

What is the *López Torres* case about?

Judicial elections in New York, and taking the political clubhouse out of the courthouse.

[New York's Constitution](#) requires that "Supreme Court" judges (state trial court judges) be elected. But the candidates for election are nominated by a byzantine convention system mandated by statute. The only way to become a Supreme Court judge is to gain the nomination at the convention, and the only way to gain the nomination at the convention is with the approval of the local leader of the dominant political party (the Democrats in New York City and the Republicans outside of New York City).

What is wrong with the New York State judicial nomination system?

1. The system is dominated and controlled by party machines.

As Judge Gleeson put it, "[t]he labyrinthine, burdensome procedures ... ensure that the entrenched party leaders can install as delegates persons who will do their bidding.... Faced with an inability to get supportive delegates elected, it is cold comfort for a challenger candidate to be told not to worry, she can try to convince the delegates selected by the party leaders. The current system for selecting judges does not work that way and is not structured to work that way." [Dist. Ct. Opin.](#), p. 32.

2. The system results in clubhouse justice.

In too many instances loyalty to the political party leadership counts for more than quality.

3. The system excludes voters from elections in a way that is radically different from any other election system in the nation.

As the [Second Circuit](#) put it, "the uncontested evidence...is that across the state, the system for selecting candidates for the Supreme Court vests almost total control in the hands of local political leaders.' ... The Commission is hardly the only entity to reach this conclusion—it merely is the latest. Since 1944, New York's judicial nominating system has been described as exclusionary and boss-dominated; reports and newspaper editorials from that time forward have decried an electoral practice 'that mocks choice,' and criticized a system in which 'voters can never know the candidates and have to accept party slates,' while the 'real choice is ... left to political bosses ... who control nominations.'"

Why should the Second Circuit's decision be affirmed?

It is correct as a matter of law and was widely heralded as forcing reforms that were long overdue. If the Second Circuit's decision is reversed, the entrenched beneficiaries of status quo will make sure that the current system continues.

Supporters of the opportunity for reform created by the Second Circuit Decision include:

1. New York's Republican-led State Senate, which passed a bill tracking the court's injunction
2. Judicial leaders in New York, including Chief Judge Judith Kaye, and former Chief Administrative Judges Richard Bartlett, Joseph Bellacosa, and E. Leo Milonas
3. The organized bar including the New York State Bar Association, the Amistad Black Bar Association, the Association of the Bar of the City of New York, Latino Lawyers of Queens, New York County Lawyers Association, Puerto Rican Bar Association, and the Rochester Black Bar Association
4. New York Executive Branch officials, including Governor Spitzer, Mayor Bloomberg and former Mayor Koch
5. Good government and civil rights groups, including Common Cause/NY, the Fund for Modern Courts, Citizens Union, the New York Civil Liberties Union, Asian American Legal Defense and Education Fund, Center for Law and Justice, and Puerto Rican Legal Defense and Education Fund
6. Law enforcement officers who have investigated judicial misconduct, including former Chair of the New York State Commission on Judicial Conduct and Brooklyn District Attorney Charles Hynes
7. Every newspaper covering the issue, including the *Buffalo News*, the *Syracuse Post-Standard*, the *New York Daily News*, *The New York Times*, the *Rochester Democrat and Chronicle*, *New York Newsday*, and the *Albany Times Union*

Excerpts of Statements About the Judicial Convention System

1. Senior New York State Officers

"[T]he current system... 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 [passed by the Senate] would preserve the integrity of the process by including the public in the selection process."

– Sen. John DeFrancisco (R-Syracuse), Chairman, NY State Senate Judiciary Committee, [press release](#)

"It is a simple fact that our court system is in dire need of reform.... [T]he courts have been hopelessly compromised by a party-dominated system of judicial selection that permits unqualified judges to reach the bench."

– Eliot Spitzer, Governor, New York State, [speech to Rockefeller Institute](#)

The conventions "are completely shrouded in secrecy with absolutely no input from the electorate."

– Michael Bloomberg, Mayor, New York City, [press release](#)

"The decision on who will become a judge has been left solely in the hands of a small group of people: county political leaders. As one Supreme Court justice, who was ultimately forced to step down for disciplinary violations, said, 'You don't have to know something to be a judge, you have to know somebody. They give you a robe and expect you to know the law.' Shame on us if this is the way we have allowed our judges to be selected. * * *

"There is a judicial selection crisis in this state. The system has not only been found unconstitutional, but it is producing candidates who clearly are not the most highly qualified."

