the impracticality of lobbying delegates to change their votes prior to and at the conventions themselves. *Id.* at 217-230.

Based on its finding of a First Amendment violation, the district court enjoined the operation of the entire New York judicial convention system, and ordered that direct primary elections be held unless the Legislature can implement a new system before the next election cycle. *Id.* at 255-56. The district court did not examine whether the convention system could still function in the absence of the provisions it found too burdensome, instead voicing its opinion that a primary system was preferable because it "assure[s] that intraparty competition will be resolved in a democratic fashion." *Id.* at 256 (citation omitted).

The Second Circuit affirmed the district court's findings in their entirety. *Lopez Torres* v. *New York State Bd. of Elections*, 462 F.3d 161, 208 (2d Cir. 2006). The Second Circuit acknowledged the obligation of federal courts not to "nullify more of a legislature's work than is necessary." However, the court went on to mischaracterize the invalidation of only the offending provisions as "[t]inkering with the election mechanism" and "rewriting" the statute. *Id.* at 205-206.

REASONS FOR GRANTING THE PETITION

This Court should grant the petition and review the decision below because that decision conflicts with this Court's severability doctrine and threatens to seriously compromise minority representation in the New York judiciary. While this Court has consistently cautioned against invalidating an *entire* statute where only portions of the statute raised constitutional objections, the decision below ignores that warning and affirms an injunction that scraps New York's judicial convention procedure *in toto*. As a result, the decision below imposes upon New York a party-primary system that its Legislature rejected in 1921 and does not want today.

[6] *Id.* ¶ 248.

[7] *Ibid.*

[8] Defendants' Proposed Findings, ¶ 249.

I. The Decision Below Conflicts With This Court's Severability Doctrine.

A. This Court has held that invalid portions of a statute should be severed from the remainder of the statute if the legislature would prefer that result.

For more than 125 years, this Court has recognized that "the same statute may be in part constitutional and in part unconstitutional." *Allen* v. *Louisiana*, 103 U.S. 80, 83 (1880). Thus, "if the parts are wholly independent of each other, that which is constitutional may stand while that which is unconstitutional will be rejected." *Ibid.* Put another way, "[a] statute bad in part is not necessarily void in its entirety," and "[p]rovisions within the legislative power may stand if separable from the bad." *Dorchy* v. *Kansas*, 264 U.S. 286, 289-290 (1924).

This Court applied the same principles just last Term in *Ayotte* v. *Planned Parenthood of Northern New England*, 126 S. Ct. 961 (2006). The lower courts had held New Hampshire's parental notification statute unconstitutional because it lacked a "health exception" and the judicial bypass it provided was no substitute for such an exception. See *id.* at 965-966. This Court granted certiorari to decide "whether the courts below erred in invalidating the Act *in its entirety* because it lacks an exception for the preservation of pregnant minors' health." *Id.* at 966 (emphasis added).

New Hampshire conceded that its statute could not be applied in a manner that subjects minors to significant health risks, so this Court "turn[ed] to the question of remedy." *Id.* at 967. "Generally speaking," the Court explained, "when confronting a constitutional flaw in a statute, *we try to limit the solution to the problem.* We prefer, for example, to enjoin only the unconstitutional applications of a statute while leaving other applications in force, or to sever its problematic portions while leaving the remainder intact." *Ibid.* (emphasis added; citations omitted).

As the Court recognized in *Ayotte*, "the touchstone for any decision about remedy is legislative intent, for a court cannot use its remedial powers to circumvent the intent of the legislature." 126 S. Ct. at 968 (quotations omitted); see *Minnesota* v. *Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 191 (1999) (severability analysis is "essentially an inquiry into legislative intent"). Thus, "[a]fter finding an application or portion of a statute unconstitutional, [a court] must next ask: Would the legislature have preferred what is left of its statute to no statute at all?" *Ayotte*, 126 S. Ct. at 968.

