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FINAL REPORT TO THE  
CHIEF JUDGE *of the* STATE OF NEW YORK



COMMISSION TO  
PROMOTE PUBLIC CONFIDENCE  
IN JUDICIAL ELECTIONS

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FEBRUARY 6, 2006

*“Without public confidence, the  
judicial branch could not  
function.”*

*In re Raab*, 100 N.Y.2d 305, 315-316, 763 N.Y.S.2d 213, 218 (2003).



# COMMISSION TO PROMOTE PUBLIC CONFIDENCE IN JUDICIAL ELECTIONS

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# TABLE OF CONTENTS

PREFACE .....	vii
EXECUTIVE SUMMARY.....	1
Judicial Elections in New York State: A Brief History .....	4
The Current System of Judicial Selection in New York State.....	5
The Commission Process.....	7
The Commission Reports.....	10
INTRODUCTION .....	15
The Recommendations.....	17
REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK.....	19
Evidence in the Hearing Record and Surveys.....	19
Historical Intents: Origins of Judicial District Conventions.....	22
Current Statutory Provisions and Political Party Rules .....	24
Analysis of the Law .....	24
Figure 1: Number of Delegates by Judicial District Under Current Formula.....	26
A Plan To Realize Conventions’ Potential .....	27
RECOMMENDATIONS.....	30
CONCLUSION.....	36
LIST OF APPENDICES	
A: Summary of December 2003 and June 2004 Recommendations of the Commission to Promote Public Confidence in Judicial Elections	
B: Material To Be Distributed to All Delegates and Alternates	
C: Court Structure of New York State	
D: Public Hearings Witness List and Form of Notice	
E: A Survey of New York State Registered Voters (December 2003)	
F: Focus Group Results and Recommendations (June 2004)	
G: New York State Judges: Mail Survey Results (May 2004)	



## **PREFACE**

### **To the Honorable Judge Kaye, Chief Judge of New York State**

I wish to add these reflections as I transmit to you the Final Report of the New York State Commission to Promote Public Confidence in Judicial Elections.

A study of the three Reports that we have submitted to you, beginning in December 2003, will show that we have responded to your request for recommendations to enhance confidence in New York State's system of judicial elections. These recommendations grow out of an intensive inquiry by our Commission into all aspects of the system. Statewide, we have held public hearings, conducted focus group meetings, sponsored a public opinion poll, conducted a survey of sitting judges, met with political leaders, addressed bar, judicial and civic groups, testified before the Senate Judiciary Committee and heard from many citizens in private meetings. We have also conducted extensive research on the history of judicial elections in New York State and elsewhere.

After reflecting on what we have learned and know from our experiences, and giving careful consideration to the many points of view brought to our attention, the Commission—one of the largest and most diverse of its kind in the history of the State—arrived at the recommendations contained in our three Reports. Many reflect the unanimous opinion of the Commission, and those that do not reflect a substantial consensus of the Commission.

I am aware, of course, of the various views that you have received concerning the subjects of our recommendations. From my own personal experiences with legal reform over an almost forty-five-year period, I know the intense resistance that comes from those with power. I also note the differences expressed among the bar associations of the State with respect to some of our recommendations. This is not unusual, given the importance of a robust and independent

legal profession. Based on my work for this Commission and my earlier effort as chair of the New York State Commission on Government Integrity, however, I understand equally well the imperative for change. Change in the status quo is essential if the objectives you had in mind in appointing our Commission are to be achieved. The Court of Appeals acknowledged the need for change by exercising its authority to adopt so many of the recommendations we have submitted to you. The Court's commitment to significantly enhancing public confidence in judicial elections in New York State is commendable. Your dedication to the judiciary is a tremendous service to New Yorkers.

The members of the Commission and our staff express our gratitude to you for the opportunity to serve. We applaud the unique leadership you have given to judicial election improvements. I express my deep gratitude to my fellow colleagues on the Commission and the outstanding staff assembled for purposes of this work. This Final Report, as do its two predecessors, reflects an enormous expenditure of volunteer time by the members of the Commission, aided by a splendid counsel, Michael Sweeney, and a very able group of law students from Albany and Fordham Law Schools. Their names are as follows: Adrienne Woods-Blankley; Ryan Callahan; Lavonda Collins; Beth Hurley; Yehuda Greenfield; C. Kim Le; Kyle McCauley; Claudia Neary; M. David Possick; Joel Waldman; Ralph Wolf; and Elizabeth Zeigler. Several students from undergraduate institutions also contributed to the Commission's work; they are Robert Ferris, Michael Grosso and Shontell Smith. We also express heartfelt thanks for the invaluable assistance of Dan Auld, Peggy Farber, Antonio Galvao, Yitzhak Greenberg, Derek Hackett, Adam Itzkowitz, Daniel McLaughlin, Deepro Mukerjee, Jagdeep Narula, Barbara Reed, Kevin Reilly, Stacey Sabo and Jordan Stern.

We wish to single out for special recognition the members of the Commission who chaired our three subcommittees, Helaine Barnett, Nicole Gordon and Professor Patricia Salkin. These subcommittees, which met often, were responsible for the progress we made in a relatively short period of time. We thank the members of these subcommittees, all busy professionals, for their dedication to our task.

We are very grateful to the institutions that provided the technical assistance and in-kind support that allowed the Commission to function. Each time we turned to them for help, they offered more than we requested. They are Fordham University School of Law, Albany Law School, the American Arbitration Association, the Fund for Modern Courts, Justice at Stake, the New York County Lawyers' Association and the Office of Court Administration. The Commission owes special gratitude to the Government Law Center at Albany Law School and to Peggy Healy and Margie Carney for conducting focus groups on behalf of the Commission.

We are especially grateful to Dr. Lee M. Miringoff and Dr. Barbara L. Carvalho of the Marist Institute for Public Opinion and to President William Slate and Kenneth Eggers of the American Arbitration Association for agreeing to undertake surveys on behalf of the Commission to determine the views of New York's registered voters and judges on judicial elections. The surveys played an important part in enlightening the Commission's work.

We also owe a great deal of gratitude to the many individuals and organizations that took the time to testify before the Commission, submit written commentary, meet with Commissioners and comment on our recommendations. Their input was an important part of our deliberations.

Our work would not have been at all possible without the extraordinarily generous support we have received from a number of organizations. We deeply appreciate their

confidence and hope that the collective results of our work will prove worthy of their faith. They are the Carnegie Corporation, the Hearst Foundations, the J.M. Kaplan Fund, the Joyce Foundation, the New York Bar Foundation, the New York Community Trust, the Office of Court Administration, the Open Society Institute and the law firm of Skadden, Arps, Slate, Meagher & Flom.

We applaud your outstanding leadership in doing what you can to support and adopt many of our recommendations, recognizing that there is much of significance that only the other branches of government can address. We call upon our government leaders, our Governor and Legislature, to make that commitment, and upon the public to demand that commitment, because protecting and enhancing the judiciary of New York State are essential for its vitality.

John D. Feerick, Chair  
New York State Commission to Promote Public Confidence in Judicial Elections

Dated: February 6, 2006

## EXECUTIVE SUMMARY

An independent and impartial judiciary is critical to a democratic society. The judiciary is the branch of government responsible for fairly resolving disputes not only between private parties, but also between the government and its citizens. As such, the judiciary is charged with protecting the individual from government overreaching, and holds an important place in New York's constitutional balance of powers. It is the branch that holds the representative branches to their responsibilities.

If the actual independence and impartiality of the judiciary are essential to the successful operation of democracy, so too is the public perception that courts provide an independent and impartial tribunal to resolve disputes and protect basic individual rights. Without the public's confidence, the judiciary's ability to do justice is compromised. Where people do not trust the courts, they will resort to other means to resolve those matters that are properly in the judiciary's realm. History is replete with examples of judiciaries undone by a lack of public confidence. Fortunately, New York's elected bench has never suffered such a blow; rather, it has a long and noble heritage of integrity, impartiality and independence.

New York's system of judicial elections, however, has endured criticism at various times in its history, and recent events have heavily taxed public confidence in judicial elections. Reports of undignified judicial campaign activity in local elections around the State, connections drawn between campaign contributions and judicial decision-making, and attacks on political party control of judicial elections have combined to cast the system in a negative light. At the same time, there is strong evidence that the public is largely uninformed about its elected judiciary and disconnected from its courts and judges. As a result, public confidence in judicial elections is not what it ought to be.

A clamor for reform of the judicial election system has arisen. Public officials statewide have urged change. Bills to improve the system have been introduced into the legislature. Criminal investigations into the conduct of judicial elections are ongoing. Citizens are challenging fundamental parts of the system in civil litigation. Non-profit organizations, academics and commentators from around the State are demanding improvement. In an effort to ensure that the public is not ignorant of the call to reform, the media in many parts of the State has taken up the cry.

Recognizing the problem, New York State Chief Judge Judith S. Kaye formed the New York State Commission to Promote Public Confidence in Judicial Elections in 2003. Chief Judge Kaye appointed twenty-nine citizens of diverse backgrounds and experience to the Commission and asked us to develop a blueprint to promote public confidence and increase voter participation in judicial elections. If initially we were unsure of what could be accomplished based on our collective experiences, we were heartened by what we heard from the public, lawyers, judges and political and community leaders. By the end of our research, one clear theme had emerged: New Yorkers should have the highest of confidence in their elected judiciary.

After many months of public and private outreach, research and deliberation, the Commission determined that the best way to promote public confidence would be through the development and implementation of an interdependent set of reforms to the current judicial election system. As a result of that work, we created an integral model comprised of recommendations—on candidate selection, campaign conduct, campaign finance and voter education—meant to be instituted together. The blueprint represents the consensus of a large and diverse group of people with in-depth knowledge of the current system’s strengths and

weaknesses. It will, we believe, serve to protect and enhance the reputation of New York's judiciary by increasing the transparency of its electoral process, if adopted in its entirety. Each element of the blueprint both builds upon and supports the other elements, such that piecemeal implementation of the plan would not achieve the desired level of reform.

The Commission had originally contemplated that the June 2004 Report would be the final one but, as we were unable to conclude our work on the nomination process for Supreme Court justices, we requested that Chief Judge Kaye continue the Commission. She did so, and thus this Final Report marks the first time that the Commission is making specific recommendations regarding judicial district nominating conventions. In reviewing ways to improve the system, the Commission studied candidate selection by direct primary, which is the principal alternative to the nominating convention. We determined that primaries pose a great risk of attracting substantial increases in partisan spending on New York State judicial campaigns, which, as our research clearly shows, would serve to further undermine confidence in the judiciary. The Commission concluded that, without public financing of judicial elections, primaries are not preferable to judicial conventions. As a result, we shifted our focus toward making the judicial nominating convention system more open and effective, which we believe will enhance public confidence both in the system and its results. In this Final Report, we lay out specific steps to further that goal.

We recommend that:

- The judicial nominating convention system be modified to make it more open and effective.
- The election law be amended to reduce the number of delegates to the judicial district convention.
- Each assembly district send at least two delegates to the convention.

- Delegates cast weighted votes.
- The number of signatures required for nomination as a delegate or alternate delegate candidate be reduced to 250.
- The election law be amended to promote the effectiveness and independence of delegates and alternates as follows:
  - Delegates and alternates serve three-year terms;
  - Delegate elections take place at the primary election the year preceding the judicial nominating convention at which the delegate will serve;
  - The New York State Board of Elections provides delegates with information about judicial elections;
  - The Board of Elections provides delegates and the general public with a list of announced judicial candidates at least ten business days prior to the date fixed for the convention; and
  - Candidates seeking nomination for the office of Justice of the Supreme Court have the right to address delegates at their conventions.

To understand how the Commission arrived at its blueprint, it is useful to review the origins and development of New York State’s judicial election system as well as the work that substantiates the recommendations.

### **Judicial Elections in New York State: A Brief History**

Like many of the original colonies, New York State began with an appointive process for judicial selection. That system continued in various forms until the Constitution of 1846. The change to judicial selection by popular election was born of discontent over the appointive system. Tension between New York’s landed aristocracy and tenant farmers in the early 1800s fostered a violent anti-rent movement. By the middle of the century, the “Jacksonian Democracy” movement was sweeping the nation, and the two movements together provided the catalyst for New York’s Constitutional Convention of 1846. The resulting constitution provided that the judicial appointment system would be replaced with an electoral system, and since that time, most of the judges in what is now known as the New York State Unified Court System have been selected through some form of popular election.

Having established an elected judiciary, the people of New York have been reluctant to return to an appointive system, despite several opportunities. Voters were presented in 1869 with the question of whether judges of the Court of Appeals, Supreme Court, County Courts and local courts should be elected or appointed, and they decided three-to-one to retain judicial elections. The Constitutional Conventions of 1915, 1921 and 1938 also endorsed the system of judicial elections established by the 1846 Constitution. Gubernatorial commissions established in 1953 and 1973 and charged with improving the judicial system recommended against abandoning the electoral system. No changes in judicial selection were proposed by either the Judiciary Amendment of 1962 or the voter-rejected New York Constitution of 1967. In the last major study of New York's elected judiciary, conducted in 1988, the New York State Commission on Government Integrity called for an appointive process for all State judges. But the call has gone unheeded: Today, 73% of the State's 1,143 full-time judges are elected, as are most of the 2,164 Town and Village justices.

Nonetheless, voters have approved a return to an appointive system in some circumstances. In 1949, for example, voters adopted a constitutional amendment establishing the Court of Claims, with judges appointed by the governor and confirmed by the Senate. Similarly, in 1977, voters approved a constitutional amendment providing for the appointment by the governor (subject to Senate confirmation) of Court of Appeals candidates recommended by the Commission on Judicial Nomination. By and large, however, New York's judges are elected.

### **The Current System of Judicial Selection in New York State**

New York's current judicial election system is among the most complex in the United States. The constitutional scheme provides for some courts to function statewide, some to operate solely in New York City and others to exist only outside of New York City. Its appellate

structure includes a court of last resort, the Court of Appeals, and an intermediate appellate court, the Appellate Division of the Supreme Court. In addition, in some areas of the State there is an Appellate Term of the Supreme Court that hears appeals from courts of lesser jurisdiction, and in other areas County Courts act as appellate courts for lower courts. Eleven trial courts feed the appellate courts in New York: one trial court of general jurisdiction, the Supreme Court; and ten other courts of limited jurisdiction.

New York uses almost as many methods of judicial selection as there are courts. Five bodies of law address judicial selection: the State constitution; State election and judiciary laws; and gubernatorial and mayoral executive orders. At the appellate level, judges are selected for the bench in three distinct ways: The Governor appoints judges to the Court of Appeals, subject to the advice and consent of the Senate, from a pool nominated by the Commission on Judicial Nomination; the Governor designates justices of the Appellate Division of the Supreme Court from among the elected Supreme Court justices; and the Chief Administrator of the Courts assigns Appellate Term justices, subject to the approval of the presiding justice of the applicable Appellate Division.

Selection to the trial courts is no less complicated. While the State constitution requires that electors in a particular judicial district choose the justices of the Supreme Court, the election law employs a unique party convention system for nominating candidates for the general ballot. Judges of the courts of lesser jurisdiction are generally elected to office through a primary and general election, but there are exceptions even to that rule. Court of Claims judges are appointed by the Governor, subject to the advice and consent of the Senate. Family Court and Criminal Court judges in New York City are appointed by the New York City Mayor. Both the Governor and the Mayor employ screening committees established by executive order to evaluate

candidates' qualifications, but these committees are quite different from each other. Further, both the Governor and the Mayor have the authority to make interim appointments for vacancies in various benches.

For a more detailed discussion of New York's court system, see the "Working Paper on Judicial Selection in New York State Courts" available as Appendix G-1 to the June 2004 Report on the Commission's website at <http://law.fordham.edu/commission/judicialelections>. The Commission maintains this website so that its work is publicly available and to contribute to the statewide and nationwide dialogue on judicial selection. The website contains information about the Commission, reference material, public testimony and Commission work product, including this Final Report and the prior reports.

### **The Commission Process**

The Commission met for the first time on April 25, 2003. Chief Judge Kaye selected each of its twenty-nine members (at least one from each judicial district) for his or her professional, political, geographic and social diversity. Commissioners represent a broad spectrum of expertise and interests with respect to judicial selection, and bring a wealth of experience from work in the judiciary, the legislature, the executive branch, academia, private practice and public service.

Due to the breadth of the Commission's mandate, three subcommittees were formed to deal with the broad subject areas of Candidate Selection, Campaign Oversight, and Campaign Finance and Voter Education. Subcommittees held meetings between full Commission meetings. Each subcommittee met monthly between May 2003 and May 2004, and each was responsible for formulating recommendations and drafting reports for submission to the Commission. In addition, several smaller working groups met independently of the

subcommittees to develop recommendations on particular issues. Full Commission meetings, which took place in April, June, October and November of 2003, March, April, June and November of 2004 and January and March of 2005, were dedicated to deliberating on subcommittee reports and developing consensus. In all, the entire Commission and its various subcommittees and working groups held more than 100 meetings dedicated to identifying the strengths and weaknesses of New York's current system of judicial elections and developing recommendations for its improvement.

The Commission researched judicial elections and public opinion about such elections through the most rigorous means available. We reviewed reports, commentary, court decisions, academic articles and news accounts from around New York State and the nation. Several organizations lent technical support to the Commission, including providing research and commentary on issues relevant to New York State. In addition to reviewing existing research, the Commission conducted several primary research projects.

In September 2003, the Commission conducted three days of public hearings in Albany, Buffalo and New York City. Notice was widely disseminated across the State, and fifty-six witnesses offered testimony during the hearings. Further, many people submitted written testimony to the Commission. A list of the public hearings witnesses is appended hereto as Appendix D, and the transcripts from the public hearings, as well as related written testimony, are available on the Commission's website under the "Public Hearings Information" and "Written Testimony" links.

The Marist Institute for Public Opinion conducted a major public opinion poll on behalf of the Commission in October 2003. Marist interviewed 1,003 New York State registered voters via telephone to measure the perceptions throughout the State about its judges and about the

judicial campaign and election process. The results obtained were not just answers from those individuals who responded but, more importantly, because of the design and methods by which the data was collected, can be used to generalize to the population as a whole. The full report, “Public Opinion and Judicial Elections: A Survey of New York State Registered Voters,” is appended to this Report as Appendix E and is also available on the Commission’s website as Appendix C to the June 2004 Report.

The Government Law Center at Albany Law School conducted a series of nine focus groups on behalf of the Commission in March 2004. The focus groups, which took place in Albany, Clinton, Kings, Monroe, Nassau, New York, Oneida, Onondaga and Westchester counties, were designed to elicit citizen input on the issue of voter participation in judicial elections and on the Commission’s recommendation for State-sponsored screening commissions for judicial candidates. In all, ninety citizens participated in the focus groups and provided a wealth of information. The results were submitted to the Commission in the “Report to the Commission to Promote Public Confidence in Judicial Elections: Focus Group Results and Recommendations,” which is included as Appendix F and is also available on the Commission’s website as Appendix D to the June 2004 Report.

The American Arbitration Association and the Marist Institute collaborated to conduct a survey of New York State judges in the spring of 2004. The goal of the survey was to measure the perceptions of New York State judges about judicial elections in the State, and it incorporated some of the same questions asked of registered voters in the Marist public opinion poll, as well as many questions asked in surveys conducted in other states by bar associations and other groups. The survey was mailed to 3,200 sitting judges in New York State; 1,129 judges responded, for a response rate of over 33%. The survey results, in a report titled “New

York State Judges: Mail Survey Results,” are appended as Appendix G and are also available on the Commission’s website as Appendix E to the June 2004 Report.

These documents and additional research are contained in the June 2004 Report’s sixteen appendices, which comprise over 300 pages and are available on the Commission’s website as Appendix A through Appendix G-10 to the June 2004 Report.

### **The Commission Reports**

The Commission’s work confirmed that public confidence in judicial elections is foundering. Testimony at the public hearings overwhelmingly expressed concern over the current judicial election system’s effect on public confidence. The judicial survey and the public opinion poll revealed widespread concern regarding judges’ impartiality and independence under the current system. Many of the citizens in focus groups felt uninformed about and disconnected from the judicial election process.

After extensive outreach and deliberation, the Commission reached the consensus that the best way to foster public confidence in judicial elections would be to ensure that they produce an impartial, independent and well-qualified judiciary. With that in mind, the Commission issued reports on December 3, 2003 and June 29, 2004 offering a blueprint of reforms designed to counteract the public’s widespread disillusionment with New York’s judicial selection process.<sup>1</sup>

The December 2003 Interim Report contained recommendations that could be promoted in the short term by the Court of Appeals, the Chief Administrator and the Administrative Board, including: the establishment of independent commissions to evaluate the qualifications of judicial candidates throughout the State; amendments to the Chief Administrator’s Rules

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<sup>1</sup> See Appendix A, Summary of December 2003 and June 2004 Recommendations of the Commission to Promote Public Confidence in Judicial Elections. The recommendations included judicial retention elections, state-sponsored independent screening panels for judicial candidates, public financing of judicial election campaigns, expanded voter education and public access to candidates’ campaign finance information via the Internet. The full Reports can be found on the Commission’s website at <http://law.fordham.edu/commission/judiciaelections>.

Governing Judicial Conduct concerning campaign speech restrictions, disqualification and campaign expenditures; the creation of a campaign ethics and conduct center; the expansion of judicial campaign finance disclosure; and the establishment of a State-sponsored judicial election voter guide. The interim recommendations are available in their entirety on the Commission's website under the link titled "Interim Report."

The June 2004 Report included mid-term and long-term recommendations. It expanded on some of the interim recommendations and addressed other areas that the Commission had not previously commented upon. In particular, the June 2004 Report provided more detail on the interim recommendations for State-sponsored independent judicial election qualifications commissions, for a State-sponsored judicial voter guide and an update on the Commission's campaign finance disclosure recommendation. It also addressed issues of public financing, voter education, retention elections and the enforcement of the judicial conduct rules. These recommendations are available in their entirety on the Commission's website under the link titled "June 29, 2004 Report."

This Final Report marks the first time that the Commission has addressed the issue of how justices are selected for the Supreme Court, New York's court of general jurisdiction. The Commission believes that, without public financing of judicial elections, the judicial nominating convention system should be retained rather than replaced by primary elections. Our

recommendations represent significant reforms designed to address the current system's limitations and enhance its benefits.

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We said in an earlier report that the public's current attention on judicial elections creates a unique moment for reform in New York State. To seize on this moment, the Commission not only researched and developed its proposed blueprint for change, but also actively advanced its recommendations during the course of the process. The Commission's chair, its legal counsel and individual Commissioners spoke about the Commission's work and proposals to lawyers, judges, politicians and the public at scores of events and meetings. The Commission's chair also testified about the Commission's findings before the Senate Judiciary Committee.

Many of our recommendations to date have been well received and adopted for implementation. The Commission appreciates very much the steps that the Chief Judge and her colleagues have taken to implement the Commission's recommendations. The Office of Court Administration has created the Judicial Campaign Ethics Center (<http://www.nycourts.gov/ip/jcec>), published a judicial directory (<http://www.courts.state.ny.us/judges/directory.shtml>) and produced an online statewide voter guide for Supreme Court elections (<http://www.courts.state.ny.us/vote>), and the Chief Judge plans to convene a statewide conference in 2006 dedicated to developing methods of educating the public about the judiciary and judicial elections. Moreover, the Court of Appeals has announced that it will exercise its regulatory powers to adopt many of our other recommendations, including: establishing a system of independent judicial election qualifications commissions to evaluate judicial candidates throughout the State; revising and clarifying restrictions on the speech of judges and judicial candidates; creating a mandatory

judicial campaign ethics course for judicial candidates; limiting the amount judicial candidates may pay to attend political functions; and requiring that purchases of judicial-campaign-related goods and services be at market value.

We are also grateful for the steps taken by the New York State Legislature. In 2005, the legislature passed a bill implementing the Commission's recommendation that all judicial candidates' campaign finance disclosures be made available online in a timely, inexpensive and accessible format. In 2004 and again in 2005, the State Assembly passed a bill that provided for the implementation of many of the Commission's interim recommendations and a plan for public financing of judicial elections. The State Senate held hearings on the Commission's recommendation for independent screening of judicial candidates.

We consider the qualifications recommendation to be a linchpin of the instant proposals concerning the Supreme Court justice nominating conventions. The people of the State expressed in so many ways their support of this recommendation. For ease of reference, we attach as Appendices E and F to the Final Report the findings on this recommendation from the statewide public opinion poll conducted by the Marist Institute on Public Opinion and the citizen focus groups conducted by the Government Law Center of Albany Law School. The recommendation provoked debate within the bar and legislature as to its implementation. This was not unexpected; however, nothing we have heard since issuing the prior Reports dissuades us from the soundness of our recommendation, and we applaud the Court of Appeals' decision to adopt it.

Adoption of important parts of the Commission's blueprint is a positive development that will greatly enhance public confidence in New York's judicial election system. We strongly encourage continued leadership from all branches of government and the bar to implement the

balance of our recommendations and implement them in a way that will secure them as part of the judicial election process. The Commission's recommendations present an interdependent framework for change intended to ensure that our State's judicial election system advances genuine democratic participation in the selection of the judiciary and promotes the highest public confidence in our elected bench.

New York State's system of judicial elections has served it well for over 150 years and has produced some of the country's finest jurists. Maintaining the highest degree of public confidence in the system demands vigilance. The present call for reform has presented an ideal opportunity to build a consensus around ideas that will improve the judicial election system. Many people have different opinions of what should be done, and before we compiled our array of recommendations the Commission tried to listen to as many ideas as people were willing to offer. The proposals in all three of the Reports are the product of a long and rigorous process that drew on the experience of a diverse assortment of individuals from across New York State.

We offer this Final Report with a deep appreciation for all the exemplary public servants who serve as judges in New York State, and for the long and noble history of the State's judiciary. We recognize that the overwhelming majority of New York's elected judges are well-qualified, hardworking citizens who are dedicated to high ethical standards. Public confidence can be a product of perception, and perception can be driven by a few unfortunate and unrepresentative examples. Nevertheless, in the current environment, public confidence in judicial elections is sagging. We hope our recommendations, taken together, will contribute to reversing that course and bring to New York's elected judiciary the continued respect and admiration it is due.

## INTRODUCTION

New York State is divided into twelve judicial districts. Justices of the Supreme Court of the State of New York are elected to fourteen-year terms by voters in the judicial districts in which the justices serve. When a Supreme Court vacancy occurs, delegates to each party's judicial district convention are elected at the September primary election and convene a week or so later to nominate their party's candidate to run on Election Day.<sup>1</sup> New York State election law governs the organization and proceedings of judicial district conventions.<sup>2</sup>

Having reviewed New York's Supreme Court nominating convention procedures, the Commission finds a need for substantial improvements. As conducted today, conventions 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. At the same time, the convention system has delivered geographic diversity to the Supreme Court bench, an attribute of no small moment in the State's sprawling judicial districts covering many counties. Candidates from rural communities in some parts of the State who would not succeed in simple majority-rule primaries have consistently been able to serve their communities as justices.

The alternative to nominating conventions—primaries—presents hazards in today's campaign finance climate. New York State has already seen instances of major increases in campaign spending in judicial contests in which nominees are chosen by primaries.<sup>3</sup> If there is one thing the Commission learned through its encounters with the public at hearings and in the Commission's polling and focus groups, it is that confidence in the impartiality of judges is eroded by the presence of campaign contributions in the process.<sup>4</sup> The news of campaign

spending from other states is sobering: Campaign expenditures have skyrocketed in judicial primaries around the nation in the last decade.<sup>5</sup> There is every reason to assume the same dynamic would take hold in New York State Supreme Court races given that media costs here are among the highest in the nation and that the Supreme Court, a court of unlimited jurisdiction and the State's principal trial court, handles some of the nation's most significant and high stakes litigation.

Given the likelihood that the introduction of judicial primary races would draw major financial contributions into judicial elections, the Commission recommends retaining judicial district nominating conventions, subject to significant reforms, at least until New York State adopts public campaign financing of judicial elections. New York State's nominating conventions were originally conceived as instruments of representative democracy.<sup>6</sup> Ironically, the legislature instituted them to address an immediate sharp public outcry that arose against the abuse of power by political party bosses following the introduction of direct primaries in the early years of the twentieth century.<sup>7</sup> With the recommendations set forth in this Report, the Commission aims to make the conventions more transparent, deliberative and open to all qualified candidates, including people who lack political party connections.

In formulating its recommendations, the Commission was guided by a set of three overarching principles. First, the process by which convention delegates are elected and meet to select their party's nominees should be designed to attract as delegates people who are dedicated and experienced. Delegates should be willing to consider in depth the qualifications of judicial candidates with a view toward ensuring that their party nominates well-qualified candidates for the Supreme Court who reflect the communities in which they will serve. Second, conventions should afford conditions conducive to performing the delegates' duties in a professional manner.

This includes providing adequate time and information to act independently and thoughtfully.

Third, barriers to qualified candidacies should be lifted.

Many features of the convention system, as currently established in State election law and party rules, are not conducive to the realization of these principles. For example, petitioning requirements make it extraordinarily difficult for candidates without institutional party support to obtain a position on the ballot. Additionally, the delegates' term of office is only a few weeks, offering them little time to develop the information and skills they need, and the political parties, which under current law set the number of delegates, regularly run conventions that are so large that it is very difficult for delegates to engage in genuine deliberations.

