

**Background Briefing Materials for
2007 Legislative Agenda Item:
COURT RESTRUCTURING/JUDICIAL SELECTION**

COURT RESTRUCTURING:

New York State's "Unified Court System" is anything but unified. The League of Women Voters of New York State has long supported court re-structuring. The plan would streamline and simplify the state's byzantine system of 9 separate trial courts by creating a two-tier system instead. A streamlined system would be much easier to understand, more efficient and cost-effective and would also enhance the diversity of the bench by elevating Family and County Court judges to the Supreme Court, thus making them eligible for the Appellate Division of the court system.

Action on this issue is long overdue and has been consistently supported by Chief Judge Judith Kaye, who recently appointed a Commission on the Future of the Courts. The commission's recommendations for redesigning New York's convoluted court system will soon be made public. In his first State of the State address, Governor Eliot Spitzer also expressed his support of the Chief Judge's efforts to streamline the court structure, calling the current system "balkanized."

Under the current system, litigants frequently find themselves in the position of having to deal with more than one court for the same case. This dilemma becomes particularly obvious in domestic violence cases, where litigants may find themselves in Family Court, Supreme Court and even Criminal Court to resolve all of the aspects of the case, in front of a different judge, often with conflicting results and at great additional emotional and financial cost. Similar bifurcation of jurisdiction can also occur in cases that have to be heard in State Supreme Court for claims against private parties and the Court of Claims for claims against the state.

Simplifying the state's court structure requires a constitutional amendment to be voted on by two separately elected state legislatures and ratified by the voters in the general election. This reform is long overdue and would greatly benefit the litigants and the taxpayers of the state. With the strong leadership of Chief Judge Kaye and the new governor, who has made reform a central theme of his administration, now is the opportune time to get the process started. We urge the legislature to take the first step towards adopting a constitutional amendment to restructure New York State's court system. It is an important part of the overall need for reform!

JUDICIAL SELECTION:

After many years of lobbying for judicial reform, the League has again named merit selection of judges as a legislative priority.

In 1957 the League adopted a position in support of a unified court system. In 1966 the League adopted a position on judicial selection supporting merit selection with nomination of state judges by a broad-based, nonpartisan nominating commission composed of lawyers and lay people. As the result of its positions and activity in support of them, the NYS Bar Association awarded the League its first public service award in 1975 in recognition of its work in improving the judicial system. It received the Samuel J. Duboff Award from the Fund for Modern Courts in 1990, further recognizing its efforts in support of court reform.

The League successfully advocated for merit selection and appointment of judges to the state's highest court, the Court of Appeals. In 1977, a constitutional amendment was ratified that, with its implementing legislation, called for merit selection and appointment by the governor with approval by the Senate. Appointment was made from a limited (up to 7 names) list assembled by the Commission on Judicial Nomination, a nonpartisan committee of lawyers and laypeople appointed by the Governor, the Chief Judge of the Court of Appeals, and the majority and minority leaders of the Assembly and the Senate. The governor currently appoints judges to the Appellate Division and the Court of Claims and fills vacancies on the Supreme Court, with approval of the Senate. Although judicial screening committees have been established by Executive Order, the committees fail to meet League standards since they are allowed to send an unlimited number of recommendations to the Governor, hence failing to meet the test of nonpartisanship, they also do not contain lay members.

The League has continued to advocate, along with the New York State Bar Association, The Fund for Modern Courts, and numerous other groups, for further amendment of the state Constitution to extend merit selection of judges to all courts.

As the result of its ongoing advocacy in this area, the League was asked to sit on the Feerick Commission, a blue-ribbon commission established by Chief Judge Judith Kaye to address the issue of judicial selection. In 2003, the Commission issued its first report, in which it expressed support of a well-qualified, independent judiciary by endorsing independent screening of judicial candidates by a statewide nonpartisan commission. In its final report, it concluded that direct primary elections were not preferable to nomination by judicial convention unless public financing was provided.