– Michael Cardozo, Corporation Counsel, City of New York, [article](#)

"The only thing appellants get right in describing the convention system is that the process has 'gone unchanged for more than eighty years'—or at least for the forty-plus years that I have been familiar with it. The undemocratic, boss-run system... appears to operate no differently today than it did back then.... When local party and county leaders hand-pick judges, not only do the voters suffer, but so too does our compelling interest in maintaining the rule of law, as well as the constitutional and democratic values which it protects."

– Edward Koch, former Mayor, New York City, [Brief as Amicus Curiae](#)

2. Judicial Leaders in New York

“One thing now is perfectly clear: that given the extensive findings of the Feerick Commission and the extensive findings of the United States District Court, we are not dealing solely with a ‘Brooklyn problem,’ or a ‘New York City problem,’ as I have heard some say. The issues that have been identified are pervasive, both systematically and geographically.... It is no understatement that public confidence in the Judicial Branch is at stake.”

– Judith Kaye, Chief Judge, New York Court of Appeals, [The State of the Judiciary, 2006](#)

“New York has fostered and tolerated a system in which voters not only are deprived of their right to choose, but in which they are left to question whether they have been denied that right in order for others to use objectionable criteria to determine who will become judges. The current convention system fails—at the crucial juncture when the judgeship is being bestowed—to provide constitutionally-required assurances to the public of the nominees' integrity, competence, impartiality, and quality. . . . The process by which individuals are selected to join the bench, along with the perception of how that process works, has profound implications for public confidence in the judiciary. New York's current system for selecting nominees for Supreme Court vacancies injures rather than enhances the reputation of the justices.”

– Richard Bartlett, Joseph Bellacosa, and E. Leo Milonas, former Chief Administrative Judges, New York, [Brief as Amici Curiae](#)

“Across the state, the system for selecting candidates for the Supreme Court vests almost total control in the hands of local political leaders, posing a threat to both judicial impartiality and independence and decaying public confidence in the judiciary. * * *

“[C]onventions impose unnecessary burdens on qualified judicial candidates and foster a public perception that, once elected, delegates do not act thoughtfully or independently in nominating their party's candidates, but simply reflect the decisions already reached by political party leaders.”

– New York State Commission to Promote Public Confidence in Judicial Elections, [Final Report to the Chief Judge of NY State](#)

“[O]ur responsibility to the public is to take immediate steps to ensure public trust and confidence and address the problems that we know exist — that ... a very few political leaders rather than the broader electorate determine who becomes a judge in one party districts....”

- Jonathan Lippman, Chief Administrative Judge, New York, [speech to Rockefeller Institute](#)

3. The Organized Bar and Good Government Groups

“The judicial district nominating conventions by which political parties nominate Supreme Court justices in each judicial district accomplish no proper purpose. Under the present system, delegates to the judicial convention generally do as they are told by the political leaders who select them, and therefore play no constructive role in the judicial selection process.”

- Association of the Bar of the City of New York, [Brief as Amicus Curiae](#)

“For more than 30 years the [New York State] Bar Association has said that this system is inequitable and that true reform is necessary. Now the Second Circuit has dramatically endorsed the Bar Association’s position and has set the stage for a new system. * * *

“What New York has now is an appointive system. It purports to be an elective system, but in reality it is an appointive system. That’s not just what our Association concluded in its groundbreaking study 13 years ago; that’s what the Second Circuit found as a fact in the López Torres case. And, it is the worst kind of appointive system. The appointments are made by party leaders, who are not chosen by or accountable to the public. There is no involvement by elected representatives of the public. There is no involvement by the public itself.”

- Mark Alcott, President, New York State Bar Association, [testimony to NY State Assembly Judiciary Committee](#)

“The recent decision declaring unconstitutional the manner in which New York’s Supreme Court Justices are selected gives rise to an unprecedented opportunity to improve the selection process.”

- New York County Lawyers Association, [report](#)

“Minorities seeking to become supreme court justices in this state are not served by a closed, back-door system built on cronyism and political favors. No diverse, fair system can be built by such means. As a blue-ribbon task force on diversity in the judiciary found fourteen years ago, opening the system is ‘*essential* to improving diversity on the bench.’”

- Asian American Legal Defense Fund
- Puerto Rican Legal Defense Fund
- Amistad Black Bar Association
- Center for Law and Social Justice

- Latino Lawyers of Queens
- Puerto Rican Bar Association
- Rochester Black Bar Association

[Brief of Amici Curiae](#)

“The selection of Supreme Court justices in New York is, by and large, a process controlled not by the voters but by political leaders, largely unaccountable to the citizens of New York.”