The Commission's recommendations address these limitations. They call for smaller conventions, longer terms for delegates, reduced petitioning requirements, publication of information about judicial candidates before the convention and a statutory right for candidates to address the delegates at their conventions. The recommendations would also increase voter awareness, promote the independence of convention delegates, encourage qualified candidacies and establish conventions that allow for genuine deliberation and debate.

### **The Recommendations**

We recommend that:

- The judicial nominating convention system be modified to make it more open and effective.
- The election law be amended to reduce the number of delegates to the judicial district convention.
- Each assembly district send at least two delegates to the convention.
- Delegates cast weighted votes.
- The number of signatures required for nomination as a delegate or alternate delegate candidate be reduced to 250.

- The election law be amended to promote the effectiveness and independence of delegates and alternates as follows:
  - Delegates and alternates serve three-year terms;
  - Delegate elections take place at the primary election the year preceding the judicial nominating convention at which the delegate will serve;
  - The New York State Board of Elections provides delegates with information about judicial elections;
  - The Board of Elections provides delegates and the general public with a list of announced judicial candidates at least ten business days prior to the date fixed for the convention; and
  - Candidates seeking nomination for the office of Justice of the Supreme Court have the right to address delegates at their conventions.

# REPORT

Every September, delegates meet at political party conventions in judicial districts around the State to nominate candidates for Supreme Court justice. The State is divided by counties into twelve judicial districts, and under Article VI of the New York State Constitution, voters in their judicial districts elect Supreme Court justices to fourteen-year terms.<sup>8</sup> Article VI of the New York State Election Law governs the nomination and election of Supreme Court justices, setting forth a regime of political party conventions to be held in the weeks between Primary Day, when delegates are to be elected to attend their party's judicial conventions, and Election Day.

The Commission reviewed New York's nominating conventions and found a need for substantial improvements. The review included analysis of the testimony of candidates, political party officials, newspaper editors, and community leaders given to the Commission at public hearings in Albany, Buffalo and New York City; an examination of the results of a public opinion poll conducted by the Marist Institute of 1,000 registered voters; a survey of sitting judges in New York State; the results of focus groups conducted for the Commission by the Government Law Center of Albany Law School in Albany, Rochester, Syracuse, Utica, Plattsburgh, Brooklyn and Manhattan, and in Nassau County and Westchester County; and the historical record, scholarship and media accounts.

## **Evidence in the Hearing Record and Surveys**

Witnesses appearing at the Commission's public hearings testified to the lack of sufficient time with which the parties conduct their conventions' business; they told of a near-total vacuum of information about judicial candidates and of delegates being reduced to merely rubber stamping decisions already reached by political party insiders.<sup>9</sup> Witnesses testified that

parties “dole out” judgeships as political patronage and that candidates must cater to their local political parties to have a chance at an elected position.<sup>10</sup>

The Commission also heard testimony that conventions do function democratically on some indices. In particular, conventions allow judicial candidates to be elected to the Supreme Court even though they would not likely win a nomination in a simple majority-rule primary election for various reasons.<sup>11</sup> Several witnesses testified that, in the weeks leading up to conventions, party members in multi-county districts often build coalitions allowing individuals from small rural communities to rise through the elective process. By contrast, in judicial districts such as the Fourth, where there are eleven counties spanning a sprawling geographic area, candidates from two counties with densely populated urban centers, Saratoga and Schenectady, would regularly prevail over candidates from rural counties under a system of popular primaries. Witnesses pressed home the point that this is not just a matter of geographic inequity, but that it is important to litigants in widely dispersed districts to have judges who can be counted on when they pick a jury to “know the difference . . . between Walden and Warwick.”<sup>12</sup> In the Fourth Judicial District, the Supreme Court seats justices from ten of the eleven counties. A similar spread is found in all of the State’s geographically large and diverse judicial districts.

The convention system also keeps the full force of increases in judicial campaign contributions from reaching New York State.<sup>13</sup> New York State judges already feel under pressure to raise money in election years.<sup>14</sup> Under a primary system, in the absence of public financing, costly races would become costlier and campaigns that are now run with minimal cost would become expensive. The financial pressure of a primary race would not be limited to downstate districts. As Justice John V. Centra of the Fifth Judicial District explained to the

Commission, in several judicial districts of upstate New York no one single television station covers the entire district. During the campaign for the general election, “TV managers look at us and smile because they know we’re going to be buying three [campaign advertisements] in three different locales.”<sup>15</sup> Currently, significant campaign costs, limited to general election races, are in many instances relatively low because in those areas of the State where one political party dominates, a judicial district candidate for the Supreme Court often runs without opposition. Primaries, by contrast, would very likely be contested and, as a result, would either eliminate candidates without personal wealth or force such candidates to raise campaign contributions aggressively. “With a six county judicial race, to run a primary it would just take you out of circulation,” a Supreme Court justice told us.<sup>16</sup>

As the Commission learned at its public hearings, spending in state judicial elections elsewhere in the United States is spiraling upward. The Brennan Center for Justice at the New York University School of Law began tracking expenditures in state top appellate court races and recently reported that, in the 2004 primary season, spending on television advertising was *thirty-seven* times greater than it was in 1996. The number of states with judicial candidates airing television ads during their primary judicial elections also increased, from two states in 2002 to nine in 2004.<sup>17</sup> While the Brennan Center study tracked only top appellate court races, witnesses tracking national trends told the Commission that trial court races are experiencing the trend.<sup>18</sup>

Primary races in New York State’s courts of general jurisdiction would likely attract as much or greater amounts in contributions than trial courts in other states because of the importance and complexity of litigation that takes place here. It is not hard to imagine New York City Supreme Court primary races attracting the attention of competing groups, each offering slates of candidates and each spending significant sums to win the Democratic primary,

which in New York City is often tantamount to winning an election. New Yorkers need not rely on their imaginations to come to a conclusion about the impact of primaries on judicial election spending because in some of the judicial races that currently have primaries in New York State, such as races for Surrogate's Court<sup>19</sup> and the New York City Civil Court, spending has reached high levels.<sup>20</sup>

A reform that increases the cost of judicial campaigns would exacerbate the growing concern voters have about the role of campaign contributions in judicial decision-making. All of the Commission's primary research indicated that contributions have a strong negative effect on the appearance of impartiality and independence.<sup>21</sup> For example, more than eighty percent of registered voters participating in the Marist Poll believed that campaign contributions have some or a great deal of influence on judicial decisions and that judges should not hear or rule in a case involving a campaign contributor.<sup>22</sup> Participants in seven of nine focus groups conducted for the Commission by the Albany Law Center identified the role of money in judicial elections as a reason that voter turnout is so low.<sup>23</sup> Just as startling is the opinion of New York's sitting judges: Almost sixty percent believe that campaign contributions can raise a reasonable question about a judge's impartiality.<sup>24</sup> These findings are consistent with nationwide polls of voters and judges.<sup>25</sup> Public concern about the effect of campaign contributions on judicial impartiality is at its apex when an incumbent judge campaigns for re-election.<sup>26</sup> Drawing sitting justices into primaries would erode public confidence with particular harshness.<sup>27</sup>

### **Historical Intent: Origins of Judicial District Conventions**

Nominating conventions in New York State emerged out of debates about undue political influence over the election of judges and State officers. In 1846 the State had amended its constitution to provide for the popular election of Supreme Court justices and statewide

executive officers.<sup>28</sup> Vigorous disagreement about how to restrain the influence of political bosses over nominations began as soon as the 1880s, when the legislature launched a series of investigations into the parties' nominating caucuses, which were rough-and-tumble affairs consisting of mass meetings rife with voter fraud and occasional outbursts of violence.<sup>29</sup>

In 1914, the New York legislature instituted direct political primaries for statewide and judicial offices as a measure of reform. The reform quickly prompted widespread denunciation. A 1917 New York Times editorial condemned the primary as "a device capable of astute and successful secret manipulation by professionals."<sup>30</sup> Nathan L. Miller, running successfully as the Republican candidate for governor in 1920, campaigned against primaries, telling rally crowds that the reform had "proved to be a delusion and a snare, a fraud. I think [primaries have] offered the opportunity for two things, for the demagogue and the man with money, and I am in favor of restoring, as far as the election of State and judicial candidates is concerned, a representative party system."<sup>31</sup>

Before long, the legislature began to consider proposals for a system of nominating conventions. In early legislative materials, conventions were envisioned as deliberative and representative bodies.<sup>32</sup> As proposed by a special committee of the State Senate in 1918, nominating conventions would be "an assemblage of each political party in the State, that each may make manifest, after consultation and deliberation, what its aims are."<sup>33</sup> The special committee's bill, enacted in 1922, provided for statewide conventions for nominations of State officers and judicial district-wide conventions for the nomination of Supreme Court justices. The conventions would replicate the legislature, with "delegates from each Assembly District" to be "chosen by a majority vote of the party in the district."<sup>34</sup> In the special committee's view, conventions were especially proper as a method for nominating judicial candidates: "It is

inherent in the functions of the judicial office that the office should seek the man, and not the man the office.”<sup>35</sup> The law enacted in 1922 governs today.

### **Current Statutory Provisions and Political Party Rules**

Under sections 6-124 and 6-158 of the State’s Election Law, judicial convention delegates are elected by registered voters in each of the assembly districts in a judicial district on the September Primary Day preceding the convention. Section 6-124 grants authority to the political parties to determine the number of delegates but requires that the number reflect the proportion of votes cast for the party’s gubernatorial candidate in each assembly district at the most recent general election. Section 6-136 establishes delegate petitioning requirements: To appear on the ballot as a convention delegate candidate, a person must have the signatures of 500 voters residing in the delegate candidate’s assembly district.

New York law provides that the conventions must take place in the third week of the September prior to the general election.<sup>36</sup> The legal requirements for the conduct of the convention are minimal: There must be ample room for every delegate and alternate to sit down,<sup>37</sup> and the delegates must elect a temporary chairperson and secretary (whose sole function is to preside over the election of a “permanent” convention chairperson and secretary).<sup>38</sup> When only one judicial candidate is placed in nomination, voice votes are allowed; if a nomination is contested, the law requires a roll call vote.<sup>39</sup> The law does not set any standards for the length of the convention or the amount of information available to delegates.

### **Analysis of the Law**

In reviewing the rules and statutory terms setting forth the operation of judicial district conventions, the Commission found a number of provisions that effectively limit independent action by convention delegates. The delegates’ term of office—roughly one week—is too short to

allow delegates to develop the information or skills they need; the law permits political parties to set the number of delegates so high and to conduct the business of the conventions in so perfunctory a manner that delegates do not have an adequate platform to exercise their role effectively; and petitioning requirements are so onerous that qualified judicial candidates without institutional party support cannot realistically hope to seat enough delegates to affect the outcome of the convention.

Sections 6-124, 6-158 and 8-100(1)(a) of the election law together create the delegates' term of office. Under section 6-124, delegates are elected at the Primary Day immediately preceding the convention; section 6-158(5) decrees that the judicial district convention shall take place in the third week of September; section 8-100 (1)(a) sets Primary Day as the Tuesday after the second Monday in September. The term, in other words, lasts about a week. Delegates do not have time to interview judicial candidates, to investigate the reports of bar association screening panels or to learn the skills required to perform their duties. Moreover, the fact that delegates are required to run annually fails to provide an incentive to pull individual public-spirited citizens into the race for the office of delegate.

Section 6-124 of the election law provides a formula that the political parties use to determine their number of delegates. In 2004, the formulas produced the number of delegates and alternate delegates in each judicial district shown in Figure 1.

**Figure 1: Number of Delegates by Judicial District Under Current Formula**

<b>Judicial District</b>	<b>Number of Assembly Districts</b>	<b>Number of Republican Delegates and Alternates</b>	<b>Number of Democratic Delegates and Alternates</b>
1	12	57 Delegates 57 Alternates	93 Delegates 93 Alternates
2	24	98 Delegates 98 Alternates	124 Delegates 124 Alternates
3	11	50 Delegates 50 Alternates	41 Delegates 41 Alternates
4	10	54 Delegates 54 Alternates	32 Delegates 32 Alternates
5	12	81 Delegates 81 Alternates	35 Delegates 35 Alternates
6	9	66 Delegates 66 Alternates	24 Delegates 24 Alternates
7	11	48 Delegates 48 Alternates	43 Delegates 43 Alternates
8	13	62 Delegates 62 Alternates	62 Delegates 62 Alternates
9	17	139 Delegates 139 Alternates	76 Delegates 76 Alternates
10	21	185 Delegates 185 Alternates	102 Delegates 102 Alternates
11	18	87 Delegates 87 Alternates	77 Delegates 77 Alternates
12	11	63 Delegates 63 Alternates	32 Delegates 32 Alternates

Conventions routinely include more than a hundred delegates and alternates, and sometimes well over two hundred. Combined with the quick pace taken by parties at their conventions, the large numbers of delegates all but guarantee that deliberate, thoughtful action will be foreclosed. Nothing in the law establishes a requirement that political party leaders provide information to delegates.<sup>40</sup>

The law's petitioning provisions under section 6-136 favor those candidates for delegates who have institutional party support. To appear on the primary ballot as a candidate for judicial delegate requires the signatures of 500 voters residing in the delegate's assembly district.

Judicial districts are comprised of a minimum of nine assembly districts. The largest judicial district, the Second, which encompasses the counties of Kings and Richmond, has 24 assembly districts. The supporters of an individual judicial candidate, aspiring to seat a delegation with a voting majority, would have to obtain thousands of signatures, in lots of 500 per delegate candidate, across the assembly districts in the judicial district. In the Tenth Judicial District, for example, where the number of delegates at the 2004 Republican Party convention was 185, and there are 21 assembly districts, it would have been necessary to have obtained 46,500 signatures to field independent candidates for a majority of the seats at the convention.<sup>41</sup> The political parties, which have party volunteers in each such district, are able to achieve this goal far more easily than those without such support. As a result, challenges to delegate slates are infrequent, and successful challenges are extraordinarily rare.<sup>42</sup>

### **A Plan To Realize Conventions' Potential**

The legislative history of the convention system in New York State suggests that its creators envisioned a representative process. They, like we, operated in a political environment in which primaries drew large sums of money into the selection process. Yet, as an analysis of the law shows, the chance to perform democratically is poorly served by today's statutory scheme.

In setting out to reshape the convention process, the Commission was guided by a set of three overarching principles. First, the process by which convention delegates are elected and meet to select their party's nominees should be designed to attract as delegates people who are dedicated and experienced. Delegates should be willing to consider in depth the qualifications of judicial candidates with a view toward ensuring that their party nominates well-qualified candidates for the Supreme Court who reflect the communities in which they will serve. Second,

conventions should afford conditions conducive to performing the delegates' duties in a professional manner. This includes providing adequate time and information to act independently and thoughtfully. Third, barriers to qualified candidacies should be lifted.

As set forth below, the Commission recommends setting a statutory maximum and minimum for the number of delegates, reducing petitioning requirements, providing for substantially longer terms for the position of convention delegate and having such terms begin on January 1 of the year of the first convention at which the person is a delegate. The Commission also recommends amending the election law to require the New York State Board of Elections to supply every delegate with information about judicial elections and the nominating process, and granting judicial candidates a statutory right to address delegates at their conventions.

We would set the term of office of delegates at three years so that those elected as delegates would have ample time to familiarize themselves with their role in the nominating process and develop the information they need to exercise that role effectively. The change would serve a second purpose, to get people to see the position as one worth running for. Turning the position of delegate into a significant one creates an incentive for individuals themselves to run for the position. Other reforms would contribute to this incentive. Conventions would be smaller so that deliberations could be probing and collegial. The proposal, again, serves both to increase the level of debate and to make the position of delegate more attractive to individuals interested in ensuring that only qualified judicial candidates reflective of the population of the district appear on the November ballot. Similarly, the Commission recommends holding delegate elections the year preceding the first convention the delegate was to attend, and starting the delegate's term on January 1 of the year of his or her first convention. This would give the delegate time to get to know the delegation and judicial

candidates, and would increase the dignity of the office, making it more attractive. Petitioning requirements would be cut in half, from 500 to 250 signatures per delegate.

The proposed reforms are also intended to make it easier for qualified judicial aspirants to win the support of a majority of the convention delegates without the backing of party leaders. An absolute minimum requirement for winning an election is the electors' knowledge of the candidates.<sup>43</sup> The proposed recommendations would ensure that delegates would know the names of judicial candidates and that the candidates who have demonstrated some support within the convention would have a chance to address the delegates. This reform, combined with the recommended reduction in the size of the conventions, would lower the existing hurdles preventing a candidate without the support of the party leadership from winning the support of a majority of the delegates.

## RECOMMENDATIONS

The recommendations presented here are designed to serve three purposes. First, they are meant to attract as delegates people who are dedicated, experienced and willing to consider in depth the qualifications of judicial candidates with a view toward ensuring that their party nominates well-qualified candidates for the Supreme Court who reflect the communities in which they will serve. Second, they are designed to afford conditions conducive to performing the delegates' duties in a professional manner. This includes providing adequate time and information to act independently and thoughtfully. Third, they are meant to lift barriers to qualified candidacies. Each of the recommendations offered below reflects these goals.

**The judicial district nominating convention system should be made more open and effective.**

The Commission's work leads us to conclude that the judicial district convention system has benefits that merit its retention – in a sharply modified form. Conventions facilitate access to a place on the ballot for non-majority candidates. In contrast to primaries, which are able to grant victory only to majority vote getters, conventions allow members of geographic and other minority factions to build coalitions to win a spot on the ballot. Conventions also allow candidates to avoid the high cost of conducting primary campaigns in judicial districts, many of which include multi-county and multi-media market areas. However, in order to get the benefits of the convention process, New York State must ensure that the process is fair and open and that it promotes effective, democratic and deliberate representation.

**The election law should be amended to reduce the number of delegates to the judicial district convention.**

The Commission recommends setting a minimum of twenty-five and a maximum of fifty on the number of delegates that may attend the convention. The Commission further recommends designating the number of delegates by statute.

Under this recommendation most conventions would be smaller than they are today.\* A smaller convention promotes a deliberative and collegial atmosphere in which real discussion can take place. It lowers the bar for those who seek judicial nomination without the support of party leadership. Under the system contemplated here, qualified candidates will be able to succeed with far fewer votes. Also, a smaller convention, where the real business of choosing judicial nominees can be conducted, is likely to be attractive to a larger pool of delegates focused on the business of nominating candidates who are well-qualified and reflective of the district in which they will serve if elected. Nevertheless, the number of delegates must not be reduced so far that conventions fail to function as representative bodies. In setting a minimum of twenty-five delegates, the Commission seeks to balance conditions for deliberation, on the one hand, and conditions for genuine debate on the other.

**Each assembly district should send at least two delegates or alternates to the convention.**

The election of two delegates from each assembly district will yield delegations that match the Commission's recommendation that conventions be comprised of not more than fifty delegates and no fewer than twenty-five.

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\* See Figure 1 at 26.

**Delegates should cast weighted votes.**

In order to maintain the principle of “one person, one vote,” under this plan delegates will cast weighted votes. All assembly districts in a judicial district will send the same number of delegates, the number to be defined by statute so that no more than fifty and no fewer than twenty-five delegates (and an identical number of alternate delegates) attend the parties’ judicial district conventions. In order to assure that the party's members and other supporters are properly represented at the judicial district conventions, the Commission recommends retaining the principle expressed in section 6-124, which is that the number of assembly district votes should reflect the number of votes cast by registered voters in a given assembly district for the parties’ nominees for governor in the last general election. Instead of maintaining that ratio by changing the number of delegates from year to year as the statute does now, the Commission would change the weight of the votes cast by a fixed number of delegates.

**The number of signatures required for a candidate to run as delegate or alternate delegate should be reduced to 250.**

The Commission recommends that the number of signatures required for nomination as a candidate for delegate to the judicial district convention be reduced to open the process to more party members. The current signature requirement makes it more difficult to obtain a position on the ballot than is necessary to ensure that potential delegates have a reasonable level of community support. This concern can be addressed by reducing the number of required signatures.

**The election law should be amended to promote the effectiveness and independence of delegates and alternates.**

The Commission believes that effective, democratic and deliberate representation can be

enhanced at the judicial district conventions by expanding the delegates' terms of office and electing new delegates and alternates a full year before the first convention at which they will serve.

- **Delegates and alternates should serve three-year terms.**

The Commission recommends extending the term of office for delegates and alternates to three years, replacing the current single-year term. As recognized in the comparatively long terms for judicial office in New York State, a longer term fosters independence. It also promotes effective representation as delegates and alternates apply the experience they gain throughout their three-year terms. The initial terms of delegates under the new law should be staggered between one and three years.

- **Delegate elections should take place in the year preceding the judicial district nominating convention at which the delegate will serve.\***

Electing delegates and alternates the year before the first convention at which they serve promotes effective and informed representation. Under the proposed amendments, delegates and alternates will have a full year to develop an understanding of their position and to evaluate potential candidates for office. Similarly, candidates would have an expanded opportunity to present themselves and their credentials to the delegates in hopes of gaining support. The term of office will start the first day of January immediately following a delegate's election and run three calendar years.

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\* As it is the goal of the Commission to increase voter awareness of the process by which Supreme Court justices are elected, the Commission believes that holding elections for judicial district convention delegates on Election Day, when voter turnout is at its highest, is preferable to holding them on Primary Day. We do not make the recommendation to that effect now because of the limitations of current voting technology. We anticipate, however, that in the near future voting technology will allow voters to cast votes for both the general elections and political party elections on the same ballot. We therefore recommend for that future time that the election of delegates and alternates to the judicial district conventions take place on Election Day.

- **The New York State Board of Elections should provide delegates with information about judicial elections.**

To ensure that delegates and alternates to the convention understand their role and civic responsibility in the process of nominating candidates for the office of Justice of the Supreme Court, the Commission recommends that the New York State Board of Elections distribute to every delegate and alternate a statement regarding the role and responsibility of a delegate, information regarding the judicial system, the duties and responsibilities of Supreme Court justices, and the skills, professionalism and personal characteristics required of independent and impartial judges. These materials should be brief and easy to read, and should be available in hard copy and other media. The Board of Elections should provide these information packets to county political party leaders at least thirty days in advance of the date fixed for the judicial nominating convention. The party leaders will be responsible for forwarding this information to the delegates and alternates at least twenty days prior to the convention. At least ten days prior to the date fixed for the judicial convention, the party leader would be required to file with the Board of Elections a certificate stating the date and method by which all delegates and alternates to the convention were provided with these materials.

Appendix B enumerates the information that the Commission recommends be distributed.

- **The Board of Elections should provide delegates and the general public with a list of announced judicial candidates at least ten business days prior to the date fixed for the convention.**

Candidates for the office of Justice of the Supreme Court are not required to initiate their candidacy formally in advance of the judicial nominating convention. Nevertheless, many candidates do so. As the Commission deems it crucial that voters and convention delegates have as much information as possible about judicial elections, the Commission would require the New

York State Board of Elections to publish, in hard copy or other media, a list of all of the candidates who have notified their political parties of an intent to seek the party's nomination. The list should be published and distributed to all delegates and alternates at least ten business days prior to the date fixed for the convention. The fact that candidates' names are published should not preclude additional nominations from the floor at the convention.

- **Candidates seeking nomination for the office of Justice of the Supreme Court should have the right to address the delegates.**

Because candidates do not necessarily announce their candidacies prior to the convention, and candidates not previously considered may be nominated from the floor, delegates may be unaware prior to the convention of the names of candidates that are put forward. The Commission recommends that to further enable delegates to exercise their civic responsibility in nominating the best possible candidates for Justice of the Supreme Court, candidates who have been moved and seconded at the convention should have an opportunity to address the delegates briefly regarding their qualifications for the judiciary. To further this, anyone who has formally announced a desire to be nominated at the convention shall be notified in advance by the party leader of the time and location of the convention.

## **CONCLUSION**

New York's Supreme Court justices serve on one of the most important trial courts in the nation. It is essential that the candidate selection process protect the reputation and respect for that bench. Although the current judicial district convention system is far from perfect, we are convinced that if reformed it can serve to promote public confidence in the Supreme Court bench. In the recommendations above, we offer what we believe is a blueprint to achieve a convention system that increases voter awareness, promotes the independence of convention delegates, encourages qualified candidacies and establishes conventions that allow for genuine deliberation and debate.

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<sup>1</sup> The New York State Constitution mandates the election of Supreme Court justices by judicial district. N.Y. Const. art. VI, § 6. Supreme Court justices were appointed until the 1846 Constitution. N.Y. Const. of 1846, art. VI, §12.

<sup>2</sup> See N.Y. Elec. Law §§ 6-106, 6-124, 6-126, 6-136, 6-158 (McKinney 2005).

<sup>3</sup> See Leslie Eaton, *State Commission Seeking Ouster of Surrogate Judge in Brooklyn*, N.Y. Times, Feb. 15, 2005, at B1 (reporting that candidates for Surrogate's Court spent \$1 million in a bitter 1996 primary battle); Daniel Wise, *Donors Filled War Chest in Hard-Fought Election for Westchester Surrogate*, N.Y.L.J., Nov. 3, 2000, at 1 (reporting that candidates raised and spent hundreds of thousands of dollars on primary campaigns); Michael Beebe & Robert J. McCarthy, *Appeal for Reform: As Spending on Judicial Races Escalates, Efforts to Reshape a System Many Believe Is Outmoded and Undemocratic Languish in Albany*, Buff. News, July 16, 2002, at A1 (reporting that one judge, running unopposed, nevertheless spent \$75,000 on his reelection campaign).

<sup>4</sup> See *infra* text accompanying notes 21-24.

<sup>5</sup> See *infra* note 17 and accompanying text.

<sup>6</sup> State of N.Y. Senate, *Report of Special Committee of Senate on Primary Law Submitted with Bill to Establish State Wide Judicial Conventions*, S. Doc. No. 34, at 2 (1918).

<sup>7</sup> Editorial, N.Y. Times, May 1, 1917, at 12; *Miller Declares Primary a Fraud, Promises if Elected to Try to End It in State and Judicial Nominations*, N.Y. Times, Oct. 23, 1920, at 4.

<sup>8</sup> The First Judicial District contains New York County; the Second Judicial District contains Kings and Richmond Counties; the Third Judicial District contains Albany, Columbia, Greene, Rennselaer, Schoharie, Sullivan and Ulster Counties; the Fourth Judicial District contains Clinton, Essex, Franklin, Fulton, Hamilton, Montgomery, St. Lawrence, Saratoga, Schenectady, Warren and Washington Counties; the Fifth Judicial District contains Herkimer, Jefferson, Lewis, Oneida, Onondaga and Oswego Counties; the Sixth Judicial District contains Broome, Chemung, Chenango, Cortland, Delaware, Madison, Otsego, Schuylar, Tioga and Tompkins Counties; the Seventh Judicial District contains Cayuga, Livingston, Monroe, Ontario, Seneca, Steuben, Wayne and Yates Counties; the Eighth Judicial District contains Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans and Wyoming Counties; the Ninth Judicial District contains Dutchess, Orange, Putnam, Rockland and Westchester Counties; the Tenth Judicial District contains Nassau and Suffolk Counties; the Eleventh Judicial District contains Queens County; and the Twelfth Judicial District contains Bronx County.

<sup>9</sup> The hearings took place in Albany, New York on September 30, 2003, in Buffalo, New York on September 23, 2003, and in New York, New York on September 16, 2003. See *Public Hearings Information: Public Hearings Before the Comm'n to Promote Public Confidence in Judicial Elections (2003)*, available at <http://law.fordham.edu/commission/judicialections> [hereinafter *Albany Hearings*, *Buffalo Hearings* or *New York Hearings*]. See *New York Hearings* 15 (statement of Charles Hynes, Kings County District Attorney), 231 (statement of James F. Brennan, New York State Assembly Member) and *Buffalo Hearings* 105-06 (statement of Maryann Saccomando Freedman, Cohen & Lombardo, P.C.), 125 (statement of Lyle Toohey, Vice President, Voter Service, League of Women Voters). See also Clifford J. Levy, *Picking Judges: Party Machines, Rubber Stamps*, N.Y. Times, July 20, 2003, at A1; Robert J. McCarthy & Michael Beebe, *2000 Convention Was All about Control*, Buff. News, July 15, 2002, at A4. Commission representatives attended judicial district conventions in two districts and their observations were consistent with the witness testimony and media accounts.

<sup>10</sup> *Albany Hearings*, *supra* note 9, at 64 (statement of Fern Schair, Chairman, Committee for Modern Courts); see also *Buffalo Hearings*, *supra* note 9, at 90 (statement of Steven W. Bell, Managing Editor, Buffalo News) and *Albany Hearings*, *supra* note 9, at 222 (statement of Stephen F. Downs, Esq.).

<sup>11</sup> *Buffalo Hearings*, *supra* note 9, at 52-53 (statement of Frederick G. Reed, Ontario County Surrogate), 60-61 (statement of Rose H. Sconiers, Justice of the Supreme Court and President of the Association of Supreme Court Justices of the State of New York) and *Albany Hearings*, *supra* note 9, at 106-07, 115 (statement of Lorraine Power Tharp, Whiteman Osterman & Hanna LLP), 198 (statement of Anthony J. Paris, Justice of the Supreme Court).