In asking this question, a court must determine whether "the balance of the legislation is incapable of functioning independently" from the constitutionally defective provisions. *Alaska Airlines, Inc.* v. *Brock*, 480 U.S. 678, 684 (1987). "Unless it is evident that the legislature would not have enacted those provisions which are within its power, independently of that which is not, the invalid part may be dropped if what is left is fully operative as a law." *Champlin Refining Co.* v. *Corporation Comm'n of Okla.*, 286 U.S. 210, 234 (1932).[9]

[9] The policy reasons for this rule lie at the heart of constitutional separation of powers. The limits on the power of federal courts to issue broad injunctions were one of the few issues upon which both the Federalists and the Anti-Federalists agreed. When the Federalists sought to include the phrase "all cases, in law and equity" in describing the powers of the judiciary in Article III, the Anti-Federalists were concerned that "equity" powers could be abused to give judges unfettered discretion. See Letters from The Federal Farmer to The Republican No. 3 (Oct. 10, 1787), in 1 *The Debate on the Constitution* 245, 273 (Bernard Bailyn ed., 1993). Alexander Hamilton's reply for the Federalists was not to defend broad equity powers, but rather to deny that judicial power was broad in the first instance. See Publius [Alexander Hamilton], *The Federalist* No. 78 (May 28, 1788), in

B. The courts below failed to conduct the severability analysis established by this Court's decisions.

The courts below found only certain aspects of the election statute invalid, so severance was a remedial option. But the district court did not conduct a severability analysis, and the Second Circuit below provided little more. Although the decision below cites *Ayotte*, it does not even purport to examine the legislature's intent with respect to severability. See 462 F.3d at 205-206. Had the courts below undertaken the analysis required by this Court's decisions, they could not have concluded that wholesale rejection of the convention system was appropriate under controlling decisions of this Court.

1. In finding that the judicial election statute impermissibly burdened First Amendment rights, the courts below relied heavily upon the fact that political parties could require candidates to field unreasonably high numbers of delegates within their judicial districts. See 462 F.3d at 192; 411 F. Supp. 2d at 220.

New York's Election Law provides that nominees for Supreme Court Justice shall be chosen by means of a judicial nominating convention. See N.Y. Election Law § 6-106. The statute is plainly constitutional in that respect, for this Court has expressly approved the nominating convention as a means for selecting candidates for elective office. *American Party of Texas* v. *White*, 415 U.S. 767, 781 (1974). The convention prescribed by the New York

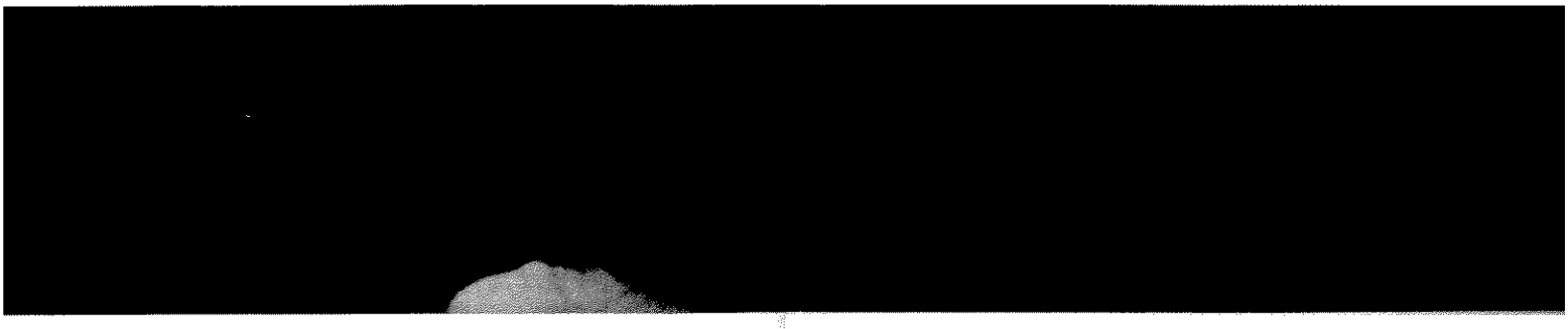
2 *The Debate on the Constitution* 467, 468 (Bernard Bailyn ed., 1993). Thus, the Anti-Federalists opposed the grant of equity powers to federal courts for fear of the unfettered discretion they would lend, and the Federalists considered the judiciary to be capable of "no active resolution whatever." *Ibid.* Between them, there is little support for the broad exercise of judicial power in issuing sweeping injunctions when a more limited remedy is available.

