COURT STRUCTURE

THE NEW YORK STATE JUDICIAL SYSTEM
Statement of Position
As announced by the State Board, 1957

The League of Women Voters of New York State supports measures to obtain a unified, statewide court system.

Framework: The framework of our judicial system shall be incorporated in the state constitution in broad outlines with the details spelled out in implementing legislation.

Structure: There shall be an integrated, statewide court system consisting of a minimum number of trial courts of broad jurisdiction. Cases and judicial personnel shall be transferable from one court to another to the greatest extent possible.
Administration: Authority and responsibility for the effective administration of the integrated, statewide court system shall be centralized in a single person or body.

Fiscal Control: The integrated, statewide court system shall be financed by means of a judicial budget, which shall be prepared, by the central administrator or administrative body.

Judicial Personnel: To the fullest extent practicable, all judicial personnel shall be fully qualified members of the bar, prohibited from practicing law, required to devote full time to their judicial duties and restricted from holding any other public or political office.

Recent League Activity

During the past year, we have concentrated our advocacy efforts on lobbying for more Family Court judges state-wide. The state LWV and many local Leagues joined a coalition of over 100 organizations to lobby for the creation of more Family Court judges. The legislation successfully passed the legislature and was signed into law by the governor. Overburdened Family Courts throughout the state now will find relief through the addition of new judges.
The LWVNY's long-standing goals of court simplification, though not addressed in the form of a constitutional amendment, find wide-spread de facto implementation, with judges routinely reassigned to courts in need of extra help. The League should continue to monitor this process and evaluate whether it should be formalized via a constitutional amendment.

Merit Selection of judges has been another long-term goal of the League. Some steps have been taken in this direction by the Office of Court Administration (OCA) administratively through appointing Independent Judicial Election Qualification Commissions (IJEQC) which evaluate and rate judicial candidates who submit to the process voluntarily. (Each Judicial District has such a commission, and I was recently appointed to the IJEQC for the 4th Judicial District). Ratings of candidates by the commissions are available on line for voters who wish to be more informed of a candidate's rating. While the process is voluntary, it is a positive step in the direction of selecting well qualified judges.

In the area of juvenile justice, the League should await the reports from the governor's commission which evaluates current practices and makes recommendations for the future. Currently, NYS is only one of two states which treats juveniles over 16 as adults! Similarly, local LWV's should also keep an open eye out for how all justice issues are handled at the county levels in criminal and civil legal defense, especially for the indigent, in alternatives to incarceration as well as in efforts to re-integrate ex-offenders into society, reducing recidivism.

In 2009, no new efforts were made to address the need for restructuring via a constitutional amendment. The current Chief Judge, Jonathan Lippman, has not yet addressed the issue or advocated for it. Even though some of the most burdensome problems litigants face in the fractured courts have been addressed by administrative measures, e.g. the Integrated Domestic Violence Courts which can deal with all aspects of a case in one court, before one judge, or the other specialty "problem-solving" courts, such as drug and mental health courts, a restructuring constitutional amendment continues to be the desirable long-term solution. Successful passage of such a constitutional amendment would help redistribute resources in favor of the most over-burdened courts, especially the Family Courts.

Although dealing with society's most pressing needs and the well being of children, the current system still treats the Family Court like a "step child", while the Supreme Court fares much better in allocated resources and staff compensation. Given the fact that New York State Chief Judge Lippman continued to omit any reference to court restructuring in his 2012 State of the Courts address, we anticipate no efforts to move forward with court restructuring. However, we continue to work with the Fund for Modern Courts on the issue.

Past League Activity

The New York State Court System has been an important League issue for almost 50 years. When the League began its study of the courts in 1955, there was widespread concern over the state of the judicial system. At that time, there were approximately 1500 separate and autonomous courts in the state. This general disorganization had prompted the establishment of a Temporary Commission on the Courts (Tweed Commission), which was in the process of formulating recommendations at the time the League study was adopted. Adopted in 1957, the League's position in support of a unified court system coincided with the Tweed Commission report calling for a sweeping reorganization of the courts. Since its adoption, this position has been the cornerstone of League activity in this area. In 1975 the New York State Bar Association presented the League with the association's first public service award in recognition of the League's work toward improving the judicial system, and in 1990 the League received the Samuel J. Duboff Award from the Fund for Modern Courts in recognition of our long-standing efforts in the area of court reform.