<sup>12</sup> *Albany Hearings*, *supra* note 9, at 236 (statement of Benjamin Ostrer, Benjamin Ostrer & Associates, P.C.), 10 (statement of Leonard Weiss, McNamee, Lochner, Titus & Williams, P.C.).

<sup>13</sup> *Buffalo Hearings*, *supra* note 9, at 53-54 (statement of Frederick G. Reed, Ontario County Surrogate), 17, 22 (statement of Leonard Lenihan, chair, Erie County Democratic Committee) and *Albany Hearings*, *supra* note 9, at 198 (statement of Anthony J. Paris, Justice of the Supreme Court), 202-04 (statement of John V. Centra, Justice of the Supreme Court). Upstate witnesses were not the only ones to warn of the heavy financial toll primaries would impose. See Marcy L. Kahn, *Testimony Before the Commission to Promote Public Confidence in Judicial Elections (Written Submission)* at 8, 13 (Sept. 16, 2003), available at <http://law.fordham.edu/commission/judicialections>.

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<sup>14</sup> *New York Hearings*, *supra* note 9, at 212 (statement of Geri Palast, Executive Director, Justice at Stake).

<sup>15</sup> *Albany Hearings*, *supra* note 9, at 202 (statement of John V. Centra, Justice of the Supreme Court). The Marist Institute survey of New York State judges conducted for our Commission found that New York State judges raised and spent a mean of roughly \$42,000 in their last elections. *See infra* note 21 at app. E (Marist College Institute for Public Opinion for the Commission to Promote Public Confidence in Judicial Elections, New York State Judges: Mail Survey Results 8-10 (May 2004)).

<sup>16</sup> *Albany Hearings*, *supra* note 9, at 198 (statement of Anthony J. Paris, Justice of the Supreme Court).

<sup>17</sup> According to a study by the Brennan Center for Justice at New York University School of Law, candidates for top state appellate courts around the nation spent \$3.8 million on television advertising in the 2004 primary election season - over thirty-seven times the \$96,000 spent in 2002. The Center reported that “[p]rimary spending accounts for almost 20% of the total amount spent over the entire 2004 election season. The number of states experiencing television ads during their primary judicial elections also increased more than four-fold from two states (IL & ID) in 2002 to nine states (AL, AR, GA, LA, NV, OR, WA, WV) in 2004.” Press release, The Brennan Center for Justice, *Buying Time: Total Amount Spent on Judicial Advertising Peaks at \$21 Million* (Nov. 18, 2004), at [http://www.brennancenter.org/presscenter/releases\\_2004/pressrelease\\_2004\\_1118.html](http://www.brennancenter.org/presscenter/releases_2004/pressrelease_2004_1118.html).

<sup>18</sup> *New York Hearings*, *supra* note 9, at 170-71 (statement of Barbara Reed, Director, Courts Initiative, Constitution Project). *See also Albany Hearings*, *supra* note 9, at 121 (statement of Luke Bierman, Director, Justice Center, American Bar Association).

<sup>19</sup> *See supra* note 3.

<sup>20</sup> The Honorable Phyllis B. Gangel-Jacob spent over \$100,000 on her primary campaign for Civil Court Judge in New York County in 1984. This is in contrast to the \$5,000 she spent in each of four attempts in the early 1990s, including the last, a successful bid to win a nomination at a Supreme Court nominating convention. Brief for the Associations of Justices of the Supreme Court of the State of New York and of the City of New York at 12, *Lopez Torres v. N.Y.S. Bd. of Elec.*, No. 04 Civ. 1129 (E.D.N.Y. 2004).

<sup>21</sup> Commission to Promote Public Confidence in Judicial Elections, Report to the Chief Judge of the State of New York 23 and apps. C, D and E (June 29, 2004) [hereinafter Commission 2004 Report], *available at* <http://law.fordham.edu/commission/judiciaelections>.

<sup>22</sup> *Id.* at app. C (Marist College Institute for Public Opinion for the Commission to Promote Public Confidence in Judicial Elections, Public Opinion and Judicial Elections: A Survey of New York Registered Voters 14-15 (Dec. 2003)).

<sup>23</sup> *Id.* at app. D (Government Law Center of Albany Law School, Focus Group Results and Recommendations 14 (June 2004)).

<sup>24</sup> *Id.* at app. E (Marist College Institute for Public Opinion for the Commission to Promote Public Confidence in Judicial Elections, New York State Judges: Mail Survey Results 8-10 (May 2004)).

<sup>25</sup> The Justice at Stake Campaign, a non-partisan national policy group in Washington D.C., conducted national polls of voters and judges in late 2001 and early 2002 and found that 76% of registered voters and 26% of judges have deep concerns about the role of campaign contributions in judicial decision-making. The poll can be found at <http://www.justiceatstake.org/files/PollingsummaryFINAL.pdf>. A 1998 poll sponsored by the Pennsylvania Supreme Court revealed that “89% of respondents believed money buys judicial favor, most, some or all of the time,” and a 1999 Texas Supreme Court-state bar poll showed that 69% of Texas court employees and 79% of Texas lawyers “believe that campaign contributions significantly influence courtroom decisions.” *New York Hearings*, *supra* note 9, at 161 (statement of Barbara Reed, Director, Courts Initiative, Constitution Project).

<sup>26</sup> Commission 2004 Report, *supra* note 21, at 35-37.

<sup>27</sup> *Albany Hearings*, *supra* note 9, at 36-37 (statement of Henry Berger, Chair, New York State Commission on Judicial Conduct) (discussing “the coercive effect of judges raising funds from attorneys who appear before them”).

<sup>28</sup> N.Y. Const. of 1846, art. VI, § 12. *See* N.Y. St. Joint Legis. Comm. on Court Reorganization, *Report of the Joint Legislative Committee on Court Reorganization*, Legis. Doc. No. 24, at 8-9 (1973) (describing early alarms about political influence). Until 1846, the governor appointed justices. N.Y. Const. of 1821, art. IV, § 7. The 1846 Constitution also changed the offices of secretary of state, comptroller, treasurer and attorney general from appointive to elective offices. N.Y. Const. of 1846, art. V, §§ 1-2.

<sup>29</sup> Legislative reports give a flavor of these “primaries”:

The better elements of the two parties will not go to primary meetings in the evening under any circumstances, nor at any hour at the risk of being hustled or jostled by intoxicated men. . . . The bill, therefore, proposes that in every primary meeting, citizens vote directly for their nominees, and not for delegates to a nominating convention, that the polls should be kept

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open all day, if need be, so that citizens can consult their own conveniences as to hours, that the sanction of law shall be given to these meetings, that there shall be penalties for frauds committed, for disturbance by violence, and for the non-enrollment of voters.

State of N.Y. Assembly, *Report of the Select Committee on the Subject of Primary Elections in the State of New York*, Assemb. Doc. No. 96, at 1-4 (1882). *See also* State of N.Y. Legis., *Report of the Joint Committee of the Senate and Assembly of the State of New York appointed to Investigate Primary and Election Laws of This and Other States* 195, 199 (J.B. Lyon Company, Printers 1910).

<sup>30</sup> *See* Editorial, *supra* note 7, at 12.

<sup>31</sup> *See Miller Declares Primary a Fraud, Promises if Elected to Try to End It In State and Judicial Nominations*, *supra* note 7, at 4. Governor Nathan Miller was a former New York State Supreme Court justice.

<sup>32</sup> State of N.Y. Senate, *Report of Special Committee of Senate on Primary Law Submitted with Bill to Establish State Wide Judicial Conventions*, S. Doc. No. 34, at 2 (1918).

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 3.

<sup>36</sup> N.Y. Elec. Law § 6-158(5) (McKinney 2005).

<sup>37</sup> *Id.* § 6-126.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> As reported by Clifford J. Levy in *The New York Times*, the absence of information sometimes reaches absurd proportions. Delegates to the 2002 Democratic Party judicial convention in the Second Judicial District told Levy that conventions always last less than an hour. None of the delegates could remember whom they had nominated. Delegates said there was no effort made to inform them which candidates were to be nominated. “In fact, the names are often secret.” Levy, *supra* note 9, at A1.

<sup>41</sup> In practice, the minimum number of signatures can be used for an entire slate of delegate candidates on a single petition within an assembly district. That practice would still require signatures to be gathered in each of the 21 assembly districts in the Tenth Judicial District. Further, candidates must typically obtain two to three times the minimum number of required signatures to be able to fend off legal challenges to their petitions. So, even under this practice, in the Tenth Judicial District, a candidate would have to gather 21,000 to 36,500 signatures to place a slate of delegate candidates on the ballot to challenge the party leadership at the nominating convention.

<sup>42</sup> *New York Hearings*, *supra* note 9, at 17 (statement of Charles Hynes, Kings County District Attorney).

<sup>43</sup> As reported by *The New York Times*, convention delegates under the current system sometimes meet and vote without knowing the names of judicial candidates. *See supra* text accompanying note 9.



**COMMISSION TO PROMOTE PUBLIC CONFIDENCE  
IN JUDICIAL ELECTIONS**

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**APPENDIX A**

**Summary of December 2003 and June 2004 Recommendations of  
the Commission to Promote Public Confidence in Judicial Elections**



# **SUMMARY OF DECEMBER 2003 AND JUNE 2004 RECOMMENDATIONS OF THE COMMISSION TO PROMOTE PUBLIC CONFIDENCE IN JUDICIAL ELECTIONS**

## **Candidate Selection**

New York State should establish a system of State-sponsored Independent Judicial Election Qualifications Commissions (“IJEQC”) with the following characteristics to evaluate the qualifications of candidates for judicial office throughout the State:

- Each judicial district should have a commission;
- The commission members should reflect the State’s great diversity;
- The commissions should actively recruit judicial candidates;
- The commissions should publish a list of all candidates found well qualified;
- The commissions should apply consistent and public criteria to all candidates;
- Member terms should be limited;
- Uniform rules should govern commission proceedings and its members’ conduct;
- The commissions should have the necessary resources to fulfill their functions; and
- The Chief Administrator’s Rules Governing Judicial Conduct should require all judicial candidates to participate in the IJEQC process.

## **Voter Education**

- New York State should produce and distribute voter guides for judicial elections that:
  - Should be fully financed by the State and distributed to every household with a registered voter;
  - Should be distributed by mail in print form and available on the Internet;
  - Should serve a dual function of educating the public about the judiciary generally, and about specific judicial candidates; and
  - Should undergo periodic evaluations after distribution.
- Information regarding voter education efforts should be centrally coordinated;
- The Office of Court Administration should establish a multi-media awareness campaign about the judiciary; and
- The Chief Judge of New York State should work to build partnerships with existing organizations working on voter education issues.

## **Campaign Finance Disclosure**

- The content and format of judicial disclosure filings should be expanded and revised;
- The Office of Court Administration should be responsible for receiving and publicly reporting judicial campaign finance disclosures; and
- Campaign finance disclosure filings for judicial candidates for all courts should be filed electronically and made publicly available in a searchable electronic format on a timely basis.

## **Campaign Expenditures**

- Limit the price that judicial candidates pay to attend political functions to the proportionate cost of attending; and
- Require that purchases of campaign-related goods and services by judicial candidates represent reasonable fair market value.

## **Promoting Ethical Campaign Activity**

A New York Judicial Campaign Ethics and Conduct Center should be created, with five primary functions:

- Establishing a mechanism under the auspices of the New York State Advisory Committee on Judicial Ethics to issue fast, reliable rulings on campaign conduct;
- Becoming a central resource for press and public inquiry on judicial elections;
- Creating an electronic-based tool for researching judicial campaign conduct ethics opinions;
- Overseeing and developing a campaign ethics course for candidates for judicial office; and
- Making candidates for judicial office aware of bar association judicial campaign oversight committees.

## **Amending the Rules of the Chief Administrator of the Courts Governing Judicial Conduct**

### Adopting Commentary to the Rules

The Chief Administrator's Rules should include commentary to give guidance and clarification.

### Rules Governing Campaign Activity

- The Chief Administrator's Rules' restrictions on judicial candidate speech should be limited to pledges or promises that are inconsistent with the impartial performance of the adjudicative duties of the office and statements that commit the judicial candidate with respect to cases, controversies or issues that are likely to come before the court;
- The Chief Administrator's Rules should clarify that its speech restrictions on judicial candidates apply to sitting judges, as well as candidates for judicial office;
- The commentary to the Chief Administrator's Rule governing speech restrictions on sitting judges should describe the Rule's significance, further define the contours of the Rules, and make judicial candidates aware of the New York State Advisory Committee on Judicial Ethics;
- Commentary to the Chief Administrator's Rules should state that the speech restrictions included in the Rules are indispensable to the maintenance of the integrity, impartiality, and independence of the judiciary; and
- The Chief Administrator's Rules should include preserving the impartiality of the judiciary as a restriction on political activity.

### Rules Governing Disqualification

- The Chief Administrator's Rules should require disqualification where a party or counsel's contributions to a judge's campaign exceed a certain threshold;
- The Chief Administrator's Rules should require mandatory disqualification where a judge has made a public commitment with respect to an issue or controversy in a current proceeding; and
- The Chief Administrator's Rules should make disqualification discretionary where a judge appears to have made a public commitment with respect to an issue or controversy in a current proceeding.

### Defining Impartiality, Integrity and Independence

Definitions of impartiality, integrity and independence should be included in the terminology section of the Chief Administrator's Rules.

### Retention Elections

New York State should adopt a system of non-competitive, non-partisan retention elections for qualified incumbent judges running for re-election.

### Public Financing of Judicial Elections

New York State should:

- Adopt voluntary pilot public financing programs for the Surrogate's Court statewide and for all courts within targeted competitive districts;
- Adopt enabling legislation for local public financing programs for judicial campaigns; and
- Establish a temporary commission to study the feasibility of a statewide public financing program for judicial campaigns.

### Campaign Conduct

Judicial Campaign Practice Committees should be established in each Appellate Department in the State.



**COMMISSION TO PROMOTE PUBLIC CONFIDENCE  
IN JUDICIAL ELECTIONS**

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**APPENDIX B**

**Material To Be Distributed to All Delegates and Alternates**



# **MATERIAL TO BE DISTRIBUTED TO ALL DELEGATES AND ALTERNATES**

## **Structure of the Courts in New York State**

The Supreme Court is New York State's principal trial court. It is the only court in the State with unlimited original jurisdiction. The State is divided into twelve judicial districts, with Supreme Courts in each of the judicial districts. Decisions of the Supreme Court are appealed to an intermediate appellate court – either the Appellate Division of the Supreme Court or, in some cases, the Appellate Term of the Supreme Court or a County Court. Intermediate appellate decisions are appealed to the State's highest court, the Court of Appeals.

## **The Role of Judicial District Convention Delegates and Delegate Alternates**

The judicial district nominating convention is the means under New York State law by which the political parties choose candidates for the position of State Supreme Court Justice. Consistent with the job of choosing a nominee for New York State's highest trial court, delegates have a duty to inform themselves about all candidates, to engage in consultation and deliberation with other delegates and to exercise independent judgment.

Judicial independence is a critical component of our justice system. Without it, there can be no guarantee of the right to a fair trial. Justices decide cases on the facts and law of each case. To do so they must possess superior qualities of independence and integrity. In choosing who will be their parties' Supreme Court nominees, delegates to New York State's judicial district nominating conventions play a role in assuring New Yorkers that the State's justices are fully qualified to exercise independent judgment.

If delegates are absent, alternate delegates take their place. The order in which alternates take the place of absent delegates is determined by votes cast for alternate delegates at the political party primary. The alternate with the most votes takes the seat of the delegate. If there was no contest for the position of alternate, substitution is made in the order in which the names of alternates appear on the certified list of delegates and alternates.

## **Qualifications To Consider when Choosing a Nominee for Supreme Court Justice**

When evaluating the qualifications of individuals to be nominated for positions as Supreme Court justices, convention delegates and alternates should consider whether the candidates: possess good character, independence and integrity; are reasonably decisive; have a reputation for uprightness, fairness and lack of bias; demonstrate good temperament, including courtesy and patience; and possess good physical and mental stamina. Supreme Court justices must have been members of the bar for at least ten years. They serve fourteen-year terms or until they reach the age of seventy, whichever comes first. No candidate may be found qualified for Supreme Court justice if there is good cause to believe that the candidate is materially deficient in one or more of the criteria, or if the candidate has been found by a court to have violated the standards of professional conduct, or has been found guilty of a serious crime.



**COMMISSION TO PROMOTE PUBLIC CONFIDENCE  
IN JUDICIAL ELECTIONS**

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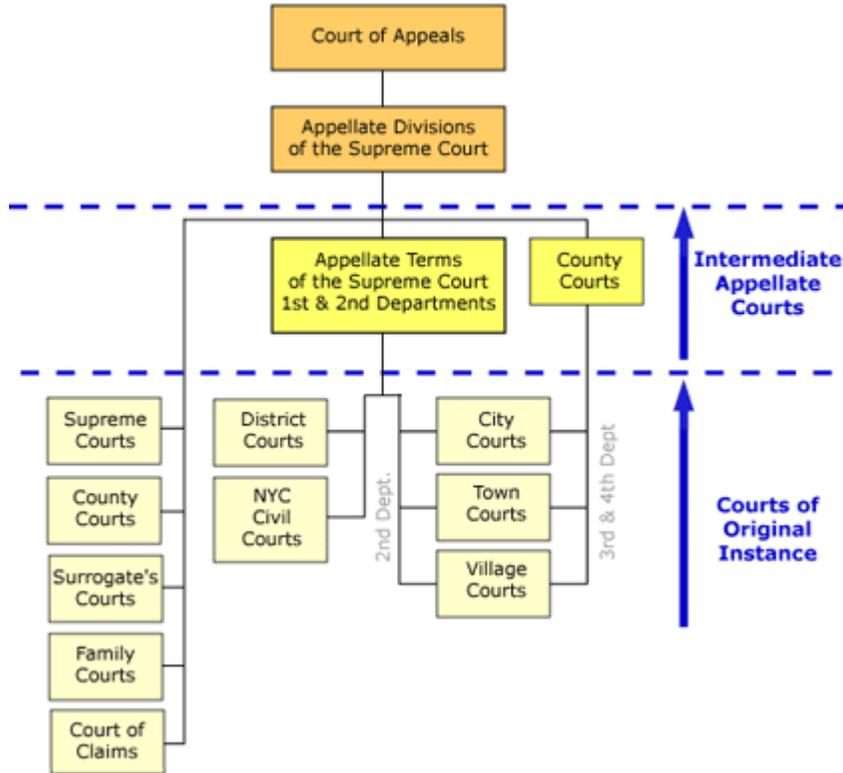
**APPENDIX C**

**Court Structure of New York State**

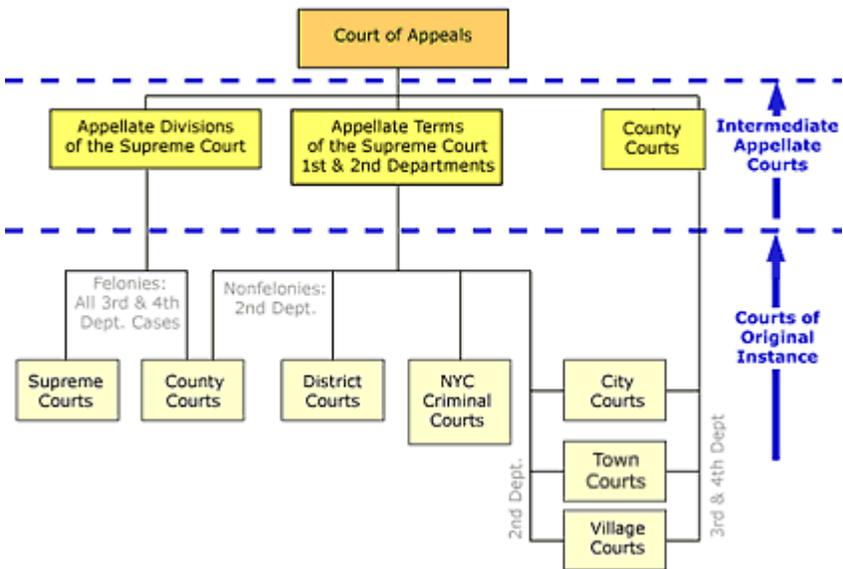


# COURT STRUCTURE OF NEW YORK STATE

## CIVIL COURT STRUCTURE



## CRIMINAL COURT STRUCTURE





**COMMISSION TO PROMOTE PUBLIC CONFIDENCE  
IN JUDICIAL ELECTIONS**

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**APPENDIX D**

**Public Hearings Witness List and Form of Notice**



## **PUBLIC HEARINGS WITNESS LIST**

### **Public Hearing in New York City – September 16, 2003**

Michael Bloomberg, Mayor of New York City

Charles Hynes, Kings County District Attorney

Floyd Abrams, Cahill Gordon & Reindel LLP

Testimony of C. Virginia Fields, Manhattan Borough President, delivered by Denise A. Outram,  
General Counsel

Kenneth J. Knuckles, President & CEO, Upper Manhattan Empowerment Zone

Robert J. Levinsohn, Proskauer Rose LLP

Norma Ramirez, District Leader, 64<sup>th</sup> District

Edward W. Madeira, American Bar Association

Daniel L. Greenberg, President and Attorney-in-Chief, The Legal Aid Society

William M. Savino, President, Nassau County Bar Association

Stephen De Castro, Vice President, Asian American Bar Association

Barbara Reed, Director, Courts Initiative, Constitution Project

Jonathan Jacob Gass, Associate Counsel, Brennan Center for Justice

A. Thomas Levin, President, New York State Bar Association

Geri Palast, Executive Director, Justice at Stake

James F. Brennan, New York State Assembly Member

Hon. Marcy Kahn, Justice of the Supreme Court

Prof. David Yassky, New York City Council Member

Scott Greenfield, Vice President, New York State Association of Criminal Defense Lawyers

Gary B. Pillersdorf, Network of Bar Leaders

William C. Thompson, Law Office of Ross & Hill

Gary Schultz, Law Offices of Gary Schultz

### **Public Hearing in Buffalo, New York – September 23, 2003**

Leonard Lenihan, Chair, Erie County Democratic Committee

Bradley J. Stamm, Erie County Republican Committee

Michael J. Flaherty, President Erie County Bar Association

Steven W. Bell, Managing Editor, Buffalo News

Maryann Saccomando Freedman, Cohen & Lombardo, P.C.

Lyle Toohey, Vice President, Voter Service, League of Women Voters  
Melissa Hancock Nickson, Esq., President, Western New York Chapter of the Women's Bar Association of the State of New York  
James M. Shaw, Vice President, Erie County Bar Association  
Craig Hannah, President, Western New York Minority Bar Association  
Professor James A. Gardner, University of Buffalo School of Law  
Patrick J. Maloney, Vice President, Western New York Trial Lawyers Association  
Michael P. Leone, Harris, Chesworth & O'Brien  
Harold A. Kurland, Monroe County Bar Association  
Edward C. Cosgrove, Chair Trial Lawyers Section, New York State Bar Association  
Hon. Frederick G. Reed, Ontario County Surrogate  
Hon. Rose H. Sconiers, Justice of the Supreme Court and President of the Association of Supreme Court Justices of the State of New York

**Public Hearing in Albany, New York – September 30, 2003**

Judge Leonard Weiss, McNamee, Lochner, Titus & Williams, P.C.  
Rex Smith, Editor, Albany Times Union  
Henry Berger, Chair, and Robert Tembeckjian, Administrator, New York State Commission on Judicial Conduct  
Justice James W. Dougherty, President of the New York State Magistrates Association  
Fern Schair, Chairman, Committee for Modern Courts  
Dale Thuillez, Thuillez, Ford, Gold, Johnson & Butler LLP  
Lorraine Power Tharp, Whiteman Osterman & Hanna LLP  
Luke Bierman, Director, Justice Center, American Bar Association  
George P. Alessio, Jr., President, Onondaga County Bar Association  
Judge E. Leo Milonas, President, Association of the Bar of the City of New York  
Jill Dunn, President, Capital District Women's Bar Association  
Hon. Kevin G. Young, Syracuse City Court  
Hon. Anthony J. Paris, Justice of the Supreme Court, 5<sup>th</sup> District  
Hon. John V. Centra, Justice of the Supreme Court, 5<sup>th</sup> District  
Hon. David G. Klim, Onondaga County Family Court  
Stephen F. Downs, Esq.  
Benjamin Ostrer, Benjamin Ostrer & Associates, P.C.  
Richard Denis

# Commission to Promote Public Confidence in Judicial Elections

*The Commission to Promote Public Confidence in Judicial Elections will be conducting three public hearings this fall. Chief Judge Judith S. Kaye appointed the Commission in April of this year to provide a blueprint for enhancing public confidence in New York State's elected judiciary and to promote meaningful voter participation in judicial elections. Its work focuses on improving public confidence in the judicial independence and impartiality of New York State courts in which the judges and justices are elected to the bench.*

**THE PURPOSE OF THE PUBLIC HEARINGS** is to receive the views of interested individuals and organizations with regard to the issues surrounding public confidence and participation in judicial elections. The Commission seeks comments on the following issues:

- 1. THE JUDICIAL CANDIDATE SELECTION PROCESS.** Candidates for election to the bench in New York State are selected for the ballot in a variety of manners. The Commission is seeking comment on the value of the current system and on reforming the existing candidate selection methods. Among the issues about which the Commission seeks views are judicial nominating conventions, partisan versus non-partisan elections, and candidate screening committees.
- 2. JUDICIAL CAMPAIGN ACTIVITY.** Recent federal court cases have challenged certain aspects of New York State's Code of Judicial Conduct relating to campaign activities. The Commission is interested in views on New York's interest in restricting judicial campaign activities, the proper standards for such activities, and the proper balance between the guarantees of freedom of speech in the U.S. and New York Constitutions and New York's interest in restricting such activities. The Commission is also seeking views on the resources available to judicial candidates for understanding and interpreting the rules of campaign activity.
- 3. CAMPAIGN FINANCE.** The Commission is seeking views on the current system of campaign finance for judicial candidates. Among the issues about which the Commission seeks views are providing equal financing opportunities to judicial candidates, campaign contribution limitations, and disclosure of campaign contributions and expenditures.
- 4. VOTER EDUCATION.** The Commission seeks public comment on methods of voter education. Among the relevant issues are voter education regarding specific races and general education about the judicial role in society.

**THE COMMISSION WILL NOT ADDRESS:**

- Issues of changing the current system of elections to an appointive system; *or*
- Complaints against individual judges.

**THE HEARINGS WILL TAKE PLACE AS FOLLOWS:**

**NEW YORK CITY**

**SEPT. 16, 2003**

**9:00 A.M. – 6:00 P.M.**

New York County Lawyers Association, 14 Vesey Street

**BUFFALO**

**SEPT. 23, 2003**

**11:00 A.M. – 5:00 P.M.**

Old County Hall  
92 Franklin Street, Part 6

**ALBANY**

**SEPT. 30, 2003**

**10:30 A.M. – 5:00 P.M.**

Albany Law School  
80 New Scotland Avenue

*HEARINGS MAY BE EXTENDED TO END AT A LATER HOUR WHERE DEMAND EXISTS.*

**ALL THOSE INTERESTED IN TESTIFYING SHOULD REGISTER AT LEAST 10 DAYS BEFORE THE HEARING DATE** by e-mail at [msweeney@law.fordham.edu](mailto:msweeney@law.fordham.edu) or by calling our toll-free telephone number: **1-800-401-6580**. Prior to the hearing, you will receive a time frame for your testimony. Comments should be limited to 10 minutes, after which Commissioners may pose questions.

**THE COMMISSION WILL TRY TO ACCOMMODATE EVERYONE WHO REGISTERS**, but that may not be possible. Preference will be given to individuals representing interested organizations. For those that cannot testify at the hearings, the Commission welcomes written submissions. Submissions intended to be submitted in writing may not be read at the public hearings. Written submissions should be sent or e-mailed to **PROFESSOR MICHAEL SWEENEY** at the address below.