Election Law, however, bears an unusual feature: A candidate seeking the office of Supreme Court Justice must field a slate of convention delegates and alternate convention delegates from each assembly district ("AD") within the judicial district he or she seeks to represent, and the political parties determine how many delegates must be elected from each AD. See N.Y. Election Law § 6-124.

Using this authority, the political parties have devised delegate-allocation formulas yielding unreasonably high numbers of delegates per judicial district. For example, a Democratic candidate running for Supreme Court Justice in the Second Judicial District must field a slate of 124 delegates plus 124 alternate delegates—248 total—across the 24 ADs in that judicial district. Even worse, a Republican candidate running in the Tenth Judicial District must field 185 delegates plus 185 alternate delegates—370 total—across that judicial district's 21 ADs. See 411 F. Supp. 2d at 219.

According to the district court, the statute "make[s] a challenger candidate's effort to elect a majority of delegates more difficult" by "delegating to the major parties the right to determine the number of delegates and alternate delegates" required for nomination. *Id.* at 220. "In the Second Judicial District in 2004, for example, such a challenge would require running approximately 250 candidates across 24 ADs and two counties. The sheer number of people a challenger must recruit to run for the office of delegate and alternate delegate is a significant burden in itself." *Ibid.*

The Second Circuit agreed. "Here, the evidence showed that the political parties' delegate allocation formulae do much more than merely dilute the proportional efficacy of votes *vis a vis* assembly districts within a judicial district. Rather, the evidence showed that a network of restrictive regulations effectively *excludes* qualified candidates and voters from participating in the primary election and subsequent convention, and thus severely



limits voter choice at the general election." 462 F.3d at 192.

2. The other features of the judicial convention system cited below as contributing to an undue burden have previously been found to be constitutionally benign when standing alone. For example, this Court has repeatedly upheld more demanding signature requirements for ballot access than those at issue here—between 9,000 and 24,000 signatures over a 37-day period. See *Norman* v. *Reed*, 502 U.S. 279, 295 (1992) ("our precedents foreclose the argument" that collecting 25,000 signatures from one suburban district is unduly burdensome); *Storer* v. *Brown*, 415 U.S. 724, 740 (1974) ("[s]tanding alone, gathering 325,000 signatures in 24 days would not appear to be an impossible burden"); *White*, 415 U.S. at 783 (22,000 signatures in 55 days "does not appear either impossible or impractical").

Similarly, although this Court has not considered New York's practice of not including on the primary ballot the names of the candidate to whom a convention delegate has pledged his support, that practice has been sustained by a New York State court. See *Fallon* v. *State Bd. of Elections*, 380 N.Y.S.2d 355 (N.Y. App. Div. 1976).

None of the other features of New York Election Law §§ 6-106 and 6-124 were even claimed to be unconstitutional, much less found to be so. The requirement of a convention in the first instance, the election of delegates in a primary, their distribution across all ADs, and the use of alternates are all features of candidate selection for other offices in New York that were cited with approval by the district court. 411 F. Supp. 2d at 220.

Without the cumulative effect of the delegate-allocation formulas discussed above, it is unlikely that the courts below would have found that the other features of

the convention system significantly burden First Amendment rights.[10]

3. Once the courts below concluded that certain portions of the election statute created constitutional difficulties, they were required to ask whether "the legislature [would] have preferred what is left of its statute to no statute at all." *Ayotte*, 126 S. Ct. at 968. Under this Court's severability decisions, the courts below were required to strike down only the defective provisions and uphold the remainder unless the latter was "incapable of functioning independently." *Brock*, 480 U.S. at 684.