In 1961, the League worked for passage of a new constitutional judiciary article, the Court Reform Amendment of 1961. Though the new article, which went into effect in 1962, was an improvement, it did not fully satisfy League goals. While the court system was centralized under the Administrative Board of the Judicial Conference, the delegation of this authority to the four Judicial Departments diluted effective central control. The new article did require all judges be lawyers, except those in town and village courts, and judges were prohibited from practicing law while holding judicial office.

Building on the initial court consolidation of 1961, the League continues to work for an integrated system:

- Supporting the incorporation of the Courts of Claims, the Surrogate's, Family, County and the Civil and Criminal Courts of the City of New York into the Supreme Court;
- Establishing a District Court in every county in the state to replace town and village courts; and
- Opposing legislative proposals to fragment existing courts by establishing special parts to meet particular problems.

In 1970, the League was instrumental in the establishment of a new State Commission on the Courts to work on resolving the remaining problems within the system. The commission report, issued in 1973, was compatible with League position with one exception: selection of judges.

In 1971, the League joined with the New York State Bar Association to mobilize a broad coalition of groups in a major campaign for state financing of the courts through a state judicial budget. This goal was finally achieved in 1976 when a bill passed in special session of the Legislature providing for a four-year phase-in of full state funding for court operating costs, except for town and village courts. (Operating costs should be distinguished from construction, repair, or maintenance of court facilities, which are still a local responsibility. The League had no position on the "court facilities" bill passed by the Legislature in 1987.)

In 1972, the League led a successful campaign to defeat a proposed constitutional amendment that would have created a Fifth Judicial Department, thereby causing further division of administrative authority. The necessity to oppose creation of an additional department became moot when voters approved the 1977 constitutional amendment, which unified administration of the state court system and imposed state responsibility.

Although defeated on the ballot in 1975, the amendment for centralized court administration, under a chief administrator, was passed in 1977 with strong League support. The Chief Judge was clearly established as head of the state court system and fulfillment of League goals in this area was nearly complete. The first uniform rules of practice and procedure for the state's trial courts went into effect January 1, 1986.

In 1980, the League, together with the Committee for Modern Courts, Citizens Union and others, drafted a model constitutional amendment to merge the major trial courts and provide for merit selection of judges of the newly merged courts. This was introduced by a large, bipartisan group of legislators. The governor and the New York State Bar Association introduced similar proposals, but the Legislature failed to take any action on court reform in that session. This 'model' court reform bill has been introduced, with growing bipartisan support, in almost every session of the Legislature since 1980, serving to keep the issues alive.

In July 1986, the League supported, and the Legislature voted, first passage of a constitutional amendment merging the state's major trial courts. The method of selecting judges was left largely unchanged; those judicial offices now filled by election remained elective and those filled by appointment remained appointive. Although the amendment did not fully satisfy League goals concerning judicial selection, inclusion of the District Court, and partial merger of the Surrogate's Court, this proposal was viewed as a significant improvement over the present fragmented court system. Despite intensive League lobbying both at the state and local levels, the newly elected 1987 Legislature failed to vote second passage in the first regular session as required in the constitution.

The 1987 legislative session began with high hopes and intensive lobbying for second passage of a court merger constitutional amendment, but ended with no action

Court Reform - 1988

In 1988, Governor Mario Cuomo proposed a court reform constitutional amendment calling for merger of the major trial courts, merit selection of judges, and retention election for incumbent judges. The League vigorously supported this legislation through lobbying legislators, participating in press conferences and issuing an all member Call To Action.

The campaign for reform was reinforced by the publication of the Commission on Government Integrity (Feerick Commission or COGI) report, Becoming a Judge: Report on the Failings of Judicial Elections in New York State, highly critical of judicial election as a method of selecting judges. The commission recommended a merit selection process by which the mayors would appoint judges to City Courts outside New York City and the Mayor of New York City would appoint Family, Civil, and Criminal Court judges within the city; county level judges outside of New York City would be appointed by local county executives; Supreme Court justices, Surrogate's and Court of Claims judges would be appointed by the governor with Senate confirmation. (See Merit Selection below.)

1988 Family Court Merger Proposal

A different approach to court consolidation was taken by Assembly Judiciary Chairman G. Oliver Koppell who introduced 14 measures to achieve "piecemeal" court merger. Only one of the proposals was even partially successful. First passage was given to a constitutional amendment authorizing Family Court to share concurrent jurisdiction with the Supreme Court over matrimonial actions, distribution of marital property, and custody and support determinations incidental to these actions. After public hearings in the fall indicated lack of support, the measure was not reintroduced for second passage in 1989.