**COMMISSION TO PROMOTE PUBLIC CONFIDENCE IN JUDICIAL ELECTIONS**

**C/O PROF. MICHAEL J.D. SWEENEY, LEGAL COUNSEL**

**FORDHAM LAW SCHOOL, 140 WEST 62ND STREET, NEW YORK, NY 10023**

**e-mail: [msweeney@law.fordham.edu](mailto:msweeney@law.fordham.edu)**

*For further information about the Commission and the Hearings, please call 1-800-401-6580 or visit our website at:*

**<http://law.fordham.edu/commission/judiciaelections>**



**COMMISSION TO PROMOTE PUBLIC CONFIDENCE  
IN JUDICIAL ELECTIONS**

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**APPENDIX E**

**A Survey of New York State Registered Voters (December 2003)**



**Commission to Promote Public  
Confidence in Judicial Elections**

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**Public Opinion and  
Judicial Elections**

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A Survey of New York State Registered Voters

Conducted by the Marist Institute for Public Opinion  
for the Commission to Promote Public Confidence in Judicial Elections

December 2003

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# Public Opinion and Judicial Elections

## TABLE OF CONTENTS

<b>EXECUTIVE SUMMARY .....</b>	<b>IV</b>
<b>PERCEPTIONS OF JUDGES IN NEW YORK STATE.....</b>	<b>6</b>
REGISTERED VOTERS RATE ELECTED JUDGES IN NEW YORK STATE .....	6
PERCEPTIONS OF NEW YORK STATE JUDGES' PRIMARY RESPONSIBILITY .....	7
<b>PERCEPTIONS OF FAIRNESS .....</b>	<b>9</b>
HOW FAIR AND IMPARTIAL ARE NEW YORK STATE JUDGES? .....	9
IS JUSTICE BLIND? .....	10
WHAT FACTORS INFLUENCE JUDGES' DECISIONS? .....	13
<b>PERCEPTIONS OF THE JUDICIAL CAMPAIGN PROCESS.....</b>	<b>14</b>
PUBLIC OPINION ON THE INFLUENCE OF CAMPAIGN CONTRIBUTIONS .....	14
SHOULD JUDGES HEAR CASES INVOLVING CAMPAIGN CONTRIBUTORS? .....	14
PUBLIC OPINION ON THE FACTORS THAT INFLUENCE WHO BECOMES A JUDGE .....	15
TAKING A STAND ON THE ISSUES DURING JUDICIAL CAMPAIGNS .....	16
<b>INDEPENDENCE OF JUDGES .....</b>	<b>18</b>
HOW IMPORTANT IS IT TO VOTERS FOR JUDGES TO BE INDEPENDENT? .....	18
SHOULD JUDGES BE IDENTIFIED WITH A POLITICAL PARTY ON THE BALLOT? .....	20
<b>VOTERS AND JUDICIAL ELECTIONS.....</b>	<b>22</b>
NON-VOTING IN JUDICIAL ELECTIONS .....	22
ELECTED OR APPOINTED...IT DEPENDS .....	23
WHERE DO VOTERS GET THEIR INFORMATION ON JUDICIAL CANDIDATES? .....	24
VOTER GUIDES.....	25
<b>HOW THE SURVEY WAS CONDUCTED.....</b>	<b>26</b>
BACKGROUND.....	26
HOW TO INTERPRET THE NUMBERS .....	26
METHODOLOGY .....	27
<i>Sample Design</i> .....	27

TABLE OF CONTENTS

<i>Data Collection</i> .....	27
DEMOGRAPHY .....	28
<b>APPENDIX</b> .....	<b>29</b>
QUESTION WORDING AND RESULTS .....	29

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# Public Opinion and Judicial Elections

## Executive Summary

### Section 1: Perceptions of judges in New York State

- ❑ New York State registered voters divide over how well they think the elected judges throughout the state are doing their jobs.
  - Forty-five percent of registered voters rate the job elected judges throughout the state are doing as excellent or good, while 48% rate the job performance of elected judges as just fair or poor.
- ❑ Registered voters feel that the most important responsibilities of New York State judges are making impartial decisions, protecting individuals' rights, and providing equal justice for the rich and poor.

### Section 2: Perceptions of fairness

- ❑ Most registered voters generally agree that both New York State judges as a whole and their local county judges are fair and impartial. There is a racial divide.
- ❑ Justice is not blind, according to New York State voters. Many registered voters believe that people who are financially well-off receive better treatment from judges in the state while the poor, non-English speaking people, African-Americans, and Latinos are not treated as well.
- ❑ Most registered voters believe that the political process influences the decisions made by judges.
  - Seventy-nine percent of registered voters believe that having to run for re-election has at least some influence on the decisions judges make, and 78% believe that political parties have a great deal or some influence.

### Section 3: Perceptions of the judicial campaign process

- ❑ Fundraising for judicial elections and the perceived influence it has on the decisions made by judges are sources of concern to registered voters in New York State.
  - Eighty-three percent of registered voters in the state indicate that having to raise money for election campaigns has at least some influence on the decisions made by judges.
- ❑ Registered voters overwhelmingly agree that judges should not be permitted to hear cases involving campaign contributors.
- ❑ Political party leaders top the list of those who registered voters believe have at least some influence over who becomes a judge.
- ❑ About half of registered voters believe that a judge will be fair and impartial on a case involving an issue that they had taken a stand on during their election campaign.

#### **Section 4: Independence of Judges**

- ❑ Nine out of ten registered voters believe that it is important for a judge to be independent from political party leaders and campaign contributors.
- ❑ 68% of registered voters in New York State believe the justice system would be improved if judicial candidates would agree not to raise money and limit spending to publicly financed funds.
- ❑ 65% of registered voters believe disclosing campaign contributions to the public immediately would have a positive effect on judicial elections.
- ❑ Registered voters divide over whether judges should be identified with a political party on the ballot, or not.

#### **Section 5: Voters and Judicial Elections**

- ❑ A majority of New York State registered voters, 58%, indicate that the main reason they would not vote in a judicial election is that they do not know enough about the candidates.
- ❑ New York State registered voters generally are not familiar with how judges throughout the state obtain their posts.
- ❑ The most common sources of information about judicial elections are newspapers and magazines, television, word of mouth, radio, and direct mail.
- ❑ Voter guides, despite limited availability throughout the state, are used by nearly half of registered voters as a source of information about judicial elections. Most registered voters think voter guides would be a useful way to learn more about judicial candidates and campaigns.

#### **Section 6: How the Survey was Conducted**

- ❑ This survey was sponsored by the Commission to Promote Public Confidence in Judicial Elections and conducted by the Marist Institute for Public Opinion.
- ❑ 1,003 New York State registered voters were interviewed by telephone in proportion to the voter registration in the state from October 8<sup>th</sup> through October 20<sup>th</sup>, 2003.
- ❑ The sampling error for the survey results is  $\pm 3\%$ . The error margin increases for cross-tabulations.

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# Section 1

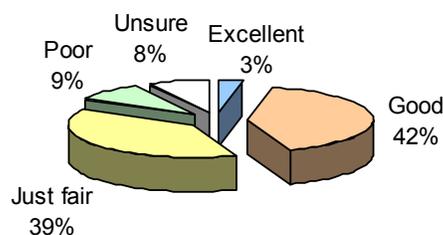
## Perceptions of Judges in New York State

### Registered voters rate elected judges in New York State

New York State registered voters divide over how well they think elected judges throughout the state are doing their jobs. Those surveyed were asked to rate the job performance of elected judges in New York State using a scale ranging from excellent to poor.

Forty-five percent of registered voters rate the job elected judges throughout the state are doing as excellent or good, while 48% rate the job performance of elected judges as just fair or poor.

Rate job of elected judges in NYS



Overall, would you say the elected judges in New York State are doing an excellent, good, just fair, or poor job?

Registered voters who live in the suburbs and upstate New York are more likely than registered voters in New York City to rate the job being done by judges positively. Forty-eight percent of suburban and 54% of upstate registered voters rate the job being done by judges as excellent or good. These results compare with 30% of registered voters in New York City who rate elected judges positively.

Elected judges in New York State receive low ratings from African-American and Latino voters. Only 29% of African-American voters and 33% of Latino voters rate judges who are elected in the state positively. Nearly half of white voters, 49%, rate the job being done by judges as excellent or good.

SECTION 1: PERCEPTIONS OF JUDGES IN NEW YORK STATE

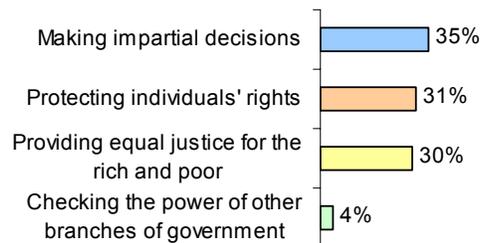
		Upstate	NYC	Suburbs	White	African-American	Latino
		%	%	%	%	%	%
Rate job of elected judges in New York State	<u>Excellent/good</u>	<u>54</u>	<u>30</u>	<u>48</u>	<u>49</u>	<u>29</u>	<u>33</u>
	Excellent	3	2	4	3	4	2
	Good	51	28	44	46	25	31
	<u>Just fair/poor</u>	<u>42</u>	<u>58</u>	<u>44</u>	<u>43</u>	<u>65</u>	<u>58</u>
	Just fair	33	47	36	36	52	42
	Poor	9	11	8	7	13	16
	Unsure	5	12	8	8	7	9

**Perceptions of New York State judges' primary responsibility**

Registered voters feel that the most important responsibilities of New York State judges are making impartial decisions, protecting individuals' rights, and providing equal justice for the rich and poor.

About one-third of registered voters deem one of these three responsibilities to be most important, including 35% who cite making impartial decisions, 31% who choose protecting individuals' rights, and 30% who mention providing equal justice for the rich and poor. 4% of registered voters indicate that checking the power of other branches of government is the most important responsibility of judges.

**Most important responsibility of judges**



Which one of the following do you think is the most important responsibility for judges: (choices rotated)

Race, education, and income are all related to what New York State voters think is the most important responsibility of judges. Providing equal justice for the rich and the poor is most important to African-Americans, 44%, those without a college degree, 36%, and those who earn less than \$50,000 a year, 37%. In contrast, making impartial decisions is the most important responsibility of judges for those who are white, 39%, college graduates, 45%, and earn more than \$50,000 a year, 41%.

SECTION 1: PERCEPTIONS OF JUDGES IN NEW YORK STATE

		White	African-American	Not college graduate	College graduate	Income < \$50,000	Income \$50,000 or more
		%	%	%	%	%	%
Most important responsibility of judges	Providing equal justice for the rich and poor	28	44	36	23	37	25
	Protecting individuals' rights	30	37	33	28	30	30
	Making impartial decisions	39	13	28	45	29	41
	Checking the power of other branches of government	4	5	4	4	4	4

## Section 2

### Perceptions of Fairness

#### How fair and impartial are New York State judges?

Many registered voters in New York State believe making impartial decisions is an important responsibility of a judge. In order to assess voters' perceptions of how well judges are meeting this responsibility, they were asked how much they agree or disagree that judges are, in fact, fair and impartial.

Most registered voters generally agree that both New York State judges as a whole and their local county judges are fair and impartial. Seventy-one percent of registered voters throughout the state agree that New York State judges as a whole are fair and impartial, and 70% agree that their county judges are fair and impartial.

		NYS Registered Voters	
		Judges as a Whole	County Judges
		%	%
Judges are fair and impartial	<u>Strongly Agree/agree</u>	<u>71</u>	<u>70</u>
	Strongly agree	8	9
	Agree	63	61
	<u>Disagree/strongly disagree</u>	<u>22</u>	<u>22</u>
	Disagree	18	17
	Strongly disagree	4	5
	Unsure	7	8

Would you say that you strongly agree, agree, disagree, or strongly disagree that judges as a whole/judges in your county are fair and impartial?

However, there is a racial divide. African-American voters, in particular, are less likely than others in the state to agree that judges are fair and impartial. About half of African-American voters, 51%, agree that New York State judges as a whole are fair and impartial and 43% disagree. When asked to consider judges at the county level, 43% of African-American voters believe county judges to be fair and impartial and 48% believe they are not.

Although the difference is not as dramatic, about six in ten Latino voters believe that both New York State judges as a whole, 60%, and county judges, 61%, are fair and impartial. This compares with 76% of white voters who agree that judges

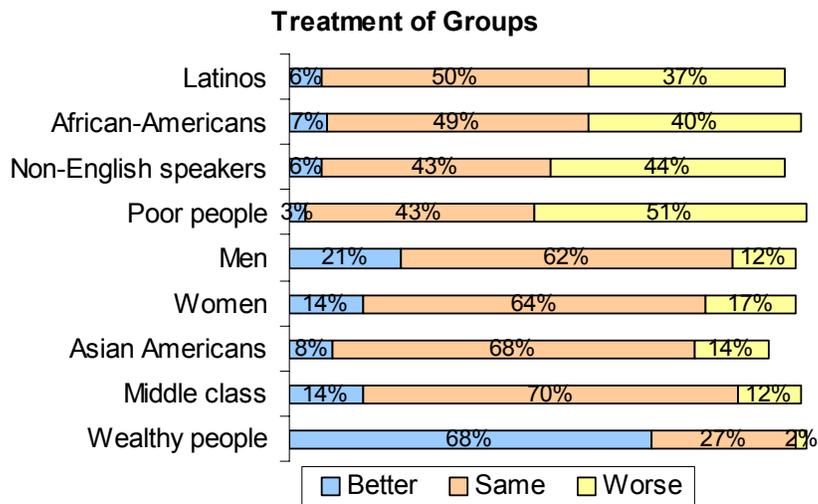
throughout the state are fair and impartial and 75% who hold this view of judges in their county.

		White		African-American		Latino	
		Judges as a Whole	County Judges	Judges as a Whole	County Judges	Judges as a Whole	County Judges
		%	%	%	%	%	%
Judges are fair and impartial	<u>Strongly agree/agree</u>	<u>76</u>	<u>75</u>	<u>51</u>	<u>43</u>	<u>60</u>	<u>61</u>
	Strongly agree	8	10	7	7	7	7
	Agree	68	65	44	36	53	54
	<u>Disagree/strongly disagree</u>	<u>17</u>	<u>18</u>	<u>43</u>	<u>48</u>	<u>35</u>	<u>34</u>
	Disagree	14	14	29	33	30	28
	Strongly disagree	3	4	14	15	5	6
	Unsure	7	7	5	9	5	6

### Is justice blind?

Judges are expected to look beyond a person's race, ethnicity, gender, and income in making their decisions. But do registered voters throughout New York State believe all groups receive equal treatment? Registered voters believe that the wealthy receive better treatment by judges in the state while the poor, non-English speakers, African-Americans, and Latinos are not treated as well.

Justice is not blind, according to registered voters in New York State. Registered voters believe that not all groups receive the same treatment. The one group that the majority of voters thinks receives better treatment than other groups is the wealthy, 68%. Groups whom many registered voters think are not treated as well as other groups include poor people, 51% think that the poor are not treated as well as other groups, non-English speaking people, 44%, African-Americans, 40%, and Latinos, 37%. Registered voters think that Asian Americans, 68%, and the middle class, 70%, are generally treated about the same as anyone else. In addition, most registered voters believe there is little difference in how judges treat men and women.



(Rotated) Some people say that judges in New York State generally favor certain groups over others, while others say (rotated) that judges in New York State generally treat everyone equally. Please tell me whether you think that each of the following groups receives better treatment, the same treatment, or worse treatment than other groups from judges in New York State? (Respondents who are unsure are not included in the above chart)

Many registered voters throughout New York State feel that people who are poor receive worse treatment from judges than other groups. Those individuals who earn less than \$50,000 a year are more likely to think so than those earning \$50,000 or more annually. Nearly six in ten registered voters who earn less than \$50,000 a year believe that people who are poor are not treated as well as other people while 47% of registered voters earning more than \$50,000 a year share this opinion.

African-American and Latino voters are also more likely to believe that judges in New York State do not treat people with low incomes as well as those with higher incomes. Eighty-one percent of African-American voters and 67% of Latino voters believe that poor people are not treated as well by judges in the state compared with 46% of white voters who feel this way.

		Income < \$50,000	Income \$50,000 or more	White	African-American	Latino
		%	%	%	%	%
Treatment of people who are poor	Better	2	2	3	0	1
	Same	36	46	47	17	31
	Worse	59	47	46	81	67

On the other hand, registered voters believe people who are well off financially receive better treatment from judges in New York State than do other people. African-American voters and Latino voters especially feel this way. Eighty-six

percent of African-Americans and 90% of Latinos believe that the wealthy receive better treatment from judges in the state.

		White	African-American	Latino
		%	%	%
Treatment of the wealthy	Better	63	86	90
	Same	31	10	9
	Worse	2	1	1

African-American and Latino voters are also more likely than white voters to feel that non-English speaking people are not treated as well as other groups by judges in New York State. Six in ten African-Americans and seven in ten Latino voters believe that non-English speaking people receive worse treatment than other groups compared with 39% of white voters who share this view.

Younger voters are also more likely than older voters to believe that non-English speaking people are not treated as well by judges. Six in ten registered voters between 18 and 30 years of age believe that non-English speaking people are treated worse than other people, significantly higher than registered voters aged 31 to 44, 46%, 45 to 60, 42%, and over 60, 35%.

		White	African-American	Latino	30 or less	31 to 44	45 to 60	Over 60
		%	%	%	%	%	%	%
Treatment of non English speakers	Better	6	6	2	4	5	6	9
	Same	47	26	27	32	45	44	48
	Worse	39	60	70	60	46	42	35

Although many registered voters throughout New York State feel that African-Americans and Latinos are not treated as well as other people by judges in the state, African-American and Latino voters are more likely to have this view. Nearly eight in ten African-American voters, 79%, and more than six in ten Latino voters, 62%, believe that African-Americans receive worse treatment than other groups from judges in the state. And more than half of African-American voters, 58%, and Latino voters, 56%, express the belief that Latinos receive worse treatment from New York State judges than do other people. Only about one-third of white voters share this opinion.

SECTION 2: PERCEPTIONS OF FAIRNESS

		White		African-American		Latinos	
		African-American	Latino	African-American	Latino	African-American	Latino
		%	%	%	%	%	%
Treatment of groups	Better	7	6	1	5	4	3
	Same	55	53	15	30	33	40
	Worse	33	33	79	58	62	56

**What factors influence judges' decisions?**

Although registered voters place a high value on judges' responsibility to make impartial decisions, most voters believe that a variety of factors do influence the decisions judges make.

Most registered voters believe that the political process influences the decisions made by judges. Seventy-nine percent of registered voters believe that having to run for re-election has at least some influence on the decisions judges make, and 78% of registered voters believe that political parties have a great deal or some influence. In each instance, more than one-third of registered voters in the state, 35%, believe that each of these two factors has a great deal of influence on the decisions judges make.

Many registered voters cite other factors of influence, as well. About seven in ten, 69%, believe that people a judge knows personally influence a judge's decisions. Sixty-six percent believe that media coverage has a great deal or some influence, and 64% believe that public opinion on an issue has at least some influence on the decisions made by judges.

		NYS Registered Voters				
		Having to run for re-election	Political parties	People judges personally know	Media coverage	Public opinion on an issue
		%	%	%	%	%
Factors that influence judges' decisions	<u>A great deal/some</u>	79	78	69	66	64
	A great deal	35	35	28	27	13
	Some	44	43	41	39	51
	<u>Just a little/not at all</u>	22	22	31	34	36
	Just a little	14	15	21	21	23
	Not at all	8	7	10	13	13

Do you think that (insert item-rotated) influences the decisions of judges in New York State a great deal, some, just a little, or not at all?

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## Section 3

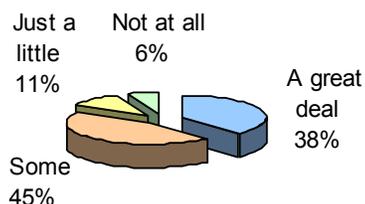
### Perceptions of the Judicial Campaign Process

#### Public opinion on the influence of campaign contributions

Fundraising for judicial elections and the perceived influence it has on the decisions made by judges are sources of concern for registered voters in New York State.

Eighty-three percent of registered voters in the state indicate that having to raise money for election campaigns has at least some influence on the decisions made by judges. Nearly four in ten voters, 38%, believe campaign fundraising has a great deal of influence on the decisions judges in New York State make.

**Influence of having to raise money for election campaigns**



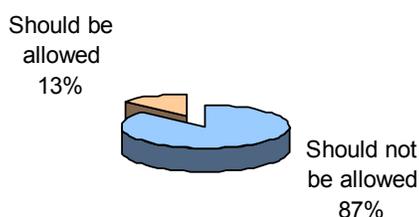
Some judges in New York State are elected and therefore have to raise money for their election campaigns. How much influence do you think campaign contributions made to judges have on their decisions: a great deal, some, just a little, or not at all?

#### Should judges hear cases involving campaign contributors?

Given that most New York State registered voters believe that campaign contributions have at least some influence on the decisions made by judges, it is no surprise that voters also overwhelmingly agree that judges should not be permitted to hear cases involving campaign contributors.

Eighty-seven percent of registered voters throughout the state think that judges should not be allowed to hear cases when their campaign contributors are involved. A small minority, 13%, disagrees and thinks that judges should be allowed to hear cases when contributors to their election campaigns are involved in a case.

### Judges allowed to hear cases when campaign contributors involved



Do you think a judge should or should not be allowed to hear or rule in cases when one of the parties has given money to the judge's campaign?

### Public opinion on the factors that influence who becomes a judge

Registered voters believe that many groups have a role in who becomes a judge. Political party leaders top the list of those who registered voters believe have at least some influence over who becomes a judge. Eighty-six percent of registered voters believe that political party leaders have a great deal or some influence over who becomes a judge including 48% of registered voters who believe political party leaders have a great deal of influence.

Seventy-eight percent of registered voters believe that campaign contributors have at least some influence over who becomes a judge followed by 75% who believe that special interest groups have a great deal or some influence, and 74% who believe that voters have at least some influence over who becomes a judge.

		NYS Registered Voters			
		Political party leaders	Campaign contributors	Special interest groups	Voters
		%	%	%	%
Groups who have influence over who becomes a judge	<u>A great deal/some</u>	<u>86</u>	<u>78</u>	<u>75</u>	<u>74</u>
	A great deal	48	39	31	36
	Some	38	39	44	38
	<u>Just a little/not at all</u>	<u>15</u>	<u>22</u>	<u>25</u>	<u>26</u>
	Just a little	12	15	18	18
	Not at all	3	7	7	8

Registered voters in New York City are less likely than their upstate and suburban counterparts to believe that voters maintain a great deal of influence over who becomes a judge. Twenty-eight percent of registered voters in New York City indicate that voters have a great deal of influence over who becomes a judge, compared to 38% of suburban and 40% of upstate voters.

		Upstate	NYC	Suburbs
		%	%	%
Influence of voters on who becomes a judge	<u>Great deal/some</u>	<u>76</u>	<u>68</u>	<u>77</u>
	Great deal	40	28	38
	Some	36	40	39
	<u>Just a little/not at all</u>	<u>24</u>	<u>32</u>	<u>22</u>
	Just a little	18	20	15
	Not at all	6	12	7

Registered voters in New York City and the suburbs are more likely than upstate voters to believe that campaign contributors have a great deal of influence over who becomes a judge. Forty-four percent of New York City voters and 43% of suburban voters believe that campaign contributors have a great deal of influence over who becomes a judge. This compares with 33% of upstate voters who share this view.

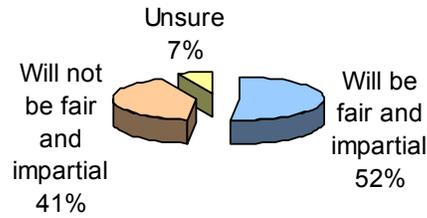
		Upstate	NYC	Suburbs
		%	%	%
Influence of campaign contributors on who becomes a judge	<u>Great deal/some</u>	<u>76</u>	<u>82</u>	<u>78</u>
	Great deal	33	44	43
	Some	43	38	35
	<u>Just a little/not at all</u>	<u>24</u>	<u>19</u>	<u>21</u>
	Just a little	16	14	15
	Not at all	8	5	6

### **Taking a stand on the issues during judicial campaigns**

In the course of campaigning for election, some judicial candidates will take positions on issues. But when a judge takes a stand on an issue, do voters believe that the judge will be fair and impartial if a case involving that issue comes before him or her?

Fifty-two percent of registered voters think that a judge can be fair and impartial in a case involving an issue the judge has taken a stand on during a campaign. However, 41% of registered voters think a judge will not be fair and impartial in this situation.

**Campaign issue effect on judicial fairness**



If a person running for judge takes a position on an issue during an election campaign, do you think that person will be fair and impartial or will not be fair and impartial as a judge if a case involving that issue comes before them?

While a majority of upstate voters believe that a judge will be fair and impartial on an issue even if the judge has taken a stand on that issue, their suburban and New York City counterparts are divided on the question. Forty-nine percent of suburban voters think that a judge will be fair and impartial on issues that the judge has taken a stand on during an election, and forty-two percent think that the judge will not be fair and impartial. New York City voters divide evenly. Forty-six percent think that the judge will be fair and impartial, and 46% think that the judge will not be fair and impartial.

		Upstate	NYC	Suburbs
		%	%	%
Campaign issue effect on judicial fairness	Will be fair and impartial	58	46	49
	Will not be fair and impartial	36	46	42
	Unsure	6	8	9

## Section 4

### Independence of Judges

#### How important is it to voters for judges to be independent?

As noted earlier, most registered voters in New York State believe that political party leaders and campaign contributors have at least some influence over who becomes a judge. Nine out of ten registered voters believe that it is important for a judge to be independent from political party leaders and campaign contributors including a majority of voters who believe it is very important for judges to be independent from each of these groups.

		NYS Registered Voters	
		Political party leaders	Campaign contributors
		%	%
Judges independence from political party leaders and campaign contributors	<u>Very important/important</u>	<u>90</u>	<u>90</u>
	Very important	56	56
	Important	34	34
	<u>Not very/not at all important</u>	<u>9</u>	<u>10</u>
	Not very important	5	6
	Not at all important	4	4

Do you think it is very important, important, not very important, or not important at all that a judge be independent from (insert item-rotated) in order for a judge to carry out his or her responsibilities?

Although a majority of both men and women believe it is very important for judges to be independent from political party leaders, men are more likely than women to think so. Sixty-two percent of men report that it is very important for judges to be independent from political party leaders compared with 51% of women.

Similarly, older voters are more likely to share this view. Sixty-seven percent of registered voters over 60 years of age are likely to agree that it is very important for judges to be independent from political party leaders compared with 61% of registered voters aged 45 to 60, 50% of registered voters aged 31 to 44, and 31% of registered voters aged 30 or less.

SECTION 4: INDEPENDENCE OF JUDGES

		Men	Women	30 or less	31 to 44	45 to 60	Over 60
		%	%	%	%	%	%
Importance of judges independence from political party leaders	Very important/important	91	90	86	90	90	93
	Very important	62	51	31	50	61	67
	Important	29	39	55	40	29	26
	Not very/not at all important	10	10	14	10	10	7
	Not very important	5	6	8	5	6	3
	Not at all important	5	4	6	5	4	4

When it comes to the importance of judges being independent from campaign contributors, men, college graduates, and those who earn more than \$50,000 a year are more likely to feel strongly on this issue. Sixty-one percent of men believe it is very important for judges to be independent from campaign contributors, 63% of voters with a college degree, and 61% of voters who earn more than \$50,000 a year think it is very important for judges to be independent from campaign contributors.

		Men	Women	Not College Graduate	College Graduate	Income < \$50,000	Income \$50,000 or more
		%	%	%	%	%	%
Importance of judges independence from campaign contributors	Very important/important	91	88	88	92	89	91
	Very important	61	51	50	63	50	61
	Important	30	37	38	29	39	30
	Not very/not at all important	8	12	12	8	11	8
	Not very important	4	8	6	6	5	6
	Not at all important	4	4	6	2	6	2

**The public's perception of campaign finance reform**

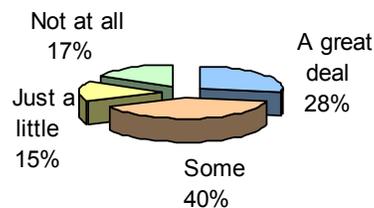
Registered voters in New York State are concerned about the potential issues that arise from campaign fundraising. As noted earlier, registered voters perceive campaign contributors to have at least some influence on the decisions made by judges as well as an influence on who becomes a judge. In addition, many registered voters believe it is very important that judges remain independent from their contributors, and that judges should not be involved with cases involving their contributors.

Registered voters were presented two campaign finance reform proposals.

- First proposed reform: Have judicial candidates agree not to raise money and limit their spending to money available from a publicly financed election fund.

Sixty-eight percent of New York State registered voters believe that this measure will improve the justice system at least some. About one-third of registered voters, 32%, think this reform measure will improve the justice system just a little or not at all.

**How much will judicial system be improved if candidates agree not to raise money and limit spending to publicly financed funds**

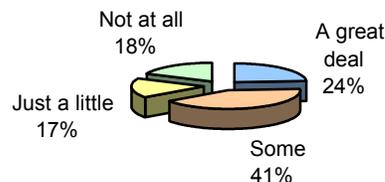


Do you think having judicial candidates agree not to raise money and limit their spending to money available from a publicly financed election fund will improve the justice system a great deal, some, just a little, or not at all?

- Second proposed reform: Have each campaign contribution to a judicial candidate disclosed to the public immediately.

Nearly two-thirds of registered voters, 65%, think that this measure will improve the justice system a great deal or some.

**How much will judicial system be improved if campaign contributions are disclosed to public immediately**



Do you think having each campaign contribution to a judicial candidate disclosed to the public immediately will improve the justice system a great deal, some, just a little, or not at all?