Remarkably, the courts below failed to undertake any analysis of severability, much less conclude that the benign portions of the convention system could not stand on their own. Without discussing the Legislature's intent at all, the district court simply asserted that temporarily replacing the convention system with a primary system was "the least intrusive course." 411 F. Supp. 2d at 256. And the Court of Appeals declared that excising only the defective provisions of the election statute—as *required* by this Court's severability decisions where the remainder of the statute is salvageable—would be tantamount to "inviting the District Court to act as a one-person legislative superchamber." 462 F.3d at 206.[11]

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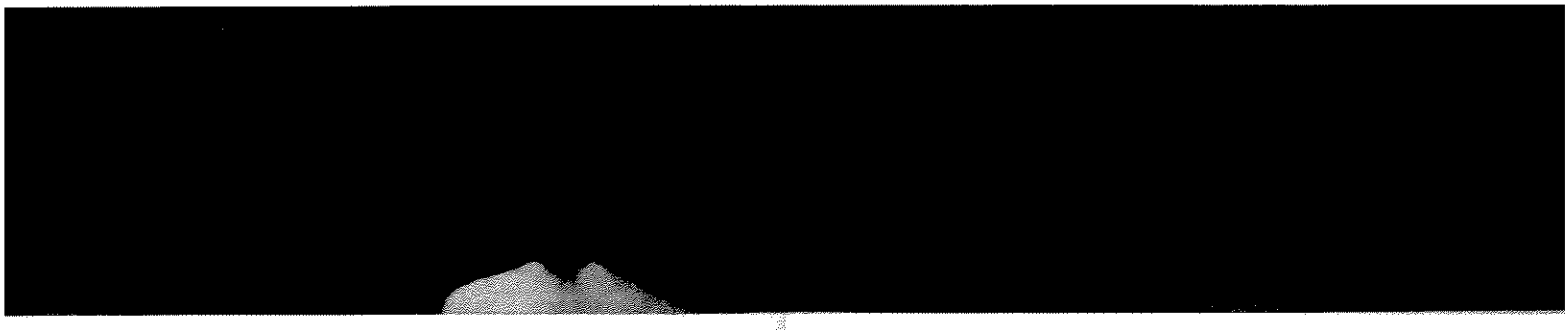
[10] The other factual findings below—detailing the anecdotal difficulties of respondents in seeking office—are more accurately described as symptoms, not causes, of the severe burden discussed above. It is hardly surprising that the political bosses respondent Lopez Torres encountered were able to freeze her out of the convention process when her only alternative was to attempt to field a slate of 248 of her own delegates and alternates.

[11] The Court of Appeals also found that the statute was correctly stricken down facially, as opposed to as applied. *Id.* That ruling—which focuses on the injuries suffered by particular plaintiffs versus the public at large—is distinct from the severability question addressed here.



The Court of Appeals seems to have thought that the only alternative to keeping the whole statute intact was to "rewrite" portions of it: "Tinkering with the election mechanism would require that [the] District Court not only rewrite aspects of the judicial election scheme, but also modify provisions, such as the 37-day petition window, that apply to candidates for a variety of offices in New York." *Ibid.* But there was, of course, another option, the option *mandated* by this Court—to invalidate only the offending provisions, without "rewriting" anything. As this Court explained in *Ayotte*, courts should "try not to nullify more of a legislature's work than is necessary." 126 S. Ct. at 967.

The correct analysis would have been to identify exactly which portions of the existing convention system were constitutionally defective—as discussed above, the delegate-allocation formulas—and then to examine whether the statutory convention system could still function without them. See *Brock*, 480 U.S. at 685 ("The more relevant inquiry in evaluating severability is whether the statute will function in a *manner* consistent with the intent of [the legislature]").

4. Had the courts below asked the questions this Court requires, and had they considered the evidence of the Legislature's intent, they could not have approved the substitution of a primary system for the convention system, even temporarily.

As the Second Circuit correctly observed, the New York State Legislature enacted the existing judicial convention system in 1921 *to replace* the then-existing direct primaries. 462 F.3d at 171-172. In fact, the current convention system was enacted in response to a specific "concern * * * that bare-knuckled primary elections dissuaded qualified candidates from seeking these significant judicial positions." *Id.* at 171.