- Fund for Modern Courts, Brief of [Amicus Curiae](#)

“[T]he unique structure of New York's convention system, as it has operated for decades, results in political party leaders hand picking New York's Supreme Court justices, while New York's voters are denied any significant role in the process. It is correspondingly all but impossible for a person who is not selected by such party leaders to get elected to the Supreme Court.”

- Citizens Union, [Brief for Amicus Curiae](#)

4. Law Enforcement Officers Who Have Investigated Judicial Misconduct

“[T]he pool of truly eligible candidates is severely limited and cannot include many talented lawyers who have spent their careers focusing on legal work rather than political party service.”

- Henry Berger, Former Chair, New York State Commission on Judicial Conduct, [Declaration](#)

“I have overseen and I continue to oversee the investigation of allegations of the corrupt use of the power of the Kings County Democratic Party to control and influence the judiciary in Brooklyn. As a result, I know full well the evidence that was considered by the District Court, and I therefore can and do attest that the District Court correctly concluded that the powerful county leaders of the major political parties, through the mechanism of the judicial district nominating convention, have a stranglehold on the Supreme Court of the State of New York....

“We have traced the roots of this system back to the corruption in the era of Tammany Hall, establishing that it is a vestige of the back-room power that party leaders used to be able to wield over the nominating process for *all* elected offices.”

- Brooklyn District Attorney Charles Hynes, [Brief of Amicus Curiae](#)

“What [judges] must go thorough is downright disgusting. These people have to go...to the likes of Clarence Norman, the party boss, the man who runs the machine. All he cared about was money or whether or not a candidate had the right last name.”

- Assistant District Attorney Michael Vecchione, in summation in *People v. Norman*, in which Mr. Norman was convicted for using his political position to extort money from judicial candidates.

5. Newspapers

a. After the District Court Decision:

“Push came to shove for the inherently undemocratic way New Yorkers select candidates for State Supreme Court judgeships. A federal judge in Brooklyn ruled last week what reformers and critics knew all along – political party bosses should not pick judges.

“New York’s existing system made that routine, and political parties used that power to channel substantial political contributions through judges to other candidates in their stables.”

- *The Buffalo News*, “Yes, choose judges democratically” February 1, 2006.

“For too long, voters have had no direct role in choosing nominees for Supreme Court, New York’s highest trial court. Instead of going before party voters in primary elections, judicial candidates are chosen at political conventions in September by delegates hand-picked by party bosses. In areas where one political party is dominant, party leaders essentially decide who sits on the bench. Too many judges get their jobs this way as rewards for loyal party service.

“Lawmakers should consider DeFrancisco’s bill. A fair and honest justice system should not rest on a foundation of squishy patronage plums.”

- *Syracuse Post-Standard*, “Judging candidates” February 2, 2006.

“Six weeks after Brooklyn Federal Judge John Gleeson ruled that New York’s boss-rigged method of selecting state Supreme Court justices is unconstitutional, the Legislature’s Democrats still can’t—or won’t—get their reform act together. You could call it obstruction of justices.

“Regardless, Democratic Assembly Speaker Sheldon Silver and nearly all his cohorts in the state Senate are wringing their hands over what they predict would be an undue influence of money in judicial elections. Well, folks, how about the overdue influence of voters in judicial elections? Currently, they have none where the state Supreme Court is concerned.

“When Joe Bruno’s GOP-dominated Senate passed a bill requiring primaries, only four of its 26 Democrats voted yes. Silver’s Assembly hasn’t done a thing to address the conventions’ unconstitutionality. No wonder, since Silver has consistently defended conventions and serves as the most powerful delegate at the Manhattan confab.”

– *New York Daily News*, “Primary colors” March 13, 2006.

“The myth that New Yorkers choose their top trial judges by democratic election was exploded last week by a 77-page federal court decision striking down the clubhouse-controlled selection process for violating the rights of candidates and voters.

“Judge John Gleeson of the United States District Court in Brooklyn laid out in damning detail the state’s system—unique in the nation—of letting party leaders anoint candidates for State Supreme Court judgeships at sharply controlled nominating conventions held out of public view. The voters’ role has been limited to ratifying their (often mediocre) choices. A telling statistic: From 1994 to 2002, 568 candidates were nominated around the state for seats on the State Supreme Court. Not a single challenger to the clubhouse favorite won his party’s nomination.

“Judge Gleeson has performed a valuable public service in pulling the plug on this sham. We also salute the lead plaintiff, Margarita López Torres, for daring to challenge judicial politics-as-usual by bringing the lawsuit back in 2004.”

– *New York Times*, “A Turning Point for New York Courts” February 4, 2006.

b. After the Second Circuit Decision

“Another court decision, another defeat for New York State’s unconstitutional, undemocratic, boss-controlled method of judicial selection.