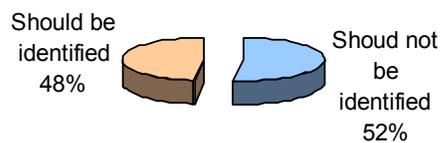
**Should judges be identified with a political party on the ballot?**

Registered voters were presented with two positions regarding whether judges should be identified with a political party on the ballot. The first statement was: “Some people think judges running for election in New York State should not be identified with a political party on the ballot because people may vote for the party rather than for the candidate with the better qualifications.” The second

statement was: “Other people think judges running for election in New York State should be identified with a political party on the ballot to help people understand what the candidate stands for.” Registered voters divide on whether judicial candidates should or should not be identified with a political party on the ballot.

Fifty-two percent of registered voters believe that judges should not be identified with a political party, and 48% of registered voters think that judges should be identified with a political party on the ballot.

**Judicial candidate party affiliation on ballot**



(Rotated) Some people think judges running for election in New York State should not be identified with a political party on the ballot because people may vote for the party rather than for the candidate with the better qualifications. (Rotated) Other people think judges running for election in New York State should be identified with a political party on the ballot to help people understand what the candidate stands for. Which comes closer to your own view: judges should not be identified with a political party on the ballot or judges should be identified with a political party on the ballot?

Upstate voters are more likely than suburban and New York City voters to feel that judges should not be identified with a political party. Fifty-nine percent of upstate voters indicate that judges should not be identified with a political party compared with 46% of suburban voters and 48% of New York City voters.

Additionally, 54% of white voters believe that party affiliation should not be on the ballot compared with 43% of African-American voters who share this view.

		White	African-American	Upstate	NYC	Suburbs
		%	%	%	%	%
Judicial candidate party affiliation on ballot	Should not be identified	54	43	59	48	46
	Should be identified	46	57	41	52	54

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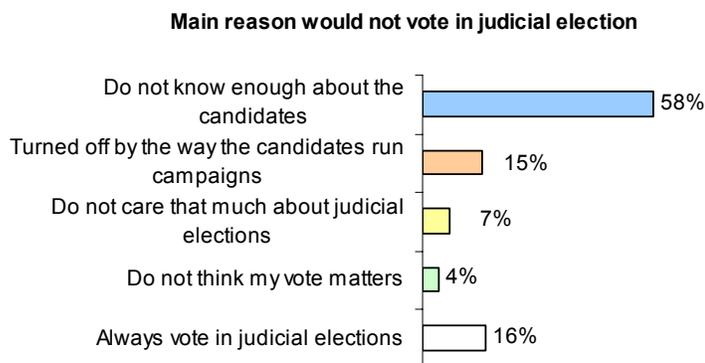
## Section 5

### Voters and Judicial Elections

#### Non-voting in judicial elections

A majority of New York State registered voters, 58%, indicate that the main reason they would not vote in a judicial election is that they do not know enough about the candidates.

Fifteen percent would not vote because they are turned off by the way the candidates run campaigns followed by 7% who do not care that much about judicial elections, and 4% who believe that their vote does not matter. The remaining 16% of respondents report that they always vote in judicial elections.



Which one of the following comes closest to the main reason why you would not vote in a judicial election: (choices rotated)

Registered voters throughout the state mention their lack of knowledge about the candidates as their main reason for not voting in judicial elections, although New York City voters are most likely to cite this reason, 67%, followed by voters in the suburbs, 59%, and voters upstate, 52%.

		Upstate	NYC	Suburbs
		%	%	%
Main reason would not vote in judicial election	Do not know enough about the candidates	52	67	59
	Turned off by the way the candidates run	18	10	14
	Don't care about judicial elections	7	9	4
	Do not think my vote matters	3	4	4
	Always vote in judicial elections	19	10	19

### Elected or appointed...it depends

New York State registered voters generally are not familiar with how judges throughout the state obtain their posts. Twenty-six percent of registered voters are unsure if justices of the New York State Court of Appeals are elected or appointed, 23% of registered voters are unsure if justices of the New York State Supreme Court are elected or appointed, and 22% of registered voters are unsure whether county level judges are elected or appointed.

About half of registered voters, 52%, are aware that judges of the New York State Court of Appeals are appointed, while 22% of registered voters believe these judges to be elected.

One-third of voters correctly state that justices of the New York State Supreme Court are elected, while more than four in ten, 43%, believe these justices to be appointed.

Voters are more knowledgeable about their local county and civil court judges. Sixty percent of registered voters correctly indicate that their local county and civil court judges are elected and only 19% of registered voters believe these judges are appointed.

		NYS Court of Appeals	NYS Supreme Court	County level and civil courts
		%	%	%
Knowledge of judicial elections	Elected	22	33	60
	Appointed	52	43	19
	Unsure	26	23	22

Do you think (insert item-rotated) are elected or appointed? If you are unsure, just say so. a) Judges of the New York State Court of Appeals which is the highest court in the state b) Justices of the New York State Supreme Court which is the main trial court in the state c) Judges of county level and civil courts

While there are no significant differences among groups on their knowledge about how judges for the New York State Court of Appeals or the New York State Supreme Court are selected, there are several significant differences among groups regarding knowledge of how local county and civil judges are selected.

Registered voters who know that local county and civil court judges are elected are more likely to live upstate, 72%, or in the suburbs, 60%, than in New York City, 43%.

		Upstate	NYC	Suburbs
		%	%	%
Knowledge of local county and civil court judges	Elected	72	43	60
	Appointed	9	30	21
	Unsure	19	28	19

Registered voters who know that local county and civil court judges are elected are also more likely to be white, 64%, than African-American, 45%, or Latino, 37%.

		White	African-American	Latino
		%	%	%
Knowledge of local county and civil court judges	Elected	64	45	37
	Appointed	15	37	36
	Unsure	21	18	27

### **Where do voters get their information on judicial candidates?**

Newspapers or magazines, television, and word of mouth are the most popular sources used by New York State registered voters to learn about judicial elections.

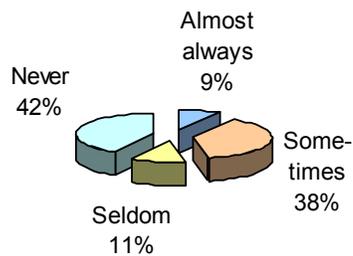
More than eight in ten, 84%, registered voters report that they use newspapers or magazines almost always or sometimes to learn about judicial elections. About seven in ten registered voters use television, 72%, and word of mouth, 67%, almost always or sometimes to learn about judicial elections.

Cited by more than half of New York State's registered voters is radio, 59%, and direct mail, 55%. Noted less often, but still cited as sources for information on judicial campaigns are lawn signs or posters, 39%, door to door visits from the candidates or their workers, 33%, bar association ratings, 28%, and the Internet, 23%.

### Voter guides

Voter guides are used by nearly half of registered voters as a source of information to learn about judicial candidates. Forty-seven percent of registered voters rely on voter guides at least sometimes to learn about judicial candidates. While about half, 53%, of registered voters report using voter guides seldom or never, it should be noted that the guides are not available in all regions of the state.

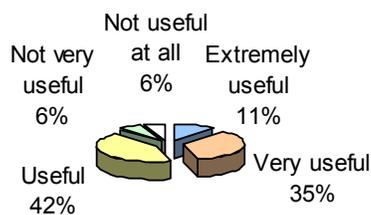
#### Frequency of Using Voter Guides



Do you use voter guides to learn about judicial candidates almost always, sometimes, seldom, or never?

Most registered voters indicate that voter guides are useful. Eleven percent of registered voters indicate that such a guide would be extremely useful and 35% of registered voters indicate that the guide would be very useful. Only 12% of registered voters do not consider a voter guide to be useful.

#### Usefulness of voter guides



Do you think that it would be extremely useful, very useful, useful, not very useful, or not useful at all if New York State were to provide voter guides for judicial elections to help inform voters about the candidates in each race?

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## Section 6

### How the Survey was Conducted

#### Background

This survey was sponsored by the Commission to Promote Public Confidence in Judicial Elections and conducted by the Marist Institute for Public Opinion. The purpose of the survey was to measure the perceptions of registered voters throughout the state about judges in New York State and the judicial campaign and election process.

#### How to Interpret the Numbers

The goal of a scientifically designed survey sample is to be representative of the population that is being surveyed. The results obtained from a scientific probability survey are not just answers from those individuals who responded but more importantly, because of the design and methods by which the data are collected, can be used to generalize to the population as a whole. For this study, the results are an estimate of what would have been obtained, within a certain range, if all registered voters throughout New York State were interviewed.

When analyzing the survey results, it should be kept in mind that in all surveys each result is an estimate of what would have been obtained had everyone in the eligible population been interviewed. This difference between the responses if all registered voters throughout New York State have been interviewed and the survey results is referred to as sampling error. Sampling error is primarily based upon the number of interviews in the survey sample.

1,003 New York State registered voters were interviewed from October 8<sup>th</sup> through October 20<sup>th</sup>, 2003. The sampling error for the survey results is  $\pm 3\%$  for percentages near 50% at a confidence level of 95%. The sampling error may be interpreted as indicating the probability (95 times out of 100) within which the results of repeated samplings, in the same time period, assuming the same sampling procedures can be expected to fall within a certain range. The sampling error diminishes slightly for questions whose results are at the extremes, and the sampling error increases as the number of interviews for a particular group or sub-group within the sample declines.

For example, 52% of New York State registered voters surveyed think judicial candidates should not be identified with a political party. We may conclude that there is a high probability (95 times out of 100) that the average results for this question of repeated samplings of registered voters throughout New York State will fall between 49% and 55% ( $\pm 3\%$ ).

Please note that numbers may not add to 100% due to rounding.

## **Methodology**

### **Sample Design**

A stratified random digit dial (RDD) probability design was used to draw the telephone numbers for the survey. RDD ensures representation of both listed and unlisted telephone numbers. Telephone numbers were selected based upon a list of telephone exchanges from throughout New York State. The exchanges were selected to ensure that each county was represented in proportion to the number of registered voters. The telephone numbers were obtained from Survey Sampling Inc. in Fairfield, Connecticut. The sample file was electronically matched after selection to the yellow pages business directory and screened for business and or disconnected numbers. In order to participate in the survey a respondent needed to be at least 18 years of age or older and be registered to vote at their current address in New York State.

### **Data Collection**

The questionnaire and the telephone samples were programmed for computer assisted telephone interviewing (CATI). A pretest of the questionnaire was conducted on October 7<sup>th</sup>, 2003. 87 interviews with New York State registered voters were completed. As a result of the pretest, the questionnaire was updated and revised.

All interviewing for both the pretest and the full survey was conducted from a centralized telephone facility using trained interviewers who were specifically briefed on this study. Interviewers attempted to contact households between 5:15 p.m. and 9:45 p.m. on weeknights and 1 p.m. to 5:00 p.m. on weekends. Callbacks were also conducted between 9:00 a.m. and 5:00 p.m. on weekdays. A toll free number was provided for respondents to call the survey center to complete the survey at their convenience. Polling supervisors regularly monitored, evaluated, and provided feedback to the interviewing staff.

Information collected from survey participants is both confidential and anonymous. Personal identifying information was removed from files after the integrity of the data was verified.

**Demography**

		NYS Registered Voters
		%
NYS Registered Voters		100
Party Registration	Democrat	44
	Republican	32
	Independent	23
	Other	1
Region	Upstate	43
	New York City	33
	Suburbs	24
Gender	Male	48
	Female	52
Race	White	80
	African-American	9
	Latino or Hispanic	9
Education	Not college graduate	56
	College Graduate	44
Age	30 or less	13
	31 to 44	25
	45 to 60	37
	Over 60	25
Household Income	Less than \$50,000	43
	\$50,000 or more	57

# Public Opinion and Judicial Elections

## Appendix

### Question wording and results

Q1. Are you 18 years of age or older?

		NYS Registered Voters
		Col %
18 years of age or older	Yes	100%

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Q2. Are you registered to vote at your current address in New York State?

		NYS Registered Voters
		Col %
Registered to vote	Yes	100%

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Q3. What are the chances of your voting in the elections coming up this November, are you almost certain to vote, will you probably vote, are the chances fifty-fifty, or don't you think you will vote?

		NYS Registered Voters
		Col %
Involvement in elections - Generally	Almost certain	70%
	Probably	14%
	Fifty-fifty	10%
	Do not think will vote	6%

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Q4. Thinking specifically about judicial elections, how frequently do you vote in elections for judges: almost always, sometimes, not often, almost never?

		NYS Registered Voters
		Col %
Involvement in elections - Judicial	Almost always	52%
	Sometimes	23%
	Not often	10%
	Almost never	16%

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Q5. Which one of the following comes closest to the main reason why you would not vote in a judicial election:

		NYS Registered Voters
		Col %
Main reason not vote in judicial elections	Do not know enough about the candidates	58%
	Always vote in judicial elections	16%
	Turned off by the way the candidates run campaigns	15%
	Do not care that much about judicial elections	7%
	Do not think my vote matters	4%

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Q6. Do you think (insert item) are elected or appointed? If you are unsure, just say so.

Knowledge of Judicial Elections

		NYS Registered Voters
		Col %
Judges of the New York State Court of Appeals	Elected	22%
	Appointed	52%
	Unsure	26%
Justices of the New York State Supreme Court	Elected	33%
	Appointed	43%
	Unsure	23%
Judges of County level and civil courts	Elected	60%
	Appointed	19%
	Unsure	22%

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Q7. Overall, would you say the elected judges in New York State are doing an excellent, good, just fair, or poor job?

		NYS Registered Voters
		Col %
Rate job of elected judges in New York State	Excellent	3%
	Good	42%
	Just fair	39%
	Poor	9%
	Unsure	8%

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Q8. Which one of the following do you think is the most important responsibility for judges:

		NYS Registered Voters
		Col %
Most important responsibility of judges	Making impartial decisions	35%
	Protecting individuals' rights	31%
	Providing equal justice for the rich and poor	30%
	Checking the power of other branches of government	4%

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Q9. Would you say that you strongly agree, agree, disagree, or strongly disagree that (insert item) are fair and impartial?

Perception of Fairness and Impartiality

		NYS Registered Voters
		Col %
Judges in your county are fair and impartial	Strongly Agree	9%
	Agree	61%
	Disagree	17%
	Strongly Disagree	5%
	Unsure	8%
New York State judges as a whole are fair and impartial	Strongly Agree	8%
	Agree	63%
	Disagree	18%
	Strongly Disagree	4%
	Unsure	7%

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Q10. Some people say that judges in New York State generally favor certain groups over others, while others say that judges in New York State generally treat everyone equally.

Please tell me whether you think that each of the following groups receives better treatment, the same treatment, or worse treatment than other groups from judges in New York State?

Treatment of Groups by New York State Judges

		NYS Registered Voters
		Col %
Men	Better	21%
	Same	62%
	Worse	12%
	Unsure	5%
Women	Better	14%
	Same	64%
	Worse	17%
	Unsure	5%
African Americans	Better	7%
	Same	49%
	Worse	40%
	Unsure	4%
Hispanics and Latinos	Better	6%
	Same	50%
	Worse	37%
	Unsure	7%
Asian Americans	Better	8%
	Same	68%
	Worse	14%
	Unsure	9%
Non-English speaking people	Better	6%
	Same	43%
	Worse	44%
	Unsure	7%
Middle class people	Better	14%
	Same	70%
	Worse	12%
	Unsure	4%
People who are poor	Better	3%
	Same	43%
	Worse	51%
	Unsure	4%
Wealthy people	Better	68%
	Same	27%
	Worse	2%
	Unsure	3%

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Q11. Some judges in New York State are elected and therefore have to raise money for their election campaigns. How much influence do you think campaign contributions made to judges have on their decisions: a great deal of influence, some influence, just a little influence, or no influence at all?

		NYS Registered Voters
		Col %
Perception of influence on judges' decisions of having to raise money for election campaigns	A great deal	38%
	Some	45%
	Just a little	11%
	No influence at all	6%

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Q12. Do you think that (insert item) influences the decisions of judges in New York State a great deal, some, just a little, or not at all?

Perception of Influence on Judges' Decisions

		NYS Registered Voters
		Col %
The public's opinion on an issue	Great deal	13%
	Some	51%
	Just a little	23%
	Not at all	13%
Media coverage	Great deal	27%
	Some	39%
	Just a little	21%
	Not at all	13%
People judges know personally	Great deal	28%
	Some	41%
	Just a little	21%
	Not at all	10%
Political parties	Great deal	35%
	Some	43%
	Just a little	15%
	Not at all	7%
Having to run for re-election	Great deal	35%
	Some	44%
	Just a little	14%
	Not at all	8%

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Q13. Do you think that (insert item) have a great deal, some, just a little, or no influence at all over who becomes a judge?

Perception of Influence on Who Becomes a Judge

		NYS Registered Voters
		Col %
Voters	Great deal	36%
	Some	38%
	Just a little	18%
	Not at all	8%
Political party leaders	Great deal	48%
	Some	38%
	Just a little	12%
	Not at all	3%
Campaign contributors	Great deal	39%
	Some	39%
	Just a little	15%
	Not at all	7%
Special interest groups	Great deal	31%
	Some	44%
	Just a little	18%
	Not at all	7%

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Q14. Do you think it is very important, important, not very important, or not important at all that a judge be independent from (insert item) in order for a judge to carry out his or her responsibilities?

Importance of Judges' Independence

		NYS Registered Voters
		Col %
Political party leaders	Very important	56%
	Important	34%
	Not very important	5%
	Not important at all	4%
Campaign contributors	Very important	56%
	Important	34%
	Not very important	6%
	Not important at all	4%

Marist College Institute for Public Opinion October 2003

Q15. Some people think judges running for election in New York State should not be identified with a political party on the ballot because people may vote for the party rather than for the candidate with the better qualifications.

Other people think judges running for election in New York State should be identified with a political party on the ballot to help people understand what the candidate stands for.

Which comes closer to your own view: judges should not be identified with a political party on the ballot or judges should be identified with a political party on the ballot?

		NYS Registered Voters
		Col %
Judicial candidate party affiliation on ballot	Should not be identified with a political party	52%
	Should be identified with a political party	48%

Marist College Institute for Public Opinion October 2003

Q16. If a person running for judge takes a position on an issue during an election campaign, do you think that person will be fair and impartial or will not be fair and impartial as a judge if a case involving that issue comes before them?

		NYS Registered Voters
		Col %
Candidates' positions on campaign issues and judicial fairness	Will be fair and impartial	52%
	Will not be fair and impartial	41%
	Unsure	7%

Marist College Institute for Public Opinion October 2003

Q17. Do you think a judge should or should not be allowed to hear or rule in cases when one of the parties has given money to the judge's campaign?

		NYS Registered Voters
		Col %
Should judges hear cases involving campaign contributors	Should	13%
	Should not	87%

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Q18. Do you think (insert item) will improve the justice system a great deal, some, just a little, or not at all?

Perception Each Will Improve Justice System

		NYS Registered Voters
		Col %
Having each campaign contribution to a judicial candidate disclosed to the public immediately	A great deal	24%
	Some	41%
	Just a little	17%
	Not at all	18%
Having judicial candidates agree not to raise money and limit their spending to money available from a publicly financed election fund	A great deal	28%
	Some	40%
	Just a little	15%
	Not at all	17%

Marist College Institute for Public Opinion October 2003

**Q19. Do you use any of the following sources to learn about judicial candidates almost always, sometimes, seldom, or almost never?**

Public's Sources of Information for Judicial Elections

		NYS Registered Voters
		Col %
Television	Almost always	20%
	Sometimes	52%
	Seldom	9%
	Never	19%
Radio	Almost always	9%
	Sometimes	50%
	Seldom	12%
	Never	28%
Direct mail	Almost always	10%
	Sometimes	45%
	Seldom	12%
	Never	33%
Lawn signs or posters	Almost always	6%
	Sometimes	33%
	Seldom	15%
	Never	47%
Newspapers or magazines	Almost always	34%
	Sometimes	50%
	Seldom	6%
	Never	10%
Word of mouth	Almost always	13%
	Sometimes	54%
	Seldom	12%
	Never	22%
Door to door visits from the candidates or their workers	Almost always	7%
	Sometimes	26%
	Seldom	12%
	Never	56%
The Internet	Almost always	4%
	Sometimes	19%
	Seldom	10%
	Never	67%
Bar Association ratings	Almost always	7%
	Sometimes	21%
	Seldom	10%
	Never	63%
Voter guides	Almost always	9%
	Sometimes	38%
	Seldom	11%
	Never	42%

Marist College Institute for Public Opinion October 2003

Q20. Do you think it would be extremely useful, very useful, useful, not very useful, or not useful at all if New York State were to provide voter guides for judicial elections to help inform voters about the candidates in each race?

		NYS Registered Voters
		Col %
Usefulness of voter guides	Extremely useful	11%
	Very useful	35%
	Useful	42%
	Not very useful	6%
	Not useful at all	6%

Marist College Institute for Public Opinion October 2003



**COMMISSION TO PROMOTE PUBLIC CONFIDENCE  
IN JUDICIAL ELECTIONS**

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**APPENDIX F**

**Focus Group Results and Recommendations (June 2004)**



**GOVERNMENT LAW CENTER  
OF ALBANY LAW SCHOOL**

**REPORT TO THE COMMISSION TO  
PROMOTE PUBLIC CONFIDENCE  
IN JUDICIAL ELECTIONS**

**FOCUS GROUP  
RESULTS AND RECOMMENDATIONS**

**JUNE 2004**

## ***Acknowledgments***

Special thanks to the staff at the Government Law Center who worked with me to organize the focus groups and to prepare this report. Sharmaine Moseley worked under tight deadlines to ensure that each of the focus groups had hosts and participants. Ginny Battige worked on the design and format of the final report. Michele Monforte assisted with the editing of this document. Special thanks also to Margaret Regan, CEO of the Future Work Institute, who served as a pro bono consultant on the project.

Patricia E. Salkin  
Associate Dean and Director  
Government Law Center  
Albany Law School

# Table of Contents

<b>I.</b>	<b>Introduction .....</b>	<b>1</b>
<b>II.</b>	<b>Methodology and Process.....</b>	<b>2</b>
	A. Location of and Participation in the Focus Groups.....	2
	B. Demographics of Focus Group Participants.....	3
	C. Focus Group Process .....	4
	D. Facilitator and Scribe .....	5
<b>III.</b>	<b>Voter Participation .....</b>	<b>6</b>
	A. Question 1 – Is there anything that currently exists in your community that is helping to encourage or support informed voter participation in judicial elections? .....	7
	1. Methodology .....	7
	2. What is Helping New York State Voters to Participate in Judicial Elections? .....	7
	B. Question 2 – Why is voter participation in judicial elections so low? .....	11
	1. Methodology .....	11
	2. Why is New York State Voter Participation in Judicial Elections So Low? .....	12
	C. Question 3 – What recommendations do you have to address each of the identified root causes for low voter participation in Judicial Elections? .....	17
	1. Methodology .....	17
	2. Summary of Recommendations .....	17
	a. Issue: Lack of information about the judicial system and judicial candidates is a hindrance to voter participation .....	17
	b. Issue: The negative role of political parties/disillusionment with the political process .....	19
	c. Issue: There is a disconnect between courts/judges and ordinary citizens .....	20
	d. Issue: Lack of Trust: Judicial system perceived as discriminatory and elitist .....	21
	e. Issue: Partisan judicial elections are a flawed model with multiple tensions .....	22

f.	Issue: The mechanics and complexity of the election system discourages voter participation	23
D.	Question 4 – Is a state voter guide a good idea or a bad idea?	24
1.	Methodology	24
2.	Results of Focus Group Question on Whether a State Voter Guide is a Good Idea or a Bad Idea	24
3.	What Should Be Included in a State Voter Guide	25
4.	How Should the Voter Guide Be Distributed	26
5.	Other Comments on the Voter Guide	26
<b>IV.</b>	<b>State Sponsored Screening Commissions</b>	<b>26</b>
1.	Methodology	26
2.	Are State Sponsored Screening Commissions a Good Idea or a Bad Idea	27
3.	Characteristics and Composition of State Sponsored Screening Commissions: What Should They Look Like?	28
a.	What characteristics should members of the screening commissions possess	28
b.	Is diversity on the screening commissions important and if so what kinds of diversity	28
c.	What groups in society might Commissioners be drawn from	28
d.	Should any individual or group be excluded from participation on the Commissions	29
e.	How important is lay participation on the Commissions and why	29
f.	Who should select the members of screening commissions	29
g.	Should any individual or group be excluded from selecting the Commissioners	30
4.	Additional feedback	30
<b>V.</b>	<b>Contributions to Judicial Campaigns</b>	<b>30</b>
<b>VI.</b>	<b>Conclusion</b>	<b>32</b>

**Appendix A**..... **33**  
    Letter to Participants ..... 34  
    Participant Education Materials..... 36

**Appendix B**..... **38**  
    Focus Group Participant Survey ..... 39

## I. Introduction

At the request of the Commission to Promote Public Confidence in Judicial Elections, the Government Law Center of Albany Law School arranged for a series of statewide focus groups to assist the Commission in accessing more detailed comments from the public about some of the items reported in the Marist Poll addressing voter participation and state sponsored screening commissions. The subject of campaign contributions and its impact on judicial impartiality was probed as well, but only through a written question on the demographic survey participants were asked to complete at the conclusion of the focus group session.

Specifically, after seeking the input of a number of Commission members, the Government Law Center developed a focus group study with the following objectives:

- \*Identify current supports for informed voter participation in New York State judicial elections
- \*Identify and prioritize root causes for low voter participation in judicial elections
- \*Collect citizen recommendations on how to address these root causes;
- \*Assess whether there is citizen support for State sponsored screening commissions
- \*Collect citizen input on characteristics and composition of screening commission members
- \*Assess citizen ideas about who should appoint the members of the screening commissions

In February 2004 the Government Law Center retained the services of a professional facilitator who consulted with the Center on development of the focus group methodology. The facilitator attended and conducted each of the nine focus groups and provided the Government Law Center with immediate feedback from each session, summary reports of each individual focus group and a summary of the combined focus group experience. Commission members did not participate in the focus groups, and with the exception of one focus group session where a representative of the Government Law Center observed the focus group, no one from the Commission attended a focus group session. This was a deliberate decision to ensure that the focus group sessions were dominated by citizens not connected to the work of the Commission.

## **II. Methodology and Process**

### **A. Location of and Participation in the Focus Groups**

Nine focus groups were conducted in the following different geographic regions of the State:

- \*Nassau County (Mineola)
- \*New York County (Manhattan)
- \*Onondaga County (Syracuse)
- \*Oneida County (Utica)
- \*Monroe County (Rochester)
- \*Albany County (Albany)
- \*Clinton County (Plattsburgh)
- \*Westchester County (Purchase)
- \*Kings County (Brooklyn)

In each geographic location, a local host organization was identified and asked to assist the Government Law Center by providing the site location for the focus groups and by identifying citizens to invite for participation in the focus group sessions. The local host organizations were:

- \*Nassau County Bar Association (Mineola)
- \*Fordham Law School (Manhattan)
- \*Syracuse University Continuing Education (Syracuse)
- \*Oneida County Bar Association/SUNY IT (Utica)
- \*Monroe County Bar Association (Rochester)
- \*Rural Law Center (Plattsburgh)
- \*Albany Law School (Albany)
- \*SUNY Purchase (Purchase)
- \*SUNY Downstate Medical Center (Brooklyn)

To assist the host organization in identifying appropriate focus group participants, the Government Law Center provided the following criteria:

- \*Participants should be civically active in the community
- \*Participants should reflect the diversity of the community (including: age, gender, race, ethnicity, socio-economic status, education, political party affiliation, profession)
- \*Participants should not include political party leaders/officials or individuals active in the judicial selection process

The Government Law Center did not screen any of the names provided by the host organizations. Rather, once the host organization submitted a list of invitees, the Government Law Center prepared a personalized letter for Chairman John Feerick's signature to each of the identified potential focus group members. The letter, attached as Appendix A to this report, provided a brief background about the Commission, a reference to the Commission's Interim Report and information about the location and time of the focus groups.

In total, 90 individuals participated in the focus group process. Focus groups are intended to be small groups of people who spend a period of time together discussing questions that are posed. What follows is a listing of the number of participants at each of the nine focus group locations:

*Nassau County	13 participants
*New York County	11 participants
*Onondaga County	10 participants
*Oneida County	13 participants
*Monroe County	7 participants
*Clinton County	17 participants
*Albany	6 participants
*Westchester	6 participants
*Kings County	7 participants

## **B. Demographics of Focus Group Participants**

Focus group participants were asked to complete an anonymous survey at the conclusion of each focus group session. A copy of the survey is included with this report as Appendix B. A primary focus of the survey was to collect demographic data on the participants. What follows is a summary of the demographic data for those who completed the survey and those who answered the individual question.

There was an even split statewide of male (44) and female (44) attendees. With respect to race, focus groups identified themselves as follows:

White	60
Black	18
Hispanic	5
Black/Hispanic	2
Asian	3

Focus group participants were asked to disclose the year that they were born. The following shows how many participants were born during each decade:

1920s	5
1930s	5
1940s	28
1950s	23
1960s	23
1970s	3
1980s	1

Sixty-nine (69) of the focus group participants were employed full-time and 3 were employed part-time. Seventeen (17) focus group participants were not employed either full-time or part-time. A broad range of employment/professions were represented including: attorneys, banker, educators (teachers and administrators), financial services, health care, homemaker, media, non-profit management/staff, printer, public relations, student and writer.