Moreover, the New York State Legislature—at the Second Circuit's invitation—submitted an *amicus curiae* brief in this case representing that the district court's sweeping remedy contravened its legislative intent. The Legislature correctly observed that "[i]n enjoining all judicial nominating conventions and ordering the State to use a primary system for selecting candidates for the position of Supreme Court Justice, the district court completely discarded the Legislature's constitutionally permissible choice of a convention system. The Legislature thus has a strong interest in reversal of the district court's decision."[12]

The Legislature's position in this case is not surprising, because the record below strongly suggests that the convention system could function as the Legislature intended even without the defective delegate-allocation formulas. The fact that the Legislature itself did not create the defective formulas, but authorized the political parties to create them,[13] is compelling proof that the Legislature did not see *any* particular delegate-allocation formula—yielding 370 delegates or 37—as an essential feature of judicial conventions. The statute, as written, would require *zero* "rewriting" to excise the offending formulas, because those formulas were not part of the statute to begin with.[14]

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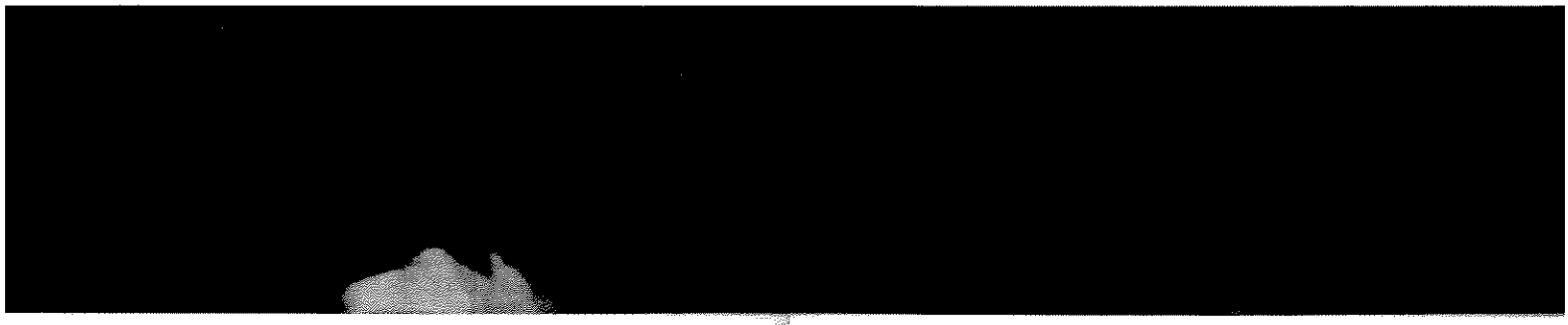
[12] Brief of the New York State Legislature as *Amicus Curiae*, *Lopez Torres* v. *New York State Bd. of Elections*, No. 06-0635 (2d Cir. June 2, 2006), at 1.

[13] See N.Y. Election Law § 6-124 ("The number of delegates and alternates, if any, shall be determined by party rules"). The creation of the delegate-allocation formulas by the parties is nonetheless "state action" for constitutional purposes. See *Terry* v. *Adams*, 345 U.S. 461, 481-482 (1953); *Smith* v. *Allwright*, 321 U.S. 649, 663-664 (1944).

[14] It is axiomatic that a statute delegating rulemaking authority to another entity is not defective simply because the delegee misuses that authority. See *Whitman* v. *American Trucking*



In sum, the Legislature's preference for a convention system over a primary system was strong enough in 1921 that it replaced the latter with the former by statute. And the Legislature's preference for a convention system remains to this day, as evidenced by its argument against the remedy adopted in this case. So the answer to the question whether the Legislature would prefer *some* convention system to *none at all* is clear. In conflict with this Court's precedents, the decision below ignores that clear answer and imposes a primary system contrary to the expressed wishes of the Legislature.