In 2005, U.S. District Court Judge John Gleeson issued an order in *Lopez Torres v. New York State Board of Elections*, in which he held that the state's system of nominating

major party judicial candidates at judicial district party conventions violated the First and Fourteenth Amendment rights of both voters and potential Supreme Court candidates who were unable to obtain party nomination. Unlike candidates for other elective offices within the state, Supreme Court judicial candidates who are unsuccessful in obtaining a party's nomination have no right to participate in a primary election. The court reasoned that a state may not choose to have judicial elections and then stifle the process by creating electoral practices that effectively exclude aspiring candidates in the name of protecting the judicial office from politics. At a minimum, the process must afford the reasonably diligent candidate who lacks the support of the apparatus controlled by party leadership an opportunity to fulfill the requirements for party nomination. After recent affirmation of the order by the Second Circuit Court of Appeals, the state is faced with the need to amend its system of judicial selection to meet the criteria articulated by the Lopez Torres case. If it does not do so in time for the November, 2007 elections, Supreme Court candidates must run in direct primaries.

In recognition of the fact that the political reality during Governor Pataki's administration mitigated against movement to a system of elected judges and that amendment of the state constitution is a multi-year process, the League has adopted the interim goal of bringing merit selection to the election process. This goal could be met in either of two ways. First, if the nominating convention remains the sole means of gaining ballot access, the League would support establishment of a broad and diverse screening committee that rates potential nominees and reports to those parties' Judicial Nominating Conventions. If unsuccessful nominees were given the right to a direct primary, the Commission could send lists of a limited number of highly qualified candidates to the conventions. Nominations would be made from these lists.

The League's long-term goal continues to be amendment of the state Constitution to provide for judicial appointment after merit screening and recommendation by a broad-based, diverse, nonpartisan commission.

Anticipated Action:

The League anticipates a legislative solution to the Lopez Torres decision. To that end it supports the following:

- ◆ Implementation of reforms to the Judicial Nominating Convention and petitioning process for primary ballot access. This could include measures to disassociate convention delegates from the control of party bosses, including delegate selection months prior to the convention, three year terms for convention delegates, lowering petition requirements for election of delegates, decreasing the size of judicial election districts, enabling candidates to address the convention, education of delegates about their authority, rights and responsibilities, and providing delegates with the opportunity to consider the reports of an independent judicial qualification commission.

- ◆ Establishment of a Judicial Qualification Commission, reflecting the diversity of the community, that would rate a candidate as highly-qualified, qualified, or decline to issue a rating. Evaluation by individuals seeking judicial office should be mandatory and results should be made available to the conventions and voters.
- ◆ Judicial elections should be publicly financed.

Constitutional Amendment:

The League continues to support a constitutional amendment for merit selection of judges. The amendment, together with its implementing legislation, should contain the following:

- ◆ Merit selection with review of applicants by a broad-based, nonpartisan nominating commission composed of lawyers and lay people.
- ◆ Appointment from a limited list of highly qualified applicants recommended by the commission.

**2007 LWNYS LOBBY REPORT FROM
COURT RESTRUCTURING/JUDICIAL SELECTION**

Please complete and return to the LWNYS office in Albany by **APRIL 20, 2006**. If possible, please submit electronically by downloading this form from the state web site (www.lwnvy.org) or calling Stephanie at the state League office (518-465-4162) to have a form e-mailed to you. A copy should also be kept in your League files.

Name of Legislator: _____

(Please circle one) Senator Assemblyperson

District # _____ Date of visit _____

Name of person reporting: _____

Representing the LWV of _____

If you met with staff, please list name(s) _____

Please record information that will provide an accurate picture of the legislator's position on any of the following discussed during your visit. Please indicate the legislator's general agreement or disagreement with League position. Also, please indicate if the legislator felt strongly about any other issue covering League positions.

COURT RESTRUCTURING:

DO YOU SUPPORT A CONSTITUTIONAL AMENDMENT TO STREAMLINE THE NYS COURT SYSTEM, AND HOW ACTIVE A ROLE WOULD YOU BE WILLING TO PLAY IN ITS PROMOTION AND PASSAGE?

JUDICIAL SELECTION

**WOULD YOU SUPPORT A CONSTITUTIONAL AMENDMENT FOR
MERIT SELECTION OF JUDGES TO INCLUDE:**

- ◆ MERIT SELECTION WITH REVIEW OF APPLICANTS BY A BROAD-BASED, NONPARTISAN NOMINATING COMMISSION COMPOSED OF LAWYERS AND LAY PEOPLE.
- ◆ APPOINTMENT FROM A LIMITED LIST OF HIGHLY QUALIFIED APPLICANTS RECOMMENDED BY THE COMMISSION.