Asked about their education, the following was reported:

Associate's Degree	3
Bachelor's Degree	22
Graduate Degree	53
Some College	9
High School	2

### **C. Focus Group Process**

Each focus group began with the following information provided by the facilitator:

- 1) That each individual opinion was important and would be recorded by the Scribe on large flipcharts so that participants could see what was being written;
- 2) That participants should request that the Scribe change anything that does not represent what the participants said;
- 3) That the material recorded on the flipcharts would be the substance of the report from that focus group and would be rolled up with the data from the other nine focus groups into a summary report; and
- 4) That it was not expected that everyone would agree and that each opinion would be respected and recorded.

After the facilitator asked the questions indicated in the next two sections of this report, each person was given a chance to respond to the questions or to pass if they did not wish to respond. Where participants agreed with something already stated by

another participant, they were asked to indicate that fact and a check mark was placed next to that statement on the flipchart. In addition, if there was a dissenting opinion(s) from a position already stated, that was also noted on the flipchart. Any other specific directions that were given are noted in the appropriate sections of this report.

Each focus group was scheduled in the evening, beginning at 6pm and ending at 9pm. A light dinner was available for each of the participants. There was no financial remuneration for participation, and attendance was purely voluntary.

#### **D. Facilitator and Scribe**

The Government Law Center obtained the services of an experienced facilitator/scribe team to assist with the design, execution and analysis of the focus group process.

The facilitator selected was Peggy Healy, an adjunct professor of law at Fordham University School of Law. Ms. Healy has an extensive background in this field, having served as a facilitator in different settings for twenty-five (25) years. From 1999 to 2002, she served as a consultant and senior consultant at Towers Perrin Global Diversity Practice. She currently serves as a senior consultant to the Future Work Institute. Ms. Healy has designed and facilitated focus groups (including Spanish speaking groups) for multiple clients and has been responsible for the analysis of focus group data and the preparation of individual and summary focus group reports. Her client list includes Chase Manhattan (domestic and Latin American programs), Goldman Sachs, PaineWebber, Alliance Capital, and Deutschebank. Working with nonprofits, Ms. Healy has conducted focus groups for the Lawyers Committee for Human Rights (New York City) and for the Genetic Alliance (Washington, DC).

Ms. Healy worked with Scribe Marjorie Carney. Since 1999, Ms. Carney has served as a group facilitator and scribe in multiple positions within the Central Islip School District where she is currently employed full-time. Ms. Healy and Ms. Carney have collaborated together prior to this assignment.

### **III. Voter Participation**

The focus groups were asked to concentrate on three (3) major issues within the topic of voter education. Specifically they were asked:

- 1) “Is there anything that currently exists in your community that is helping to encourage or support informed voter participation in judicial elections?”
- 2) “What are some of the root causes for lack of voter participation?”
  - a) “How would you rank them in order of significance?”
  - b) “What recommendations would you offer to address each of these root causes?”
- 3) “Do you think that State-funded voter guides are a good idea or a bad idea and why?”

**A. Question 1 - Is there anything that currently exists in your community that is helping to encourage or support informed voter participation in judicial elections?**

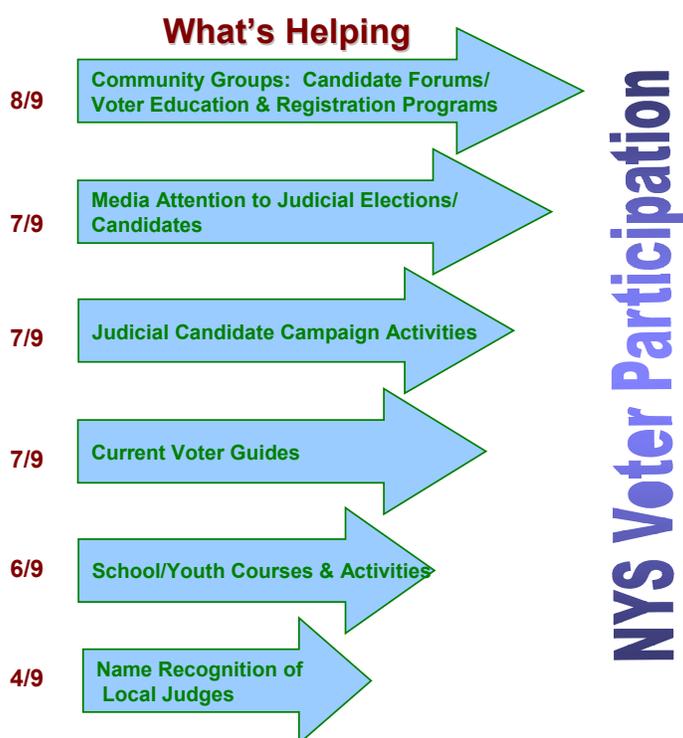
**1. Methodology**

Participants were asked the above question, and remarks were recorded on flipcharts noting agreement by check marks and noting dissents. Where more than one person agreed with the statement, this was noted numerically in parenthesis in the raw data. For purposes of reporting, comments were organized into similar topics/categories. The number of groups (e.g., out of the nine focus groups) that gave a particular response was also tabulated. Topics/categories were then ranked according to the number of groups and where they were mentioned, the number of participants who expressed agreement.

**2. What is helping New York State Voters to Participate in Judicial Elections?**

**What's Helping New York State Voters to Participate in Judicial Elections?**

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***51 participants in 8 groups mentioned a variety of civic organizations doing multiple activities to encourage informed voter participation including:***

**\*Creating forums for judicial candidates to speak to/meet with community members**

**\*Voter education programs**

**\*Voter registration programs**

Focus group participants identified by name a number of community groups and civic organizations that provided these services. Although these organizations are for the most part geographically unique, entities included, in no special order: League of Women Voters, 100 Black Men, NAACP, neighborhood associations, business groups (e.g., chambers of commerce, Rotary, Lions Clubs, Kiwanis), churches, civic clubs, citizens league and social service agencies.

***24 participants in 7 groups mentioned media attention to judicial candidates/elections including:***

**\*Information published in local newspapers**

**\*Letters to the Editor**

**\*Newspaper endorsements**

**\*TV interviews**

Focus group discussions identified that brief biographies, information about candidate credentials and information on high profile decisions were helpful when published in newspapers just before the election. Letters to the editor and newspaper endorsements were identified as helpful items. Participants in three focus groups stated that there was limited media coverage of judicial candidates, and they commented that there was better coverage for other positions. It was also noted in one focus group that unless a candidate was breaking a barrier of historic significance (e.g., the first Black or first woman judge in a locale), no specific attention is given to judicial candidates.

***22 participants in 7 groups mentioned judicial candidate campaign activities including:***

**\*Campaign appearances at fundraisers, local events, cultural events**

**\*Door-to-door campaigns**

**\*Flyer distribution**

**\*Campaign ads in media**

Focus group participants believe that it encourages voter participation when candidates are engaged in a variety of campaign activities designed to educate and inform voters and where voters have an opportunity to meet the candidates.

***22 participants in 7 groups named current voter guides including:***

- \*League of Women Voters Voter Guide (raised in 6 out 9 groups)**
- \*New York City Board of Elections Voter Guide**

Participants in 6 of the focus groups identified a voter guide published by the League of Women Voters, although there was a split of opinion and uncertainty as to whether these guides contain information on judicial candidates.

***12 participants in 6 groups mentioned school/youth activities including:***

- \*Mock trials/elections**
- \*High school civics course**
- \*Student voter registration programs**
- \*Youth court**

Participants in six of the focus groups provided specific examples of programs in the schools that they believe assist with encouraging [young] people to vote. Specific initiatives identified were school district specific.

***12 participants in 4 groups mentioned name recognition of local judges/candidates***

While participants in four of the focus groups mentioned that when voters recognize the names of local candidates it can help to encourage or support informed voter participation in judicial elections, it was acknowledged in all of these four focus groups that the candidates for town and village justices are better known than candidates for other county-level and multi-county level positions.

***7 participants in 4 groups mentioned various local bar association screening programs***

In four of the focus groups participants were aware that local and/or specialty bars (e.g., women's bar association) screen and rate judges and judicial candidates.

***8 participants in 2 groups mentioned political party activities including:***

**\*Driving elderly voters to polls**

**\*Telephone calls by party members to get out the vote**

**\*Political party club activities (e.g., ad in the newspaper with candidate names and pictures)**

Participants in one of these focus groups appeared to have significant knowledge of the activities of the local political party with respect to judicial candidates.

***12 participants in 5 groups said they know of nothing in the community that encourages informed voter participation in judicial elections***

## **B. Question 2 – Why is voter participation in judicial elections so low?**

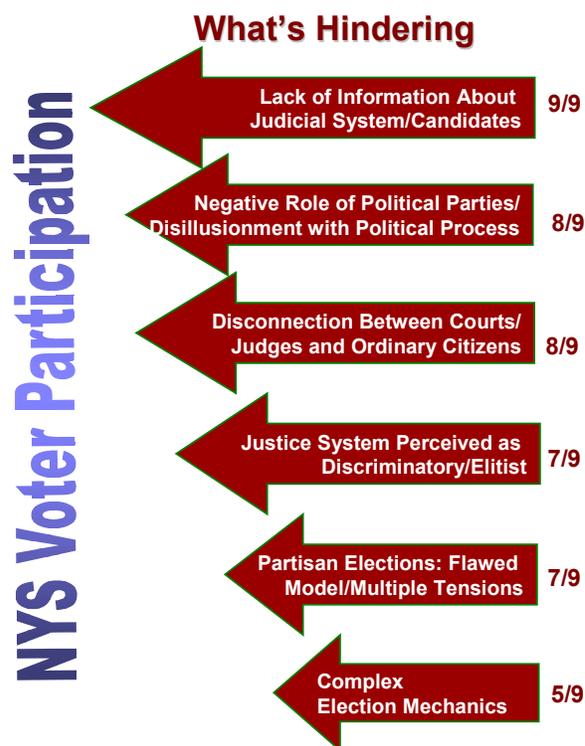
### **1. Methodology**

Focus group participants were asked to identify the root causes/reasons for lack of voter participation in judicial elections. Remarks were recorded on flip charts noting agreements and dissents. During a break in the session the facilitator and the scribe reviewed all the comments and identified five or six categories that participants' responses could be organized under. These categories were posted on flipcharts and participants were asked to edit/change/approve final categories. Participants were then asked to rank the categories from 1 to 5 with 1 being the most important root cause for lack of voter participation and 5 being the least important root cause. Votes were then counted and weighted (e.g., each ranking of "1" received 5 points down to 1 point for a ranking of "5"). Root causes were then prioritized in individual focus groups according to the weighted scores each one received. For purposes of this report, the root causes identified in each of the nine groups were prioritized by applying the same weighted vote process to the rankings in each of the nine individual focus groups (note: the number of focus groups were also counted in which at least one of the participants mentioned a related root cause/reason).

## 2. Why is New York State Voter Participation in Judicial Elections So Low?

### Why is New York State voter participation in judicial elections so low?

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Focus group participants identified six reasons or root causes for why local voter participation in judicial elections is so low.

***Participants in 9 out of 9 (all) focus groups identified the lack of information about the judicial system and judicial candidates as the greatest hindrance to voter participation.***

Focus group participants in all nine groups stated that citizens will not vote without sufficient information about candidates. For example, comments were made that not enough information is known about candidates to form an opinion or to vote, and that people do not pull the lever because they do not know the candidates. It was also expressed in all nine focus groups that speech restrictions on judicial candidates limit information that voters need. For example, some focus group participants explained that without more information from the candidates it is hard to tell the differences between candidates on the issues.

Participants in 6 of the 9 groups noted that the media gives little attention to judicial elections/candidates and participants in 5 of the 9 groups expressed that voters do not understand the complex judicial system nor the necessary qualifications for judges. For example, some participants noted that there is not a clear understanding among the general public as to what each court does and the responsibilities of the judges that sit in these courts.

***The negative role of political parties/disillusionment with the political process was identified as a factor in 8 out of the 9 focus groups.***

Focus group participants in 6 of the 9 groups noted that the political party selection process for judicial candidates excludes voters and that endorsement can be tantamount to election where a single party dominates. For example, some participants expressed the view that by the time the delegates get to the judicial convention, the selection of the candidate is already a done deal. Also, some participants expressed that single party domination means that only judges of one party can ever get elected (e.g., because the non-dominant party does not want to invest resources into a campaign) and that some people may never have a chance to run for a judgeship (e.g., women). It was expressed that these situations discourage citizen participation since it feels as though it doesn't matter whether or not someone votes. While participants in some focus groups had a negative view of the use of cross-endorsement for judicial candidates, in one focus group it was expressed that discontinuance of cross endorsements in one region resulted in a decrease in the quality of judges.

Participants in 5 of the 9 groups stated that general disillusionment with politics, the political process and scandals discourages voter participation.

In 3 of the 9 groups it was expressed that judicial campaigns are not a priority for political parties and that political parties are run by the elite (examples were given of high end fundraisers, nepotism and family name recognition).

***Disconnect between courts/judges and ordinary citizens was identified as a factor producing low voter participation in 8 out of 9 groups.***

Participants in 5 of the 9 focus groups stated that judges and the judicial system have no perceived impact on everyday life. For example, it was noted that in general people do not have a relationship with the justice system unless they get into trouble or have to appear before a judge for some other reason.

Participants in 3 out of the 9 groups expressed that there is a lack of connection between judges and the community. This belief was supported by comments in the focus groups that the majority of the public do not interact with judges, they do not know

what different judges do, that judges are not as visible in the community as other elected officials.

Participants in 2 focus groups noted that ordinary citizens know little about the judicial system and that young people/students have a limited sense of civic duty.

***In 8 out of 9 focus groups, participants expressed that different treatment for different segments of society leads to serious mistrust.***

Participants in 7 out of 9 groups stated that there is a lack of trust and that the justice system is perceived as discriminatory and elitist, leading to low voter turnout. In several of the focus groups participants expressed that there is a lack of trust among minority communities for the judiciary because of the high percentage of minorities in prison and the belief that minorities experience a real injustice within the system (e.g., it is the judges who send people to prison).

The belief that elite control the system was verbalized in 7 of the 9 focus groups. It was expressed, for example, that judges are from a different social situation, that elections are ruled by money, there is no access for non-elites to the circles of power and that candidates go to community groups only to get endorsements. The involvement of lawyers in the election of judges was also given as an example of the elite influence.

Participants in 4 of the 9 focus groups stated that unethical or questionable behavior of judges discourages voting. For example, it was noted that publicity about corruption in the judicial system discourages voters, and one participant said, "Not that anything is pure but we expect a higher level behavior from judges than other segments of society."

In 3 of the 9 focus groups participants noted that the lack of diversity in the judiciary increases mistrust, that the U.S. Supreme Court decision in *Gore v. Bush* turned off voters, and that there is no monitoring the performance of judges. On the issue of diversity, it was noted by several focus groups that it appears as though diversity has not been achieved when it comes to minorities, women and physically disabled individuals on the bench. With respect to *Gore v. Bush*, participants expressed the belief that the decision was seen as political and that the situation raised public awareness of the flaws in the electoral system. Lastly, concern was expressed in two focus groups that no organization/entity is monitoring the performance of judges and in another focus group it was noted that attorneys do not speak out about judicial performance for fear of retaliation.

***The belief that partisan judicial elections represent a flawed model with multiple tensions was identified by 7 out of 9 focus groups.***

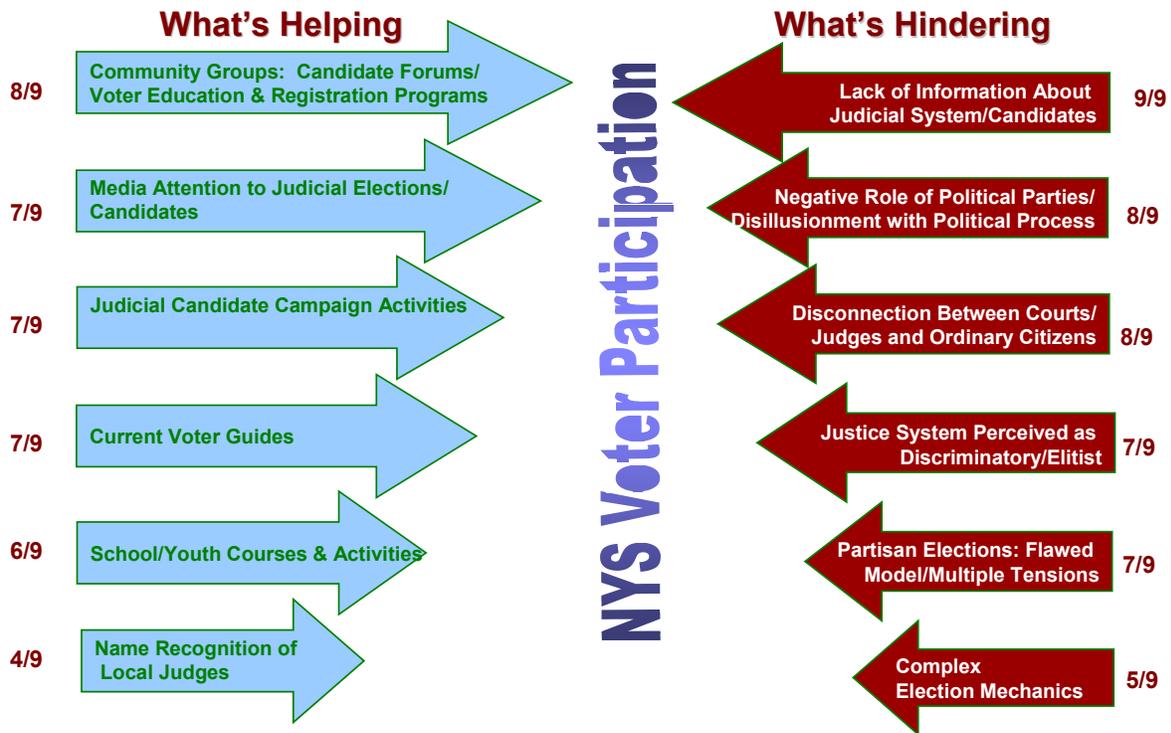
Participants in 5 of the 9 focus groups were of the opinion that the partisan election system is not appropriate for judicial elections. Some of the reasons given in support of this belief were that: judges are supposed to be independent and impartial and that alignment with a political party did not advance this belief; neutrality appears to be compromised when running on a political party line; and that judges are in a different category than the executive branch and from legislators.

In 3 of the 9 groups participants stated that the tensions that surround campaign speech, campaign contributions and political affiliation lead to difficult campaigns. For example, it was expressed that restrictions on speech contribute to judicial candidate isolation, and it was noted that criticisms may be lodged against judicial candidates but that candidates may not defend themselves because of the rules regarding speech. With respect to campaign contributions, it was noted in one focus group that “Supposedly under the rules and guidelines for judges, judicial candidates are not allowed to ask for money and are not supposed to know who make contributions to their campaigns,” and that this is a “giant fiction.”

***The mechanics and complexity of the election system was identified in 5 of the 9 focus groups as discouraging voter participation.***

In 5 of the 9 focus groups, participants noted that there are problems with election ballots, and in 3 of the 9 groups participants expressed the belief that the complexity of the election and judicial systems leaves non-lawyers disadvantaged. In 3 of the focus groups participants specifically noted that the names of judicial candidates appear at the end of crowded ballots, and that these ballots may be confusing. Concerns over voter registration and problems with polling places were also identified as issues that contribute to the complexity of the voting system and that in turn lead to low voter participation.

## What's Helping and Hindering New York Voter Participation in Judicial Elections?



### **C. Question 3 - What recommendations do you have to address each of the identified root causes for low voter participation in Judicial Elections?**

#### **1. Methodology**

Participants were asked for concrete recommendations to address each of the root causes identified. These recommendations were recorded on flip charts noting agreements and dissents. Similar recommendations were then organized into groups under the root causes. The number of groups were counted in which at least one of the participants made such a recommendation.

#### **2. Summary of Recommendations**

##### **a. Issue: Lack of information about the judicial system and judicial candidates is a hindrance to voter participation**

**Recommendations to address the lack of information about judiciary in general could be organized into the following three areas:**

- \*Creation of multi-media awareness campaigns**
- \*Initiation of educational programs at all levels of education**
- \*Inclusion of judges/court personnel in programs**

Participants in 8 of the 9 focus groups recommended the creation of multi-media awareness campaigns that are directed at New York State citizens and include information about the New York State judicial/court system and judicial candidates. Specific recommendations included: a marketing strategy to promote judicial elections, establishment of a "Media and Democracy Project," and a state-funded voter education program on the judicial system. Participants in 6 groups said there is a need for an explanation of the New York State court system, and participants in 5 groups noted that the role of judges needs to be explained to the public, and that specific information about judicial candidates should be part of the overall education/information effort. It was suggested in 3 of the 9 focus groups that a professional ad agency be retained to create a public education campaign that should be ongoing.

It was suggested in 7 of the 9 focus groups that the media needs to provide more coverage of judicial candidates and the judicial system. Specific ideas for print included: articles in local community newspapers, publishing information about candidates in different sections of the newspaper, and asking the media to publish bar association screening results. For TV and radio, some participants specifically suggested creating public service announcements about the judicial system, airing

judicial forums/debates, and using cable television stations. Participants in 4 of the 9 focus groups suggested using a website and the Internet as part of the multi-media education campaign. One focus group suggested creating a central website that includes information on the judicial system and on the candidates.

Participants in 4 of the 9 focus groups suggested that local civic and community groups need to be involved in the education campaign. Among the specific recommendations as to what these entities could do are: increasing civic forums for judicial candidates, offering diversity forums, initiating mock trial programs in the community, distributing brochures to voters at places where they may be (e.g., schools, banks and polling places), and providing funding for local bar associations to publish their screening results.

Participants in 5 of the 9 focus groups recommended initiating educational programs in the schools. Specifically, it was suggested that a comprehensive or systematic educational scheme be designed to teach civics and the impact of judicial decisions. Participants offered that civic education should be a required part of the curriculum and that it be taught in elementary school, junior high school, and high school. It was further suggested in 5 of the focus groups that the Board of Regents institute civic courses to begin in junior high school that include, among other things, a description of the judicial system, the role of judges and their importance to society.

Additional school activities were recommended in 4 of the 9 groups. These include incorporating activities that will create interest and promote experiential learning (e.g., school trips to the courts, court visits to schools, student internship programs, establishing a Law Institute in high schools with judges and lawyers as speakers, establishing youth courts and bringing to school sample voting booths).

Participants in 6 of the 9 focus groups recommended involving judges and court personnel in media campaigns and in school programs.

**b. Issue: The negative role of political parties/disillusionment with the political process**

**Recommendations to address the negative role of political parties and disillusionment with the political process include:**

**\*Changing the selection process by political parties**

**\*Requiring candidates to participate in screening processes**

There were a number of recommendations from participants in individual focus groups regarding modifications to the political party selection process. For example, in one focus group a participant suggested instituting primaries for Supreme Court candidates to replace the nominating conventions. It was also suggested that petitions should be for the judicial candidates and not for delegates to a nominating convention.

In 7 of the 9 focus groups, participants suggested that there be a screening process for candidates. While screening commissions are discussed in greater detail in another section of this report, during this part of the focus group sessions the following ideas were suggested by individual focus group participants: screening should be mandatory, citizen participation should be ensured (e.g., representation should include non-attorneys), remove screening from the local political party process, create political party criteria/screening for judicial candidates, strengthen existing bar association screening processes, add a section to the judicial rules on qualifications for judicial candidates, and insure dissemination of screening committee process and ratings.

Additional recommendations offered to reduce the perceived politicization of judicial elections include: limiting campaigns to six weeks before elections and banning political parties from criticizing judges for their judicial decisions.

**c. Issue: There is a disconnect between courts/judges and ordinary citizens**

**Recommendations to address the disconnect between the judicial system/judges and ordinary citizens:**

- \*Educate the public about the judicial system and its impact**
- \*Target Youth Education**
- \*Get judges into the community**

Participants in 7 of the 9 focus groups recommended an educational campaign to better inform the public about the judicial system and its impact. In 6 of the focus groups, the media campaign discussed previously was endorsed as an idea to accomplish this goal. It was also suggested that an educational effort inform citizens about how judicial decisions impact their lives (e.g., illustrate how decisions on housing, divorce, family law, etc. impact daily lives of citizens). Participants also recommended encouraging the media to provide more coverage of what goes on in courtrooms. A “Visit the Courts Day” was suggested to encourage the public to take advantage of the open courtroom system.

In 4 of the 9 focus groups, participants made specific recommendations targeting youth education. These recommendations include involving the media for public service announcements, reaching out to the SUNY radio stations, using the Internet and getting a celebrity name behind voter registration drives.

Getting judges into the community was a recommendation in 5 of the 9 focus groups. Participants in 2 of the focus groups suggested that there be a pro bono requirement for judges. Encouraging judges to be involved with community service, citizen education (e.g., in the classroom and public speaking in the community), and listening and visiting in the community were all recommendations made in at least one focus group.

**d. Issue: Lack of Trust: Judicial system perceived as discriminatory and elitist**

**Recommendations to address the lack of trust and perception that the judicial system is discriminatory and elitist include:**

- \*Create a system for the monitoring/screening/rating of judges**
- \*Ensure diversity in the judiciary**
- \*Outreach to disenfranchised communities**
- \*Address scandals and use them to reform the system**

Participants in 5 of the 9 focus groups suggested creating systems for the monitoring/screening/rating of judges. Individual recommendations included: creating judicial citizen review boards to review judicial decisions and behavior, instituting a non-partisan “courtroom monitoring program” to observe and report on the functioning of the court system and the performance of judges (it was further suggested that it be done by an objective entity such as a law school and that the monitoring group be required to publish reports that are widely disseminated to the public), creating an independent process for monitoring and rating judges and their performance (recommended that this be accomplished by an independent commission and that judges be monitored on number of cases handled, number of times judges are overturned, and how judges perform on the bench) and that this information be available on the internet. Strengthening local bar association screening processes was also recommended by participants in one of the focus groups.

In 4 of the 9 focus groups, participants suggested that ensuring diversity in the judiciary would help to overcome the lack of trust by the public in the judicial system. Among the recommendations on how to achieve greater diversity are: ensure proportional representation of minorities in the judiciary, judgeships should represent the diversity of the community, create opportunities for people of diverse backgrounds to be prepared for careers as judges (e.g., start with high school education and support affirmative action), create smaller election districts to allow for elections in more minority communities, and reduce terms of office to allow for greater turnover.

Outreach to disenfranchised communities was recommended in 3 of the 9 focus groups. It was recommended that funds be invested to create outreach efforts to inform distrusting communities about the justice system and to increase the visibility of the judicial system in these communities. It was further suggested that statistics be made available about the experience of different communities in the justice system.

Addressing scandals was discussed in 2 of the 9 focus groups. It was stated that scandals must be acknowledged when they happen, that there be accountability, and that the scandals be used as a catalyst for reform.

**e. Issue: Partisan judicial elections are a flawed model with multiple tensions**

**Recommendations to address the belief that partisan judicial elections are a flawed model with multiple tensions include:**

- \*Remove judicial elections from the partisan party system**
- \*Address speech restrictions**
- \*Public financing for all judicial candidates**

Participants in 6 of the 9 focus groups recommended removing judicial elections from the partisan party system. Participants in 4 of the 9 focus groups recommended non-partisan elections, likening these (non-partisan) elections to school board elections or voting on bond issues. In 2 focus groups it was suggested that there be “generic primaries” where only candidate names appear, not party affiliation. Participants in 3 of the 9 focus groups suggested that non-partisan judicial candidate campaigns should be publicly financed.

Speech restrictions on judicial candidates were discussed in 3 of the 9 focus groups. Comments from participants in two of the focus groups were split as to whether restrictions on campaign speech for judicial candidates should remain in effect. It was suggested in one group that candidates be required to abide by certain campaign standards, including restrictions on negative campaigns.

Public financing for all judicial candidates was recommended in 6 of the 9 focus groups. It was expressed that such a system of campaign finance would provide more credibility for judges, eliminate special interests and reduce the concern for lack of judicial independence, and could provide enough money to allow candidates to put on a good campaign that educates and engages the public. In addition, 2 of the 9 focus groups recommended campaign finance reform.

**f. Issue: The mechanics and complexity of the election system discourages voter participation**

There were a number of recommendations asserted by individuals in individual focus groups, but no one recommendation was repeated in more than one focus group. Further, most of the recommendations focus on general election system challenges and are not specific to judicial elections. The following are examples of recommendations made: educate the public about election mechanics (e.g., place model voting machines in key areas, initiate a “voter instruction day”); simplify ballots; list judicial candidates in alphabetical order; train polling personnel; obtain better voting machines; initiate same day voter registration (there was a split of opinion on this in the one focus group where it was raised); better use of technology on election day; hold all elections at the same time; schedule judicial elections at a different time from presidential or legislative elections to give more attention to judges; redistrict elections so that Supreme Court judges are elected from counties not districts; and establish a non-partisan board of elections. During one of the focus groups, attention was focused on the rural poor and it was recommended that the rural poor be included in education efforts to reduce the intimidation felt about voting by this group.