League opposed first passage because we felt that this measure would increase the Family Court's already overburdened case load without corresponding increases in financial support such as would be forthcoming if the Family Court were merged with the Supreme Court. Furthermore, concurrent jurisdiction with the Supreme Court exacerbates the situation concerning the existence of separate courts for the rich and the poor and the perception that two kinds of justice are dispensed.

Governor Cuomo's 1989-1993 Merger/merit Selection Proposal

In 1989, the governor launched a new initiative providing for merger of the major trial courts and a process for local merit selection of most of the judges in the merged court system. This proposal has been introduced in the Assembly every session through 1994. (In the 1994 version, the full-time City Courts were added to the merger.) The League worked with the Committee for Modern Courts to generate a formidable list of Assembly co-sponsors. By the end of the 1993 session, there were 61 Assembly sponsors and co-sponsors and 14 sponsors in the Senate.

The bill provided for local nomination by the chief elected county official for all judges of the merged courts, except for successors to the Court of Claims judgeships (approximately 55 in number, to be appointed by the governor) and the judges within New York City (approximately 400, nominated by the mayor). The County Executive would nominate in the 16 counties where that office exists, and the chair of the county Legislature or board of supervisors would nominate in the other 41 counties, for approximately 400 judgeships.

In previous proposals, the governor was to be the appointing officer for all Supreme Court justices except for successors of the Criminal, Family, and Civil Courts in New York City who were to be appointed by the mayor.

Court Merger 1994-95

In the 1994 session, Senate Judiciary Chairman James Lack introduced a merger bill, which did not include the District Court (Nassau and parts of Suffolk counties), Family Court and the New York City Civil and Criminal Courts. The League and Modern Courts could not support a merger plan that did not include the Family Court. We also indicated we would prefer to see the New York City courts included in the plan. The 1995 version did include Family Court. The League took no position on this proposal.

In 1995 League unsuccessfully supported second passage of a constitutional amendment increasing the monetary jurisdiction of the New York City Civil Court from $25,000 to $50,000, and raising the jurisdiction of the District Court from $15,000 to $50,000. This would have eased the caseload in Supreme Court and since filing fees are lower in the Civil and District Courts, would have increased access to these courts for litigants. The goal of court merger is one trial court of uniform jurisdiction, and this amendment was viewed as a step in the right direction. The proposed amendment was narrowly defeated on the November 1995 ballot.

Chief Judge Kaye's 1997 Court Restructuring Proposal

A "restructuring" proposal submitted to the Legislature by Chief Judge Judith S. Kaye and Chief Administrative Judge Jonathan Lippman has breathed new life into efforts to bring order to the state's system of multiple courts of overlapping or fragmented jurisdiction. New York State has one of the most complex court systems in the nation with a cumbersome structure of nine major trial courts. Merger of the major trial courts has been a League goal since 1955.

Under this proposed constitutional amendment, a two-tiered system would be created, with a "Supreme Court" consisting of the current Supreme Court, Surrogate's Court, Court of Claims, County Court, and Family Court. A new "District Court" would consist of the current New York City Civil and Criminal Courts, the City Courts outside of New York City, and the Nassau and Suffolk District Courts. Town and Village Courts would not be included in the restructuring, nor would the Court of Appeals.

As proposed the Supreme Court would be the single trial court of unlimited jurisdiction with special divisions established for public claims, family, probate, criminal, and commercial matters. The District Court would have limited jurisdiction and include civil and criminal divisions.

Particularly significant in the restructuring proposal is the establishment of a unified Family/Matrimonial Division of the Supreme Court. Families going through divorce would no longer be required, as they are now, to appear in both the Supreme and Family Courts to resolve different issues in the same case involving separation, custody, support and visitation.

The manner of selecting judges would remain unchanged (merger-in-place). Judgeships in the merged courts, coming from elective positions remain elective; judgeships coming from appointive positions remain appointive.

Another benefit for women and minorities is—this structure would dramatically increase the pool of judges eligible for designation to the Appellate Division, as all judges in the expanded Supreme Court could be considered for appellate service. Presently the governor appoints Appellate Division justices from sitting Supreme Court justices and this pool is predominantly white male and Caucasian. The new Supreme Court would include former Family Court and County Court judges where women and minorities are more numerous.