“The ruling, delivered last week by a Manhattan federal appeals panel, was stunning in the extent to which a three-judge panel laid bare, fact by fact, how the bosses exploit rigged procedures to deny the voters any say in selecting jurists for the state’s primary trial courts.”

– *New York Daily News*, “Death sentence for boss rule” September 5, 2006.

“Judicial selection in New York remains the last bastion of the clubhouse. Judges ascend to the bench as a result of loyal work for the party or friendship with a political power broker. But this may be about to change, now that a federal appeals court has ruled that New York’s method of choosing judges is unconstitutional.

“The current system of choosing judges through secret deals and old-fashioned cronyism corrodes the integrity of the legal system and diminishes the courts.”

— *New York Times*, “Breaking Down the Clubhouse” September 9, 2006.

“The process was so laborious that in all of time no would-be judge ever made it through without the petition-gathering strength of the party machine. In other words, the bosses made it impossible for anyone not beholden to them to become a Supreme Court justice.

“Rather than trust the voters - and, if necessary, limit campaign donations—they would put their faith in the bosses. We place greater stock in the people. Since the state Constitution specifies judges will be elected, not appointed, attorneys should be able to run for Supreme Court by collecting a reasonable number of petition signatures for their own candidacies. And, then, the voters would have their say. It's that simple.”

— *New York Daily News*, “Courting contempt for the public” November 19, 2006.

“When federal courts this year threw out the state's method of selecting Supreme Court judges, it seemed that a last lingering element of New York's Tammany Hall-style patronage system was dead.

“But watch out, it could be creeping back.

“Under the discredited system, party bosses gathered behind closed doors to decide who the judicial candidates would be. Then they set the party machine into gear to collect the thousands of signatures required to get delegates on the ballot who would vote the party line at the judicial convention. That and other obstacles made it virtually impossible for a candidate not blessed by the party to win the nomination.

“The result, of course, was that a lot of people were put on the bench based on their party loyalty, not their merits.

“If legislators do want to act, they should follow the lead of Syracuse's John DeFrancisco, chair of the Senate Judiciary Committee, who has introduced legislation to establish a primary system similar to that used to nominate county judges.”

— *Syracuse Post Standard*, “Justice for Voters” November 22, 2006.

“Since 1921, each political party has chosen delegates who put their candidate on the ballot, with the rank-and-file party members shut out. The system's susceptibility to abuse became evident four years ago in Brooklyn, where Democratic Party leaders were caught selling judgeships and sent to jail.

“‘If you're not the anointed one, there's no opportunity to become a Supreme Court judge,’ said DeFrancisco, R-Syracuse.

– *Syracuse Post Standard*, “Change in how judges are picked” December 24 2006.

“The Supreme Court judicial selection process in New York—closed conventions with hand-picked delegates often beholden to party bosses—belongs in the museum of political chicanery, not still churning out favored candidates in the 21st century.”

– *Rochester Democrat and Chronicle*, “Court system broken” January 28, 2007.

“There's no question that the system gives party leaders a virtual lock on who gets on the ballot for State Supreme Court justice.

“The current system makes for sham elections.

– *New York Newsday*, “Don't let pols choose judges” February 22, 2007.

“Most New Yorkers usually know very little about the men and women who run for seats in state courts, even though they might one day wind up standing before one of the winners. That's because the state's political party bosses want it that way. Under New York's judicial convention system, it's the bosses who have the largest say in who is nominated because they have the most influence in choosing the convention delegates who place the names in nomination. The bosses also have the power to strike cross-endorsement deals with the opposing party, thereby denying voters a choice and ensuring the election of a favored candidate.

“Thus, until the Supreme Court resolves the issue, the current system of judicial nominating conventions will remain in effect. That's regrettable, but if the high court supports Judge Gleeson's ruling, which was upheld last autumn by the 2nd Circuit of Appeals, then it will have been worth the wait.”

– *Albany Times Union*, “Last word on judges” February 24, 2007.

“A Brooklyn jury Friday convicted former Democratic Party chief Clarence Norman of political thuggery, proving beyond a reasonable doubt that New York's notoriously rigged, boss-driven system for electing judges must go.

“The panel found Norman guilty of forcing judicial candidates to hire and pay off his cronies as a condition for getting his support, without which they stood no chance of winning spots on the state Supreme Court. It was pay or go away, because state law gives bosses absolute power to pick justices.

“The august justices in Washington are in for an eye-opening expedition into banana republic politics.”

– *New York Daily News*, “The conquest of Norman” February 26, 2007.