## **D. Question 4 – Is a state voter guide a good idea or a bad idea?**

### **1. Methodology**

The facilitator informed all groups that the Commission to Promote Public Confidence in Judicial Elections in their interim report had recommended state-funded voter guides to be distributed to every household in New York State with a registered voter to educate the public about the judicial system and about judicial candidates. Participants were asked to vote by a show of hands if they thought a State voter guide was a good idea or a bad idea. Votes were counted and recorded on flip charts.

### **2. Results of Focus Group Question on Whether a State Voter Guide is a Good Idea or a Bad Idea**

**\*81% or 73 participants indicated that the voter guide is a good idea**

**\*67% or 60 participants said it is a good idea if the voter guide includes both information about the New York State judicial system and judicial candidates**

**\*14% or 13 participants said it is a good idea only if it is limited to information about the New York State judicial system (e.g., no information on judicial candidates)**

**\*12% or 11 participants think that the voter guide is a bad idea**

Note: The reason that the raw participant number does not add up to 90 participants is because in some cases participants chose not to vote on the question and in other cases participants had to leave prior to this question being posed to the group.

After the voting was completed during each of the focus groups, the facilitator asked participants why they believed that the voter guide was or was not a good idea. Participants who thought it was a good idea offered that the voter guide would decrease the mystique around candidates, would provide more information than just names of candidates, and would cut down on the number of places where a voter has to go to get information on the candidates. Those who indicated that the voter guide was a bad idea expressed concern that it is impractical and can't be done on the state level because there are too many judges who stand for election. The cost of the mass mailing of the voter guides was also identified as a drawback, and a concern was raised as to whether political influence could be removed from whatever entity was charged with developing the guide. A question was also raised as to whether people would read the guide.

### 3. What Should Be Included in a State Voter Guide

**\*Information on individual candidates**

**\*Information on the New York State judicial system**

Focus group participants were asked about what type of information or content should be included in the voter guides. Participants in 6 of the 9 groups indicated that the guide should include information on individual candidates. It was suggested that this include:

- \*The candidate's background in a short biography (e.g., qualifications, education, work experience, activities in the community/community service, family life)
- \*Legal experience (e.g., whether the candidate has been in a courtroom recently, and whether they are a former judge and if so what court and whether they rendered significant decisions)
- \*Affiliations (including: party, business and civic)
- \*Ratings by bar associations
- \*Pictures
- \*Short statements by the candidates (to include: why they want the job, and a discussion of positions within the restraints of the rules of campaign speech)

It was also suggested that there be a description of the court that each candidate is running for that includes the duties of the position and the necessary qualifications.

Participants in 3 of the 9 focus groups expressed the recommendation that voter guides include information on the New York State judicial system including the levels of courts and the job descriptions of judges in each of the courts. Specifically, it was suggested that the guide contain an overview of how the court system works, an overview of the courts (including jurisdiction and how each court differs), a description of the judicial process and a general discussion of "What makes a good judge?" and criteria to evaluate a judge.

#### **4. How Should the Voter Guide Be Distributed?**

Participants in the focus groups discussed ideas on how the voter guide should be distributed. There was an even split on direct mail, with participants in 3 of the 9 groups recommending direct mail and participants in 3 other groups recommending against direct mail. No participant in the remaining 3 groups addressed direct mail. Civic organizations, churches, local governments, the Board of Elections, polling places and the Internet were suggested as possible distribution sites and conduits.

#### **5. Other Comments on the Voter Guide**

The following additional comments on the voter guide were recorded by the scribe: make the guide attractive/eye catching, keep it simple and brief, the guide should be culturally appropriate, the guide should be written in plain English and easy to understand, the guide should be published in different languages, an independent commission should be funded to create the voter guide, and local voter guides should be created for local candidates.

### **IV. State Sponsored Screening Commissions**

#### **1. Methodology**

To assess interest in State sponsored screening commissions, the facilitator read out loud to each focus group the description of the independent State sponsored Screening Commissions contained in the recommendation of the Commission to Promote Public Confidence in Judicial Elections (p. 7 of the Interim report). Participants were asked to vote on whether they thought the Commissions are a good idea or a bad idea by a show of hands. Votes were counted and additional comments were recorded on a flipchart noting points of agreement and dissent. In preparing the focus group reports, the facilitator organized the comments into similar topics/categories and the number of groups were counted in which at least one of the participants made a related point.

## **2. Are State Sponsored Screening Commissions a Good Idea or a Bad Idea**

**82% of participants in 8 of the 9 focus groups agree that State sponsored screening commissions are a good idea.**

82% of focus group participants (74 people) agreed that screening commissions are a good idea. Participants in 7 of the 9 focus groups said that the commissions give the public an opportunity to participate in the screening process. It was noted in 4 of the focus groups that the recruitment role of the screening commission opens the judicial candidate door to diverse communities, and in 3 of the focus groups the opportunity for diverse grassroots participation was noted as a positive. Participants in 4 of the focus groups expressed the opinion that the screening commissions encourage a level of competency in judicial candidates. In addition, participants in 4 focus groups noted support for screening commissions because the screening commissions would lend credibility to the selection process.

There were 6 individuals in 5 separate focus groups representing 6% of the total number of focus group participants who agreed with the State sponsored screening commission in principle but expressed significant doubts about keeping them apolitical or co-opted by any one group. This group was concerned with who will ultimately be on the commissions, who will create the screening criteria and whether the commissions would simply reinforce the current system. Furthermore, there was concern expressed that politics might still be involved and that the commissions could be another level of bureaucracy.

In total, 9 participants, or 10% of all participants, were opposed to the creation of State sponsored screening commissions, with 6 of the nine participants coming from the same focus group. These participants thought that State sponsored screening commissions are a bad idea because the State should support local screening commissions over regional or statewide commissions, new screening commissions would be duplicative of what already exists locally, the commissions may not be cost effective, four commissions would not be enough, and voters should not be told by the screening commissions who to vote for.

Seven (7) participants, or 8%, did not offer an opinion or abstained from voting.

### **3. Characteristics and Composition of State Sponsored Screening Commissions: What Should They Look Like?**

Participants were asked a series of questions regarding the characteristics and composition of State sponsored screening commissions. Responses were recorded on a flipchart noting points of agreement and dissent. In preparing the focus group reports, the facilitator organized the comments into similar categories/topics and the number of groups were counted in which at least one of the participants made a similar point.

#### **a. What characteristics should members of the screening commissions possess**

Participants in 7 of the 9 groups said that commission members should be independent, impartial and lack bias. Participants in 3 of the focus groups said that members should have a history of integrity and high moral standards, that they should understand the judicial system and have basic legal competence, and that they should be involved in the community. Other individual comments include: commission members should be trusted by the community, should have life experience, need to take the job seriously, should have transparency (e.g., full political and financial disclosure), should be enthusiastic, possess interviewing skills, be established in the community, be literate, and have no prior service on a screening commission.

#### **b. Is diversity on the screening commissions important and if so what kinds of diversity**

Participants in all 9 focus groups agreed that diversity is important, and multiple types of diversity were identified. All 9 groups noted gender diversity. Eight (8) of the groups added ethnicity/national origin and 7 of the groups mentioned diversity based on race and socioeconomic status. Age diversity was raised in 6 groups, and participants in 5 groups expressed the need for geographic diversity (e.g., urban/suburban/local and local/non-local). Other diversity factors mentioned were political party (4 groups), professional (3 groups), gender identity/orientation (2 groups), religion (2 groups), language (1 group) and physical disability (1 group). Most groups agreed that the diversity of the Commission should generally reflect the diversity of the community the court system is serving.

#### **c. What groups in society might Commissioners be drawn from**

Participants in all 9 focus groups expressed the need for diverse multi-racial, ethnic community and civic groups. Participants recommended by name a number of statewide and local/regional umbrella organizations that represent diverse populations as possible sources of potential members. In 8 of the 9 focus groups it was recommended that commissioners be drawn from the legal profession (e.g., bar associations, legal aid, law professors, practicing lawyers, retired lawyers, defense lawyers and prosecutors, and individuals with different types of practice areas).

Participants in 3 of the focus groups specifically recommended participation by the League of Women Voters and educators. Three of the focus groups offered that convicted felons, former inmates and ex-offenders should be able to participate because they have a direct experience with the justice system.

**d. Should any individual or group be excluded from participation on the Commissions**

Only six of the nine focus groups gave feedback on this question (due to time constraints). Participants in 4 of the 6 groups said political party leaders/bosses/inner circle members should be precluded from participation on the screening commissions, as well as elected officials. Participants in 3 of the 6 groups stated that convicted felons and individuals with a criminal record should be prohibited from serving. Individual comments in only 1 group included the following recommendations for individuals who should not serve: judicial candidates, family members of candidates, law/business partners of candidates, religious leaders, people in the media, unregistered voters, undocumented immigrants, former judges, practicing attorneys (suggested to use retired lawyers instead), and non-citizens (there was one dissenting opinion verbalized on this).

**e. How important is lay participation on the Commissions and why**

There was overwhelming support for a mix of lay people and attorneys on screening commissions. Eighty-seven (87) of the 90 participants, or 97% agreed that lay people should be included on the commissions. In support of involvement of lay people, participants expressed the following opinions: it would improve connection to the community, adds legitimacy to the process, provides a broader perspective, and jurors are lay people and they already play a major role in our justice system. In support of including attorney members, participants noted that attorneys offer professional expertise, they would be looking for different/particular qualifications, and they have a different depth of the understanding needed. It was recommended by one focus group that internal rules and published guidelines need to be in place so that attorneys do not dominate the process.

**f. Who should select the members of screening commissions**

The facilitator asked focus group participants to indicate what would be potential organizations or authorities to select screening commission members. The following were recommended followed by a parenthetical indicating the number of groups that so recommended: bar associations (6), League of Women Voters (4), clergy/interfaith organizations (4), deans of law schools (3), Chief Judge (3), Chief Administrative Judge of the Department (2), Court of Appeals Judges (2), retired judges (2), academia (2), business community (2), community board members (1), current judges (1), legal aid lawyers (1), board of education (1), former parties in civil/criminal court (1), community groups that work with justice/prison system (1), student academic organization (1), elected officials (1), elected local (not State) officials (1), governor (1).

### **g. Should any individual or group be excluded from selecting the Commissioners**

Seven (7) of the 9 focus groups gave feedback on this questions. In six of the groups, political party leaders/bosses and elected officials/legislators were identified as individuals to be excluded from selecting members of the screening commissions. Participants in 4 of the groups stated that the governor should not make appointments to the commissions. Two groups indicated that convicted felons should not make appointments to the commissions, and in one group participants suggested that the following not select commissioners: clergy, judicial candidates, district attorneys, current judges and anyone with a conflict of interest.

#### **4. Additional Feedback**

The facilitator noted that the following additional feedback was given at some of the focus group sessions:

- \*Participants in 4 focus groups thought commissioners should participate on a rotating basis
- \*3 focus groups thought commissioners should have term limits
- \*3 focus groups indicated that more than 4 departmental screening commissions would be needed
- \*While participants thought that locals should participate on the screening commissions, in 2 focus groups it was suggested that local candidates be screened by non-locals
- \*2 focus groups recommended strengthening existing screening processes and offered that State commissions should function as an umbrella for these existing commissions
- \*There was considerable support for a random process of selection.

#### **V. Contributions to Judicial Campaigns**

At the conclusion of the focus group session, each participant was asked to anonymously complete a survey. One purpose of the survey was to glean demographic data (as described in Section II, B of this report). A second purpose of the survey was to ask the following two questions regarding contributions to judicial campaigns:

**Many Judges in New York State are elected and therefore have to raise money for their campaigns.**

- 1. Do you think that campaign contributions made to a judge can have an influence on the judge's decisions when the campaign contributor has a case before that judge?**

**Yes**

**No**

- 2. If yes, please indicate what amount of contribution would trigger concern on your part. Please fill in that amount \$\_\_\_\_\_**

81 people responded that they think that campaign contributions made to a judge can have an influence on the judge's decisions when the campaign contributor has a case before that judge.

8 People responded that they do not think that campaign contributions made to a judge can have an influence on the judge's decisions when the campaign contributor has a case before that judge.

Of the 81 who responded positively, 79 people listed an amount of contribution that would trigger concern on their part. The median contribution amount was \$500. What follows is a listing of the dollar amount that was offered by individual participants where such contribution raised a concern regarding possible influence:

15 People said that \$1 raised concern  
3 People said that \$25 raised concern  
3 People said that \$50 raised concern  
5 People said that \$100 raised concern  
4 People said that \$200 raised concern  
3 People said that \$250 raised concern  
15 People said that \$500 raised concern  
18 People said that \$1,000 raised concern  
1 People said that \$2,000 raised concern  
2 People said that \$2,500 raised concern  
2 People said that \$3,000 raised concern  
1 Person said that \$5,000 raised concern  
4 People said that \$10,000 raised concern  
2 People said that \$50,000 raised concern  
1 Person said that \$100,000 raised concern

## **VII. Conclusion**

Statewide, the focus group participants helped to provide insights into how to achieve a better informed electorate on judicial races and how to increase voter participation in judicial elections. Participants also provided information on state sponsored screening commissions, offering reactions, ideas and perspectives to help guide the decisionmaking of the Commission. Special thanks to all of the participants who volunteered their time to assist in this research effort.

# APPENDIX A

**COMMISSION TO PROMOTE PUBLIC CONFIDENCE IN JUDICIAL ELECTIONS**

**John D. Feerick, Chair**

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February 2004

Dear \_\_\_\_\_,

\_\_\_\_\_ referred me to you and I would like to invite you to participate in a focus group sponsored by the Commission to Promote Public Confidence in Judicial Elections. New York State Chief Judge Judith S. Kaye appointed the Commission in April 2003 to provide her with a blueprint for promoting public confidence and voter participation in judicial elections. The Commission is comprised of 29 Commissioners from around New York State who are all contributing their time to the task.

The Commission has already issued an Interim Report, which is available on-line at our website—<http://law.fordham.edu/commission/judiciaelections--> if you wish to look at it. The recommendations in the Interim Report are the result of extensive research including information collected at public hearings around the State, a major public opinion poll conducted by the Marist Institute for Public Opinion, and communications with many interested parties. The Commission intends to issue a Final Report and Recommendations in June 2004.

Between the Interim and Final Reports, the Commission is sponsoring a series of focus groups around the State directed by the Government Law Center at Albany Law School. These focus groups are designed to gather the opinions and ideas of individuals who are active in their communities. The Marist Poll reached out to citizens on a broad level, and we hope that the focus groups will allow us to engage citizens in a deeper, more substantive conversation about the issues we are addressing.

I hope that you will be able to participate in the focus groups that will take place at [Place] on [Date]. The group will begin promptly at 6:00 p.m. and go no later than 9:00 p.m. and we will provide food. During the session, a facilitator will guide a discussion on judicial elections. The enclosed material offers some background information and gives you an idea of the issues we will cover. Please review it carefully before you come to the focus group and feel free to share it with others in the community for additional ideas.

Your participation in this project is vitally important and will have a significant impact as the information developed from the focus groups will help drive the recommendations that the Commission makes in its Final Report to Chief Judge Kaye in June of this year. If implemented, those recommendations will be a basis for reform of New York State's judicial election system.

We would be very pleased if you would participate in this important work. If you are willing and able, please call Sharmaine Moseley of the Government Law Center at Albany Law School at 518-445-2329, or e-mail her at [smose@mail.als.edu](mailto:smose@mail.als.edu). Given the fast approaching date, we ask that you respond either way by \_\_\_\_\_ so we know if we can count on your participation.

There is no institution more important to a free and democratic society than the judiciary. Your views and insights will help ensure that New York's elected judiciary is independent and impartial and comprised of well-qualified judges. Thank you for your help in this endeavor.

Very truly yours,

John D. Feerick, Chair

## **The Commission Background**

In 2003, Chief Judge Kaye appointed 29 citizens to serve on the Commission to Promote Public Confidence in Judicial Elections and charged them with providing her a blueprint to foster dignified judicial campaigns and improve voter participation in judicial elections. The Commission has conducted public hearings in Albany, Buffalo and New York City; a public poll of registered voters in New York State; and various research. It has also received written testimony from and met with many concerned citizens. The preliminary recommendations resulting from this work are in our Interim Report, which can be accessed at <http://law.fordham.edu/commission/judicialections>.

These focus groups are an important part of the Commission's continuing work towards its Final Report and Recommendations, which will be released in June 2004. By participating in them, you are helping ensure that New York State's Judiciary is among the finest in the Nation. Thank you.

## **The Issues**

New York State has a complicated judicial system, perhaps the most complicated in the nation. We have at least 11 different levels of courts, although some people claim that there are actually 13 distinct courts. And we select judges for different courts in different ways—a judge may be appointed by the Governor from a list open to all lawyers, or appointed from a pool of elected trial court judges, or elected through a primary system, or elected through a nomination system. In some cases, judges for the same court may be elected in certain parts of the state and appointed in others.

Recently, the media, non-profit organizations, politicians, citizens groups, academics and law enforcement agencies have all raised concerns about judicial elections in New York. The Commission is considering ways to address these concerns and we would like to get your thoughts on two of them in particular. First, we are considering a recommendation that the judiciary undertake a voter education program with the goal of increasing voter participation. We would like to get your views on why people do not vote in judicial elections and how an education campaign might encourage more people to vote for judicial candidates. Second, we recommended in our Interim Report that New York State establish a system of independent commissions that would screen every candidate for judicial office in New York. We would like your ideas on what types of people should sit on those commissions and who should choose them.

## **Voter Participation and Education**

Participation in judicial elections is very low in New York State, with only 17% of registered voters casting a ballot in a judicial race in some areas of the state. Without a high profile executive or legislative race to draw voters, voter turnout at judicial elections is typically among the lowest. Even when voters do go to the polls, many do not bother to cast a ballot for judicial candidates, they simply vote in the more familiar races. This phenomenon, known as voter roll off, reaches as high as 41% in parts of the state.

Voter education about the judiciary is closely linked to voter participation. Unfortunately, many New Yorkers appeared not to be well informed about the state judiciary. Even New York registered voters lack fundamental knowledge about the court system and the selection of judges. A recent poll showed that 65% of New York's registered voters did not know that Supreme Court Justices are elected, and 48% did not know that judges of the Court of Appeals are appointed. Even when the voters participate in selecting judges, they are often not well informed about the specific candidates. In the same poll, 58% of registered voters listed a lack of knowledge about the candidates as the main reason they would not vote in a judicial election. According to another survey, 75% of New York voters could not recall the judges they had voted for as they left the polling area.

## Candidate Selection

The Commission recommended in its Interim Report that New York State establish a system of independent commissions that would screen every candidate for election to judicial office in New York. These screening commissions would determine if each candidate was well qualified to serve as a judge, and encourage political parties to support candidates with the highest rating. These proposed commissions are called Independent Judicial Election Qualifications Commissions (“Qualifications Commissions”).

The idea of screening judicial candidates is not a new one. Many local organizations use a sort of screening process to identify preferred judicial candidates for their constituents. For instance, local bar associations and local branches of the League of Women Voters often interview and rate candidates for local judicial office. There would be important differences between these local screening and the Qualifications Commissions. For instance, the Qualifications Commissions would cover a larger geographic area than local screening; they would be state sponsored rather than sponsored by private organizations; they would indicate which are well qualified rather than rate preferred candidates; and they would be charged with actively recruiting candidates. The local screening process is important because it determines which candidates are best for a local community. The Qualifications Commissions would not replace local screening; they only would ensure that every candidate who runs for office is well qualified to serve.

While many people strongly support the idea of independent screening of judicial candidates, they expressed different preferences on various details of the screening process. We would like your ideas on what types of people should sit on the Qualifications Commissions and who should choose them.

We would like your opinions on why people do not vote in judicial elections and what can be done to encourage informed voting. Similarly, we would like your views on whether there is sufficient voter education about judicial elections, both on the individual candidates and on the importance of the judiciary.

\* \* \* \*

Thank you again for your participation in this important work. Your input is a valuable service and will inform the Commissions Final Report and Recommendations. Please feel free to discuss these issues with others before the focus group to help develop your thoughts and ideas.

# APPENDIX B

**Commission To Promote Public Confidence In Judicial Elections**

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**Focus Group Participant Survey**

**Date:** \_\_\_\_\_ **Town/City of Focus Group** \_\_\_\_\_

**Campaign Contributions**

Many judges in New York State are elected and therefore have to raise money for their election campaigns.

1. Do you think that campaign contributions made to a judge can have an influence on the judge's decisions when the campaign contributor has a case before that judge?

**Please Circle**

- Yes
- No

2. If yes, please indicate what amount of contribution would trigger concern on your part.

**Please fill in that amount**

\$ \_\_\_\_\_

**Demographics**

3. Are you registered to vote as a Democrat, Republican, or an Independent, that is not enrolled in any party?

**Please Circle**

- Democrat
- Republican
- Independent, not enrolled
- Other Party (Please Specify) \_\_\_\_\_

4. Are you white, black or African American, Latino or Hispanic, or Asian?

**Please Circle**

- White
- Black or African American
- Latino or Hispanic
- Asian or Asian Indian
- American Indian, Eskimo

5. Are you employed?

**Please Circle**

- Full time
- Part time
- Not employed

6. If you are employed, what is the nature of your employment?

---

6.b Please note briefly any civic activities in the community other than your employment

7. What is the last year of school you completed?

**Please Circle**

- Less than high school
- Graduated high school or equivalency degree
- Some college
- Associate degree (2 years college)
- Bachelors degree (4 years college)
- Graduate or professional degree
- Foreign degree

8. Is your combined family income before taxes:

**Please Circle**

- Less than \$15,000 a year
- \$15,000 to just under \$25,000
- \$25,000 to just under \$50,000
- \$50,000 to just under \$75,000
- \$75,000 to just under \$100,000
- \$100,000 or more

9. In what year were you born?

**Please fill in year**

---

10. In which COUNTY in New York State do you live?

---

11. Are you male or female?

**Please Circle**

- Male
- Female



**COMMISSION TO PROMOTE PUBLIC CONFIDENCE  
IN JUDICIAL ELECTIONS**

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**APPENDIX G**

**New York State Judges: Mail Survey Results (May 2004)**





**Commission to Promote Public Confidence in Judicial Elections  
 New York State Judges  
 Mail Survey Results  
 May 2004 <sup>1</sup>**

Q1. Do you think the information available to judicial candidates about election laws and rules of conduct for judicial elections is:

		NYS Judges	NYS Judges		NYS Elected Judges	
		Total	Appointed	Elected	Town or Village	All other
		Col %	Col %	Col %	Col %	Col %
How helpful: Information available about election laws and rules of conduct	Very helpful	23%	14%	24%	25%	23%
	Helpful	55%	54%	55%	56%	51%
	Not very helpful	19%	26%	18%	16%	23%
	Not helpful at all	3%	6%	3%	3%	3%

Marist College Institute for Public Opinion May 2004

Q2. How easy is it for judicial candidates to access information about election laws and rules of conduct for judicial elections:

		NYS Judges	NYS Judges		NYS Elected Judges	
		Total	Appointed	Elected	Town or Village	All other
		Col %	Col %	Col %	Col %	Col %
How easy to access: Information about election laws and rules of conduct	Very easy	17%	15%	17%	15%	20%
	Easy	52%	37%	53%	56%	47%
	Difficult	29%	42%	27%	26%	30%
	Very difficult	3%	5%	3%	3%	2%

Marist College Institute for Public Opinion May 2004

<sup>1</sup> Comparison data is included for questions asked in the October 2003 survey of NYS registered voters. Numbers may not add to 100% due to rounding.

Q3. Overall, would you say the elected judges in New York State are doing an excellent, good, just fair, or poor job?

		NYS Judges	NYS Judges		NYS Elected Judges		NYS Registered Voters
		Total	Appointed	Elected	Town or Village	All other	Total
		Col %	Col %	Col %	Col %	Col %	Col %
Perceptions of New York State Judiciary	Excellent	39%	21%	42%	37%	50%	3%
	Good	48%	50%	48%	51%	42%	42%
	Just fair	8%	20%	6%	7%	4%	39%
	Poor	1%	4%	1%	1%	0%	9%
	Do not know enough to say	4%	6%	4%	4%	3%	8%

Marist College Institute for Public Opinion May 2004

Q4. How much influence do you think campaign contributions to elected judges have on their decisions: <sup>2</sup>

		NYS Judges	NYS Judges		NYS Elected Judges		NYS Registered Voters
		Total	Appointed	Elected	Town or Village	All other	Total
		Col %	Col %	Col %	Col %	Col %	Col %
Influence of campaign contributions	A great deal	3%	4%	3%	4%	1%	38%
	Some	24%	43%	22%	29%	11%	45%
	Just a little	18%	21%	17%	18%	16%	11%
	No influence at all	55%	32%	58%	49%	72%	6%

Marist College Institute for Public Opinion May 2004

Q5. Do you think most judges who run for election in New York State know the identity of:

		NYS Judges	NYS Judges		NYS Elected Judges	
		Total	Appointed	Elected	Town or Village	All other
		Col %	Col %	Col %	Col %	Col %
Most judges who run for re-election know the identity of:	All of their campaign contributors	7%	8%	7%	8%	4%
	Most of their campaign contributors	30%	39%	29%	33%	24%
	Some of their campaign contributors	31%	32%	31%	28%	36%
	A few of their campaign contributors	25%	13%	26%	25%	28%
	None of their campaign contributors	7%	8%	7%	7%	7%

Marist College Institute for Public Opinion May 2004

<sup>2</sup> REGISTERED VOTERS' QUESTION WORDING FOR Q4. Some judges in New York State are elected and therefore have to raise money for their election campaigns. How much influence do you think campaign contributions made to judges have on their decisions: a great deal of influence, some influence, just a little influence, or no influence at all?

**Q6. If you ran for election to your current seat:** About how much money did your committee **raise** for your last election campaign?

		NYS Judges	NYS Elected Judges	
		Elected	Town or Village	All other
		Col %	Col %	Col %
Money raised by committee for last election campaign	None	54%	71%	20%
	Less than \$20,000	29%	28%	29%
	\$20,000 or more	17%	1%	51%

Marist College Institute for Public Opinion May 2004

		Money raised by committee for last election campaign
		Mean
NYS Judges	Elected	\$11,866
NYS Elected Judges	Town or Village	\$831
	All other	\$34,641

Marist College Institute for Public Opinion May 2004

		Money raised by committee for last election campaign
		Mean
NYS Judges Who Raised Money	Elected	\$25,724
NYS Elected Judges Who Raised Money	Town or Village	\$2,848
	All other	\$43,068

Marist College Institute for Public Opinion May 2004

**Q7. If you ran for election to your current seat:** About how much money did your committee **spend** for your last election campaign?

		NYS Judges	NYS Elected Judges	
		Elected	Town or Village	All other
		Col %	Col %	Col %
Money spent by committee for last election campaign	None	48%	64%	15%
	Less than \$20,000	33%	34%	30%
	\$20,000 or more	19%	1%	55%

Marist College Institute for Public Opinion May 2004

		Money spent by committee for last election campaign
		Mean
NYS Judges	Elected	\$14,278
NYS Elected Judges	Town or Village	\$932
	All other	\$42,172

Marist College Institute for Public Opinion May 2004

		Money spent by committee for last election campaign
		Mean
NYS Judges Who Spent Money	Elected	\$27,641
NYS Elected Judges Who Spent Money	Town or Village	\$2,616
	All other	\$49,839

Marist College Institute for Public Opinion May 2004

Q8. Do you feel that New York State's current rules of judicial conduct contain too many restrictions on judicial campaign speech, contain too few restrictions on judicial campaign speech, or the right amount of restrictions on judicial campaign speech?

		NYS Judges	NYS Judges		NYS Elected Judges	
		Total	Appointed	Elected	Town or Village	All other
		Col %	Col %	Col %	Col %	Col %
Restrictions on NYS current rules of conduct	Too many	32%	26%	32%	32%	33%
	Too few	2%	6%	2%	1%	2%
	The right amount	53%	44%	54%	50%	63%
	Do not know enough to say	13%	24%	12%	17%	2%

Marist College Institute for Public Opinion May 2004

Q9. Using the numbers 0 through 100, what percent of New York State's **elected** judges do you think are well-qualified for the positions they hold?