This Court should grant review to ensure that federal courts conduct appropriate severability analyses when considering statutes found to be invalid in part but not in whole.

II. The Decision Below Will Dilute Minority Representation And Diversity In The New York Judiciary.

Review is also warranted because of the practical implications of the decision below. As noted above, because of the convention system, the Supreme Court bench in New York County is highly diverse—so diverse that 44.7 percent of the judges are members of racial minorities and 57.9 percent are female.[15] Moreover, in the district court, petitioners demonstrated that a primary system, because of the fundraising difficulties it creates for women and minorities, could never achieve the type of diversity that the convention system does. Petitioners' experts testified that without the convention system only the rich would be elected to the bench and "there would be no minorit[ies] sitting up there at all,"[16] and that primaries would result in "an entirely white bench."[17]

Because it invalidates the entire New York convention election system, the decision below, whether or not it will in fact create "an entirely white bench," virtually guarantees a severe reduction in diversity in the New York judiciary. Given the importance of racial and gender diversity in America's largest city, and given that the convention system has been maintained by the people's representatives precisely to encourage such diversity, that reduction alone is ample reason to grant review.

* * * * *

Under this Court's severability decisions, the courts below should have enjoined the offending provisions of the election statute but preserved the remainder of the convention system. The decision below conflicts with this Court's settled doctrine, threatens the existing diversity of the New York bench, and therefore warrants further review. In fact, because of the clarity of the error in the lower court's severability analysis, that portion of the decision would be appropriate for summary reversal if the Court elects not to grant plenary review of the other issues presented.

CONCLUSION

The petition for a writ of certiorari should be granted.

Ass'n, 531 U.S. 457, 486 (2001) (Clean Air Act provision upheld despite EPA's misuse of its authority under that provision).

[15] Defendants' Proposed Findings, ¶ 241.

[16] *Id.* ¶ 248.

[17] *Id.* ¶ 249.

Respectfully submitted.

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JANUARY 2007

APPENDIX

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APPENDIX

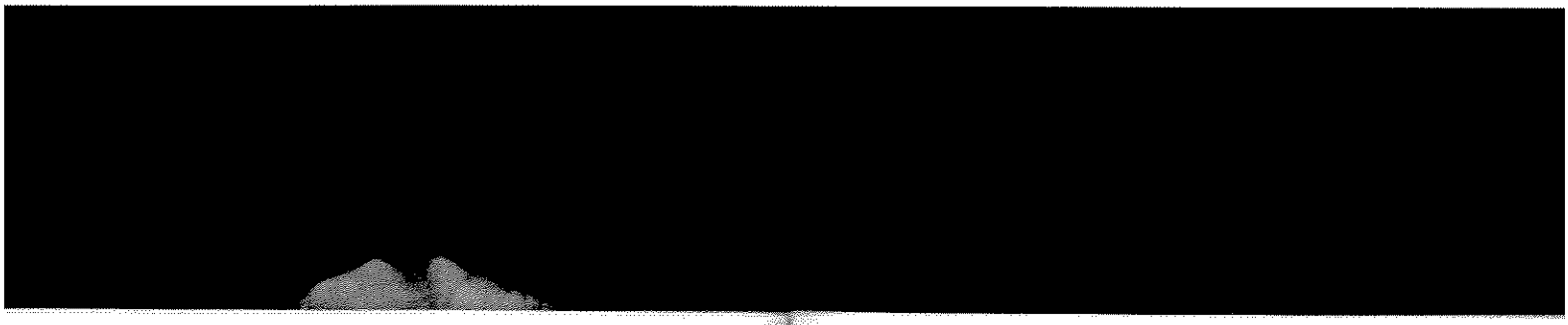
The Mid-Manhattan Branch of the NAACP:

Founded in 1909, the NAACP is the nation's oldest and largest civil rights organization. Its members throughout the United States and the world are the premiere advocates for civil rights in their communities, conducting voter mobilization and monitoring equal opportunity in the public and private sectors. The Mid-Manhattan Branch was founded in 1966.