In addition to creating the new two-tiered trial court system, the proposed measure would:

- Remove the constitutional limitation, based on population, on the establishment of Supreme
- Court judgeships, replacing temporary judicial assignments with permanent judges; and
- Create a Fifth Judicial Department within the Appellate Division of the Supreme Court to ease the burden on the Second Judicial Department.
- Save court system $92 million during only the first five years due to increased efficiency.

The amendment must be passed by two consecutive, separately elected Legislatures and by the voters in the following general election.

In 1997, the state board approved in principle this bold initiative and League testified in support of this concept at the public hearings in the fall of 1997.

Court Restructuring 1998-1999

Although the 1998 legislative session ended without first passage of a constitutional amendment to merge New York State's major trial courts into two tiers; i.e., Supreme Court and District Court, we had another opportunity for first passage in the 1999 session.

In the spring of 1999, we were cautiously optimistic. The Senate reintroduced their court restructuring constitutional amendment, similar to Chief Judge Kaye's proposal. The Assembly passed their proposal for partial merger of Family Court and County Court into the Supreme Court. The point is, unlike the 1998 session, both versions were on the table in time for serious negotiations to take place between the two houses.

Unfortunately, the delayed budget stalemate and very late passage in early August prevented official action or reaction.

Court Restructuring 2000-2001

Court restructuring bills were again introduced in both houses during the 2000 legislative session. The Senate bill supported the original proposal. The Assembly no longer tied its proposal to funding for the indigent (which had succeeded in killing the bill the previous year). It now backed a plan that would omit the Surrogate's Courts from the consolidation. Both Judge Kaye and Judge Lippman were ready to make compromises, but again nothing happened. The failure in 2000 meant any change would be postponed yet another two years. It was clear that the proposal never captured broad citizen support in spite of the fact that it had the support of the Governor, prominent legislators, the editorial boards of most newspapers and good government groups such as the League and the Committee for Modern Courts. Change was always tied to other matters and many Supreme Court and Surrogate Court judges were successful in their quiet opposition to what they perceived would weaken their importance.

A glimmer of hope appeared in the fall of 2000 when the Committee for Modern Courts conducted a survey asking New York State legislature candidates whether they favored court restructuring. A large number did. Local Leagues were asked to confront their legislators, asking those who were now on record as favoring restructuring what they planned to do about ensuring its passage and asking others to consider it. Each League received a sample Op-Ed/Letter to the Editor supporting restructuring.

With the beginning of the 2001 legislative session, Judge Kaye took the bold step of initiating integrated domestic violence pilot projects in a few areas whereby a family would be assigned to one judge for all of its judicial problems—something that would be possible for everyone with court restructuring.

Again, in 2001, the legislative session saw a budget stalemate and passage in early August of a "bare bones" controversial budget that pitted the executive and legislative branches against one another. Court restructuring was not even on the radar screen. We still agree with Judge Kaye when she said in January 2001, "Court restructuring [is] an essential foundation for a vibrant court system. While we can, through our integrated domestic violence pilots egregious consequences of splintered courts, we need systemic, comprehensive court merger."

The League continued to advocate for court restructuring in the legislative sessions of 2002 through 2006. The current system of 9 separate trial courts is confusing to litigants and costly to everyone involved in the courts: litigants, the court system itself, and taxpayers. Unfortunately, even with advocacy efforts from the League and the Fund for Modern Courts, no activity occurred in the Senate or the Assembly.

In 2007, efforts to restructure the current inefficient and costly system received new energy, when Chief Judge Judith Kaye appointed the "Commission on the Future of the Courts". The commission's recommendations to simplify the court structure into a two-tier system were introduced as a Governor's program bill in the spring of 2007. Unfortunately, no action was taken in 2008, the second year of the legislative session, which would have been the opportune
time for first passage of a constitutional amendment, such as court restructuring.
Typically, constitutional amendments, which require votes by two separately elected legislatures and ratification by the voters, are more forcefully promoted during the second year of the legislative session. Such a constitutional amendment on court restricting should also include the creation of a fifth department to alleviate the heavy burden on other departments. In addition, it would promote greater diversity on the bench by elevating more judges to Supreme Court status. The League hoped for first passage of this constitutional amendment in the 2008 legislative session. However, it was the year when Governor Spitzer resigned and the state began to see increasing fiscal pressures. In addition, Chief Judge Judith Kaye retired at the end of 2008, having reached her mandatory retirement age.