For over 40 years, the Mid-Manhattan NAACP has been an advocate for all its citizens in the struggle for civil rights and equality. Today, Mid-Manhattan NAACP plays an active role in confronting the gaps and disparities in health care, economics, education funding, criminal justice, and diversity in the courts and the judiciary.

Its efforts continue in voter education, registration and mobilization, as well as youth development and enrichment programs. Today, Mid-Manhattan NAACP has over 600 members, with seven working Committees (Education, Health, Fundraising, Legal Redress, Membership, Political Action and Youth Council).

Mid-Manhattan NAACP's past and present participation on the Supreme and Civil Court Judicial Screening Panels has contributed to greater diversity and minority participation on the Bench. The Branch has five sitting Supreme Court Justices (Hon. Carol L. Edmead, Hon. Milton A. Tingling, Hon. Doris Ling Cohen, Hon. Debra James, and Hon. Paul Fineman) and four sitting Civil Court Judges (Hon. George Silver, Hon. Tanya Kennedy, Hon. Margaret Chan, and Hon. Shari Michels) among its active members. These Judges all reported out of the Judicial Screening Panel process as highly qualified and are representative of the great diversity of New York County.



The Metropolitan Black Bar Association ("MBBA") was created on July 5, 1984 upon the merger of two of the nation's oldest Black bar organizations, the Harlem Lawyers Association and the Bedford Stuyvesant Lawyers Association. For over sixty years, the Harlem Lawyers Association (founded 1921) and the Bedford Stuyvesant Lawyers Association (founded 1933) provided a voice for Black legal professionals and their communities. The MBBA proudly continues the rich legacy of these constituent organizations.

Today, the MBBA is comprised of Black attorneys in both the public and private sectors, as well as judges and other public officials. The MBBA is an affiliate of the National Bar Association and is governed by a 22-member Board of Directors. Its daily operations are managed by its President and six additional elected officers. The purpose of the MBBA is to aid the progress of attorneys of color, and to assist the progress of the legal profession generally. The MBBA serves all of the counties of the Greater New York metropolitan area.

Throughout its 23-year history, MBBA has advocated equal justice and diversity contributing to increasing numbers of minorities in the judiciary. Its founding members include Hon. George Bundy Smith, former Associate Judge on the NYS Court of Appeals; Hon. Fern Fisher, Administrative Judge of the Civil Court of the City of New York; Hon. L. Priscilla Hall, NYS Supreme Court, Kings County; and Hon. Cheryl Chambers, NYS Supreme Court, Kings County.

The MBBA works to expand the breadth and scope of diverse social and legal issues programs for the benefit of the bar and bench as well as the community at large. MBBA has partnered with a number of other organizations to provide such programs, including the Mid-Manhattan Branch of the NAACP, the Asian American Bar Association, the Puerto Rican Bar Association, the Dominican Bar Association, the Jewish Lawyers Guild,

Nigerian Lawyers' Association, New York County Lawyers Association, The Association of the Bar of the City of New York, the American Bar Association, the New York State Bar Association, NAACP Legal Defense Fund, law schools, and other institutions.

The MBBA sponsors lectures and seminars on Tax Amnesty, Haywood Burns Memorial, Affirmative Action, Immigration Law, Attorney Disciplinary Procedures, Criminal Justice, Jury Selection, Entertainment Law, Guardian/Receivership Training, Surrogate Court Practice and Procedure, Labor Law, Estate Planning and other matters. Members may also qualify for scholarships for continuing legal education courses.

Recently, the MBBA called for minority bar associations to jointly screen and interview judicial candidates to increase the strength of diversity. Other initiatives include: In December 2006, the Hon. George Bundy Lecture Series was established to be held annually in conjunction with the Association of the Bar of the City of New York and the Ida B. Wells Barnett Awards is held annually in conjunction with the New York County Lawyers Association and MBBA's expansive CLE program is held in partnership with the ABA and other minority bar groups.

Other activities include programs geared to potential and current law students and mentoring high school students. The Metropolitan Black Bar Association Scholarship Fund, Inc., an independent non-profit corporation, raises funds and grants scholarships to minority law students.