		Percent of well-qualified NYS elected judges
		Mean
NYS Judges	Total	77%
NYS Judges	Appointed	67%
	Elected	79%
NYS Elected Judges	Town or Village	79%
	All other	79%

Marist College Institute for Public Opinion May 2004

		NYS Judges	NYS Judges		NYS Elected Judges	
		Total	Appointed	Elected	Town or Village	All other
		Col %	Col %	Col %	Col %	Col %
Percent of well-qualified NYS elected judges	Less than 50%	6%	12%	5%	6%	5%
	50% to less than 75%	21%	40%	18%	18%	19%
	75% or higher	73%	48%	77%	77%	76%

Marist College Institute for Public Opinion May 2004

Q10. Which **one** of the following do you think is a judge's most important responsibility: making impartial decisions, protecting individuals' rights, providing equal justice for the rich and the poor, or checking the power of other branches of government?<sup>3</sup>

		NYS Judges	NYS Judges		NYS Elected Judges		NYS Registered Voters
		Total	Appointed	Elected	Town or Village	All other	Total
		Col %	Col %	Col %	Col %	Col %	Col %
Most important responsibility of judges	Making impartial decisions	72%	78%	70%	61%	90%	35%
	Protecting individuals' rights	17%	8%	19%	26%	5%	31%
	Providing equal justice	10%	12%	10%	13%	4%	30%
	Checking the power of other branches	1%	2%	0%	0%	1%	4%

Marist College Institute for Public Opinion May 2004

Q11. Which **one** of the following do you think comes closest to the main reason why people do not vote in a judicial election: they do not know enough about the candidates, they are turned off by the way the candidates run campaigns, they do not care that much about judicial elections, or they do not think that their vote matters?<sup>4</sup>

		NYS Judges	NYS Judges		NYS Elected Judges		NYS Registered Voters
		Total	Appointed	Elected	Town or Village	All other	Total
		Col %	Col %	Col %	Col %	Col %	Col %
Main reason people do not vote in judicial elections	Do not know enough	33%	38%	33%	28%	45%	58%
	Turned off by campaigns	3%	2%	3%	4%	2%	15%
	Do not care that much	43%	47%	42%	39%	46%	7%
	Do not think that their vote matters	21%	14%	22%	29%	7%	4%
	Always vote in judicial elections						16%

Marist College Institute for Public Opinion May 2004

<sup>3</sup> REGISTERED VOTERS' QUESTION WORDING FOR Q10. Which one of the following do you think is the most important responsibility for judges: making impartial decisions, protecting individual rights, providing equal justice for the rich and the poor, checking the power of other branches of government?

<sup>4</sup> REGISTERED VOTERS' QUESTION WORDING FOR Q11. Which one of the following comes closest to the main reason why you would not vote in a judicial election: do not know enough about the candidates, turned off by the way the candidates run campaigns, do not care that much about judicial elections, they do not think that their vote matters? Voters could also volunteer that they always voted in judicial elections.

Q12. In your opinion, how much information does the public have about candidates for elective judicial office:

		NYS Judges	NYS Judges		NYS Elected Judges	
		Total	Appointed	Elected	Town or Village	All other
		Col %	Col %	Col %	Col %	Col %
How much information public has about judicial candidates	A great deal	7%	3%	8%	6%	11%
	Some	43%	25%	45%	49%	38%
	Just a little	42%	47%	41%	41%	43%
	None at all	8%	24%	6%	4%	9%

Marist College Institute for Public Opinion May 2004

Q13. Do you think that the following items influence the decisions of judges in New York State a great deal, some, just a little, or not at all? <sup>5</sup>

Influence of the Public's Opinion on an Issue on Judges' Decisions

		NYS Judges	NYS Judges		NYS Elected Judges		NYS Registered Voters
		Total	Appointed	Elected	Town or Village	All other	Total
		Col %	Col %	Col %	Col %	Col %	Col %
Public's opinion on an issue	Great deal	5%	5%	5%	5%	4%	13%
	Some	43%	55%	41%	43%	39%	51%
	Just a little	27%	30%	27%	24%	30%	23%
	Not at all	25%	10%	27%	27%	26%	13%

Marist College Institute for Public Opinion May 2004

Influence of the Media Coverage on an Issue on Judges' Decisions

		NYS Judges	NYS Judges		NYS Elected Judges		NYS Registered Voters
		Total	Appointed	Elected	Town or Village	All other	Total
		Col %	Col %	Col %	Col %	Col %	Col %
Media coverage	Great deal	7%	8%	7%	7%	7%	27%
	Some	31%	47%	29%	30%	28%	39%
	Just a little	29%	33%	28%	26%	33%	21%
	Not at all	33%	12%	37%	38%	33%	13%

Marist College Institute for Public Opinion May 2004

<sup>5</sup> REGISTERED VOTERS' QUESTION WORDING FOR Q13. Do you think that (insert item) influences the decisions of judges in New York State a great deal, some, just a little, or not at all?

Influence of the People Judges Know Personally on Judges' Decisions

		NYS Judges	NYS Judges		NYS Elected Judges		NYS Registered Voters
		Total	Appointed	Elected	Town or Village	All other	Total
		Col %	Col %	Col %	Col %	Col %	Col %
People judges know personally	Great deal	5%	2%	5%	7%	3%	28%
	Some	24%	34%	23%	27%	15%	41%
	Just a little	32%	37%	32%	34%	29%	21%
	Not at all	39%	27%	40%	33%	53%	10%

Marist College Institute for Public Opinion May 2004

Influence of Political Parties on Judges' Decisions

		NYS Judges	NYS Judges		NYS Elected Judges		NYS Registered Voters
		Total	Appointed	Elected	Town or Village	All other	Total
		Col %	Col %	Col %	Col %	Col %	Col %
Political parties	Great deal	6%	10%	5%	6%	3%	35%
	Some	19%	34%	17%	20%	12%	43%
	Just a little	23%	22%	23%	25%	20%	15%
	Not at all	53%	34%	55%	50%	65%	7%

Marist College Institute for Public Opinion May 2004

Influence of Having to Run for Re-election on Judges' Decisions

		NYS Judges	NYS Judges		NYS Elected Judges		NYS Registered Voters
		Total	Appointed	Elected	Town or Village	All other	Total
		Col %	Col %	Col %	Col %	Col %	Col %
Having to run for re-election	Great deal	11%	25%	9%	10%	8%	35%
	Some	31%	43%	30%	27%	35%	44%
	Just a little	27%	21%	27%	27%	27%	14%
	Not at all	31%	11%	34%	36%	30%	8%

Marist College Institute for Public Opinion May 2004

Q14. Do you think that the following people have a great deal, some, just a little, or no influence at all over who becomes a judge: <sup>6</sup>

Influence of Voters on Who Becomes a Judge

		NYS Judges	NYS Judges		NYS Elected Judges		NYS Registered Voters
		Total	Appointed	Elected	Town or Village	All other	Total
		Col %	Col %	Col %	Col %	Col %	Col %
Voters	Great deal	52%	27%	56%	61%	44%	36%
	Some	25%	24%	25%	22%	32%	38%
	Just a little	14%	24%	13%	12%	15%	18%
	Not at all	9%	24%	6%	5%	9%	8%

Marist College Institute for Public Opinion May 2004

Influence of Political Party Leaders on Who Becomes a Judge

		NYS Judges	NYS Judges		NYS Elected Judges		NYS Registered Voters
		Total	Appointed	Elected	Town or Village	All other	Total
		Col %	Col %	Col %	Col %	Col %	Col %
Political party leaders	Great deal	54%	72%	51%	44%	66%	48%
	Some	32%	24%	34%	37%	26%	38%
	Just a little	9%	4%	10%	12%	5%	12%
	Not at all	5%	1%	6%	7%	3%	3%

Marist College Institute for Public Opinion May 2004

Influence of Campaign Contributors on Who Becomes a Judge

		NYS Judges	NYS Judges		NYS Elected Judges		NYS Registered Voters
		Total	Appointed	Elected	Town or Village	All other	Total
		Col %	Col %	Col %	Col %	Col %	Col %
Campaign contributors	Great deal	8%	18%	6%	7%	5%	39%
	Some	35%	49%	33%	36%	27%	39%
	Just a little	30%	19%	32%	31%	35%	15%
	Not at all	27%	15%	29%	26%	33%	7%

Marist College Institute for Public Opinion May 2004

<sup>6</sup> REGISTERED VOTERS' WORDING FOR Q14. Do you think that (insert item) have a great deal, some, just a little, or no influence at all over who becomes a judge?

Influence of Special Interest Groups on Who Becomes a Judge

		NYS Judges	NYS Judges		NYS Elected Judges		NYS Registered Voters
		Total	Appointed	Elected	Town or Village	All other	Total
		Col %	Col %	Col %	Col %	Col %	Col %
Special interest groups	Great deal	8%	18%	6%	7%	4%	31%
	Some	29%	42%	27%	29%	23%	44%
	Just a little	31%	28%	32%	32%	32%	18%
	Not at all	32%	11%	35%	33%	41%	7%

Marist College Institute for Public Opinion May 2004

Q15. Do you think it is very important, important, not very important, or not important at all that in order for a judge to carry out his or her responsibilities a judge be independent from:<sup>7</sup>

Importance of Judges' Independence from Political Party Leaders

		NYS Judges	NYS Judges		NYS Elected Judges		NYS Registered Voters
		Total	Appointed	Elected	Town or Village	All other	Total
		Col %	Col %	Col %	Col %	Col %	Col %
Political party leaders	Very important	75%	81%	74%	75%	71%	56%
	Important	17%	15%	17%	17%	18%	34%
	Not very important	6%	4%	6%	5%	7%	5%
	Not important at all	3%	1%	3%	3%	4%	4%

Marist College Institute for Public Opinion May 2004

Importance of Judges' Independence from Campaign Contributors

		NYS Judges	NYS Judges		NYS Elected Judges		NYS Registered Voters
		Total	Appointed	Elected	Town or Village	All other	Total
		Col %	Col %	Col %	Col %	Col %	Col %
Campaign contributors	Very important	74%	79%	73%	74%	71%	56%
	Important	17%	18%	17%	18%	16%	34%
	Not very important	6%	3%	6%	5%	8%	6%
	Not important at all	3%	1%	3%	2%	5%	4%

Marist College Institute for Public Opinion May 2004

<sup>7</sup> REGISTERED VOTERS' QUESTION WORDING FOR Q15. Do you think it is very important, important, not very important, or not important at all that a judge be independent from (insert item) in order for a judge to carry out his or her responsibilities?

Q16. If a person running for judge takes a position on an issue during an election campaign, do you think if a case involving that issue comes before them, that person as a judge:<sup>8</sup>

		NYS Judges	NYS Judges		NYS Elected Judges		NYS Registered Voters
		Total	Appointed	Elected	Town or Village	All other	Total
		Col %	Col %	Col %	Col %	Col %	Col %
Candidates' positions on campaign issues and judicial fairness	Will be fair and impartial	35%	28%	36%	39%	29%	52%
	Will not be fair and impartial	33%	35%	33%	30%	38%	41%
	Do not know enough to say	32%	37%	31%	31%	33%	7%

Marist College Institute for Public Opinion May 2004

Q17. Do you think a campaign contribution raises a reasonable question about a judge's impartiality when the **contributing party** appears before that judge?

		NYS Judges	NYS Judges		NYS Elected Judges	
		Total	Appointed	Elected	Town or Village	All other
		Col %	Col %	Col %	Col %	Col %
Does a contribution from a party raise a reasonable question about impartiality?	Yes, any contribution	43%	50%	43%	51%	26%
	It may, above a certain level	19%	30%	17%	12%	27%
	No	19%	7%	20%	14%	32%
	Do not know enough to say	19%	14%	20%	23%	15%

Marist College Institute for Public Opinion May 2004

		NYS Judges	NYS Judges Who Responded "Only above a certain level"		NYS Elected Judges Who Responded "Only above a certain level"	
		Responded "Only above a certain level"	Appointed	Elected	Town or Village	All other
		Col %	Col %	Col %	Col %	Col %
Amount from contributing parties that raises question	\$500 or less	47%	44%	47%	60%	37%
	\$501 to \$1,000	31%	44%	27%	21%	31%
	More than \$1,000	22%	12%	25%	19%	32%

Marist College Institute for Public Opinion May 2004

<sup>8</sup> REGISTERED VOTERS' QUESTION WORDING FOR Q16. If a person running for judge takes a position on an issue during an election campaign, do you think that person will be fair and impartial or will not be fair and impartial as a judge if a case involving that issue comes before them?

Q18. Do you think a campaign contribution raises a reasonable question about a judge's impartiality when the **contributing lawyer** is involved in a case before that judge?

		NYS Judges	NYS Judges		NYS Elected Judges	
		Total	Appointed	Elected	Town or Village	All other
		Col %	Col %	Col %	Col %	Col %
Does a contribution from a lawyer with a case before a judge raise a reasonable question about impartiality?	Yes, any contribution	42%	49%	41%	51%	22%
	It may, above a certain level	19%	27%	17%	12%	28%
	No	21%	12%	22%	15%	36%
	Do not know enough to say	18%	12%	19%	22%	14%

Marist College Institute for Public Opinion May 2004

		NYS Judges	NYS Judges Who Responded "Only above a certain level"		NYS Elected Judges Who Responded "Only above a certain level"	
		Responded "Only above a certain level"	Appointed	Elected	Town or Village	All other
		Col %	Col %	Col %	Col %	Col %
Amount from contributing lawyer that raises question	\$500 or less	48%	41%	50%	67%	37%
	\$501 to \$1,000	30%	47%	25%	18%	31%
	More than \$1,000	22%	13%	24%	15%	32%

Marist College Institute for Public Opinion May 2004

Q19. In your experience, how effective are each of the following mechanisms for generating voter support:<sup>9</sup>

Effectiveness of Radio in Generating Voter Support

		NYS Judges	NYS Judges		NYS Elected Judges		NYS Registered Voters
		Total	Appointed	Elected	Town or Village	All other	Total
		Col %	Col %	Col %	Col %	Col %	Col %
Radio	Very effective	16%	13%	16%	12%	25%	9%
	Effective	46%	40%	47%	45%	51%	50%
	Not very effective	15%	18%	15%	16%	13%	12%
	Not at all effective	4%	3%	4%	5%	0%	28%
	Do not know enough to say	19%	25%	18%	21%	11%	

Marist College Institute for Public Opinion May 2004

<sup>9</sup> REGISTERED VOTERS' QUESTION WORDING FOR Q19. Do you use any of the following sources to learn about judicial candidates almost always, sometimes, seldom, or almost never? Media endorsements were asked only of NYS Judges.

Effectiveness of Television in Generating Voter Support

		NYS Judges	NYS Judges		NYS Elected Judges		NYS Registered Voters
		Total	Appointed	Elected	Town or Village	All other	Total
		Col %	Col %	Col %	Col %	Col %	Col %
Television	Very effective	35%	31%	35%	30%	48%	20%
	Effective	33%	32%	34%	33%	34%	52%
	Not very effective	8%	9%	8%	9%	6%	9%
	Not at all effective	4%	3%	4%	5%	1%	19%
	Do not know enough to say	20%	25%	19%	22%	12%	

Marist College Institute for Public Opinion May 2004

Effectiveness of Direct Mail in Generating Voter Support

		NYS Judges	NYS Judges		NYS Elected Judges		NYS Registered Voters
		Total	Appointed	Elected	Town or Village	All other	Total
		Col %	Col %	Col %	Col %	Col %	Col %
Direct mail	Very effective	22%	18%	22%	18%	30%	10%
	Effective	50%	38%	52%	52%	51%	45%
	Not very effective	17%	21%	16%	17%	14%	12%
	Not at all effective	2%	1%	2%	3%	0%	33%
	Do not know enough to say	10%	22%	8%	9%	5%	

Marist College Institute for Public Opinion May 2004

Effectiveness of Lawn Signs or Posters in Generating Voter Support

		NYS Judges	NYS Judges		NYS Elected Judges		NYS Registered Voters
		Total	Appointed	Elected	Town or Village	All other	Total
		Col %	Col %	Col %	Col %	Col %	Col %
Lawn signs or posters	Very effective	12%	5%	13%	16%	9%	6%
	Effective	44%	29%	46%	50%	37%	33%
	Not very effective	28%	35%	28%	23%	38%	15%
	Not at all effective	3%	6%	3%	2%	4%	47%
	Do not know enough to say	12%	25%	10%	9%	12%	

Marist College Institute for Public Opinion May 2004

Effectiveness of Newspapers or Magazines in Generating Voter Support

		NYS Judges	NYS Judges		NYS Elected Judges		NYS Registered Voters
		Total	Appointed	Elected	Town or Village	All other	Total
		Col %	Col %	Col %	Col %	Col %	Col %
Newspapers or magazines	Very effective	13%	9%	13%	13%	14%	34%
	Effective	55%	51%	56%	56%	54%	50%
	Not very effective	20%	16%	20%	19%	24%	6%
	Not at all effective	1%	2%	1%	1%	2%	10%
	Do not know enough to say	11%	22%	9%	11%	8%	

Marist College Institute for Public Opinion May 2004

Effectiveness of Word of Mouth in Generating Voter Support

		NYS Judges	NYS Judges		NYS Elected Judges		NYS Registered Voters
		Total	Appointed	Elected	Town or Village	All other	Total
		Col %	Col %	Col %	Col %	Col %	Col %
Word of mouth	Very effective	48%	36%	49%	51%	45%	13%
	Effective	37%	34%	38%	37%	39%	54%
	Not very effective	7%	8%	7%	6%	11%	12%
	Not at all effective	1%	2%	1%	1%	1%	22%
	Do not know enough to say	6%	20%	5%	5%	4%	

Marist College Institute for Public Opinion May 2004

Effectiveness of Door to Door Visits in Generating Voter Support

		NYS Judges	NYS Judges		NYS Elected Judges		NYS Registered Voters
		Total	Appointed	Elected	Town or Village	All other	Total
		Col %	Col %	Col %	Col %	Col %	Col %
Door to door visits	Very effective	48%	36%	50%	55%	36%	7%
	Effective	31%	26%	31%	29%	36%	26%
	Not very effective	11%	11%	11%	8%	18%	12%
	Not at all effective	2%	5%	2%	1%	3%	56%
	Do not know enough to say	9%	22%	7%	6%	8%	

Marist College Institute for Public Opinion May 2004

Effectiveness of the Internet in Generating Voter Support

		NYS Judges	NYS Judges		NYS Elected Judges		NYS Registered Voters
		Total	Appointed	Elected	Town or Village	All other	Total
		Col %	Col %	Col %	Col %	Col %	Col %
The Internet	Very effective	3%	3%	3%	4%	3%	4%
	Effective	21%	20%	21%	20%	24%	19%
	Not very effective	32%	31%	32%	31%	32%	10%
	Not at all effective	9%	8%	10%	12%	6%	67%
	Do not know enough to say	35%	39%	34%	33%	35%	

Marist College Institute for Public Opinion May 2004

Effectiveness of Bar Association Ratings in Generating Voter Support

		NYS Judges	NYS Judges		NYS Elected Judges		NYS Registered Voters
		Total	Appointed	Elected	Town or Village	All other	Total
		Col %	Col %	Col %	Col %	Col %	Col %
Bar Association ratings	Very effective	8%	9%	7%	5%	13%	7%
	Effective	29%	33%	28%	22%	37%	21%
	Not very effective	33%	32%	33%	31%	38%	10%
	Not at all effective	10%	5%	11%	13%	7%	63%
	Do not know enough to say	20%	22%	20%	29%	5%	

Marist College Institute for Public Opinion May 2004

Effectiveness of Voter Guides in Generating Voter Support

		NYS Judges	NYS Judges		NYS Elected Judges		NYS Registered Voters
		Total	Appointed	Elected	Town or Village	All other	Total
		Col %	Col %	Col %	Col %	Col %	Col %
Voter guides	Very effective	6%	2%	6%	5%	7%	9%
	Effective	31%	32%	30%	27%	36%	38%
	Not very effective	31%	31%	31%	29%	37%	11%
	Not at all effective	8%	5%	9%	9%	7%	42%
	Do not know enough to say	24%	29%	24%	29%	12%	

Marist College Institute for Public Opinion May 2004

Effectiveness of Media Endorsements in Generating Voter Support

		NYS Judges	NYS Judges		NYS Elected Judges	
		Total	Appointed	Elected	Town or Village	All other
		Col %	Col %	Col %	Col %	Col %
Media endorsements	Very effective	15%	20%	14%	13%	19%
	Effective	35%	31%	36%	32%	43%
	Not very effective	25%	23%	25%	25%	25%
	Not at all effective	7%	5%	7%	9%	4%
	Do not know enough to say	18%	22%	18%	22%	8%

Marist College Institute for Public Opinion May 2004

Q20. If New York State were to provide voter guides for judicial elections to inform voters about the candidates in each race, do you think the voter guides would be: <sup>10</sup>

		NYS Judges	NYS Judges		NYS Elected Judges		NYS Registered Voters
		Total	Appointed	Elected	Town or Village	All other	Total
		Col %	Col %	Col %	Col %	Col %	Col %
Usefulness of voter guides	Extremely useful	9%	14%	8%	9%	6%	11%
	Very useful	23%	19%	24%	25%	26%	35%
	Useful	46%	48%	45%	47%	41%	42%
	Not very useful	18%	14%	18%	16%	23%	6%
	Not useful at all	4%	6%	4%	3%	5%	6%

Marist College Institute for Public Opinion May 2004

Q21. Do you think the New York State judicial conduct disciplinary mechanism operates:

		NYS Judges	NYS Judges		NYS Elected Judges	
		Total	Appointed	Elected	Town or Village	All other
		Col %	Col %	Col %	Col %	Col %
NYS judicial conduct disciplinary mechanism operates	Very effectively	14%	9%	15%	18%	9%
	Effectively	60%	56%	61%	63%	58%
	Not very effectively	18%	30%	17%	13%	23%
	Not effectively at all	7%	5%	8%	5%	11%

Marist College Institute for Public Opinion May 2004

Q24. In your current position were you:

		NYS Judges
		Total
		Col %
Current position:	Appointed to a full term	10%
	Appointed to an interim term	2%
	Elected	88%

Marist College Institute for Public Opinion May 2004

<sup>10</sup> REGISTERED VOTERS' QUESTION WORDING FOR Q20. Do you think it would be extremely useful, very useful, useful, not very useful, or not useful at all if New York State were to provide voter guides for judicial elections to help inform voters about the candidates in each race?

Q25. If you ran for election to your current seat: In what year was your last campaign for election?

		NYS Judges	NYS Elected Judges	
		Elected	Town or Village	All other
		Col %	Col %	Col %
Year of last election	1979	.1%	.2%	.0%
	1981	.1%	.2%	.0%
	1985	.1%	.0%	.4%
	1986	.1%	.0%	.4%
	1987	.2%	.0%	.7%
	1989	.2%	.0%	.7%
	1990	.9%	.0%	3.0%
	1991	.9%	.3%	2.2%
	1992	.7%	.0%	1.9%
	1993	1.4%	.2%	4.5%
	1994	2.3%	.0%	7.8%
	1995	1.8%	.0%	5.6%
	1996	2.6%	.0%	8.6%
	1997	1.3%	.0%	4.1%
	1998	2.5%	.0%	7.1%
	1999	3.5%	.5%	8.9%
	2000	9.7%	8.6%	11.9%
2001	22.1%	28.5%	8.6%	
2002	14.8%	16.4%	10.8%	
2003	30.5%	39.2%	12.3%	
2004	4.3%	6.1%	.7%	

Marist College Institute for Public Opinion May 2004

Q26. If you ran for election to your current seat: **Was your last campaign:**

		NYS Judges	NYS Elected Judges	
		Elected	Town or Village	All other
		Col %	Col %	Col %
Last campaign opponent	Against an elected incumbent	4%	4%	4%
	Against an interim appointed incumbent	2%	1%	5%
	As an incumbent	62%	75%	35%
	For an open seat	32%	20%	56%

Marist College Institute for Public Opinion May 2004

Q27. Do you consider the region your court serves to be predominantly:

		NYS Judges	NYS Judges		NYS Elected Judges	
		Total	Appointed	Elected	Town or Village	All other
		Col %	Col %	Col %	Col %	Col %
Region served	Urban	21%	60%	15%	1%	46%
	Suburban	24%	12%	25%	20%	36%
	Small town	25%	11%	28%	37%	7%
	Rural	29%	12%	31%	42%	7%
	Statewide	1%	5%	1%	0%	3%

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Q28a. On what court do you currently serve as a judge?

	NYS Judges Survey Sample	NYS Judges Payroll Data
	Total	Total
	Col %	Col %
Appellate Division or Court of Appeals	1.6%	2.1%
Supreme	16.8%	15.1%
County	3.7%	3.7%
Civil	2.8%	1.9%
Criminal	2.1%	2.4%
District	.1%	1.5%
Family	3.7%	3.9%
City	4.2%	5.0%
Court of Claims	1.1%	.6%
Surrogate	1.2%	.9%
Town or Village	62.5%	62.8%

Marist College Institute for Public Opinion May 2004

Q28b. How many years have you served on that bench?

		Years on current court of service
		Mean
NYS Judges	Total	11
NYS Judges	Appointed	8
	Elected	12
NYS Elected Judges	Town or Village	13
	All other	10

Marist College Institute for Public Opinion May 2004

Q29. Have you served on any other courts in the state of New York?

	NYS Judges	NYS Judges		NYS Elected Judges	
	Total	Appointed	Elected	Town or Village	All other
	Col %	Col %	Col %	Col %	Col %
Appellate Division or Court of Appeals	1%	2%	1%	0%	2%
Supreme	9%	11%	8%	0%	21%
County	7%	1%	8%	0%	20%
Civil	7%	7%	7%	1%	20%
Criminal	8%	19%	6%	0%	15%
District	2%	0%	2%	0%	7%
Family	8%	6%	8%	1%	19%
City	4%	1%	5%	3%	7%
Court of Claims	1%	3%	0%	0%	1%
Surrogate	4%	2%	4%	0%	9%
Town or Village	24%	8%	26%	35%	9%

Choices recorded separately and do not add to 100%. Marist College Institute for Public Opinion May 2004

Q30. How important do you think it is for judges to participate in public education programs about the judiciary:

		NYS Judges	NYS Judges		NYS Elected Judges	
		Total	Appointed	Elected	Town or Village	All other
		Col %	Col %	Col %	Col %	Col %
Importance of public education programs	Very important	45%	48%	45%	43%	49%
	Important	40%	34%	41%	43%	37%
	Not very important	9%	7%	9%	9%	10%
	Not important at all	2%	4%	1%	1%	2%
	Do not know enough to say	4%	6%	4%	6%	1%

Marist College Institute for Public Opinion May 2004

Q31. In an average month, in about how many public education programs do you, yourself, participate?

		How many public education programs participated in per month
		Mean
NYS Judges	Total	.7
NYS Judges	Appointed	.8
	Elected	.7
NYS Elected Judges	Town or Village	.5
	All other	1.1

Marist College Institute for Public Opinion May 2004

		Number of public education programs participated in average month
		Mean
NYS Judges Who Participate in Public Education Programs	Total	1.4
NYS Judges Who Participate in Public Education Programs	Appointed	1.5
	Elected	1.4
NYS Elected Judges Who Participate in Public Education Programs	Town or Village	1.2
	All other	1.7

Marist College Institute for Public Opinion May 2004

		NYS Judges	NYS Judges		NYS Elected Judges	
		Total	Appointed	Elected	Town or Village	All other
		Col %	Col %	Col %	Col %	Col %
Number of public education programs participated in average month	None	55%	52%	56%	64%	38%
	One	35%	38%	35%	29%	46%
	Two or three	8%	6%	8%	6%	13%
	More than three	2%	4%	1%	1%	3%

Marist College Institute for Public Opinion May 2004

Q32. In an average month about how much time in hours do you devote to public education programs?

		How many hours public education programs participated in per month
		Mean
NYS Judges	Total	2.1
NYS Judges	Appointed	3.2
	Elected	1.9
NYS Elected Judges	Town or Village	1.5
	All other	2.7

Marist College Institute for Public Opinion May 2004

		How many hours public education programs participated in per month
		Mean
NYS Judges Who Participate in Public Education Programs	Total	4.4
NYS Judges Who Participate in Public Education Programs	Appointed	6.3
	Elected	4.1
NYS Elected Judges Who Participate in Public Education Programs	Town or Village	4.0
	All other	4.3

Marist College Institute for Public Opinion May 2004

## Demography of the Judges' Sample

		NYS Judges	NYS Judges		NYS Elected Judges	
		Total	Appointed	Elected	Town or Village	All other
		Col %	Col %	Col %	Col %	Col %
Race	White or Caucasian	94%	91%	94%	98%	86%
	Black or African-American	3%	7%	3%	0%	7%
	Latino or Hispanic	1%	2%	1%	0%	4%
	Asian, Asian Indian	1%	0%	1%	0%	1%
	American Indian, Eskimo	0%	0%	1%	0%	1%
	Other	1%	1%	1%	1%	0%
Gender	Male	82%	72%	84%	87%	75%
	Female	18%	28%	16%	13%	25%
Age	30 or less	10%	9%	9%	5%	14%
	31 to 44	5%	7%	5%	5%	5%
	45 to 60	45%	58%	44%	42%	48%
	Over 60	40%	26%	42%	48%	33%

Marist College Institute for Public Opinion May 2004

### NYS Judges

		Age
		Mean
NYS Judges	Total	55
NYS Judges	Appointed	53
	Elected	56
NYS Elected Judges	Town or Village	58
	All other	53

Marist College Institute for Public Opinion May 2004

### Sample Size Counts

		NYS Judges
		Count
NYS Judges	Total	1129
NYS Judges	Appointed	136
	Elected	964
NYS Elected Judges	Town or Village	636
	All other	291

Marist College Institute for Public Opinion May 2004

## How the mail survey of NYS judges was conducted

This survey of New York State Judges was sponsored by the Commission to Promote Public Confidence in Judicial Elections. The questionnaire was developed and the results tabulated by the Marist College Institute for Public Opinion in conjunction with the American Arbitration Association (AAA). The goal of the survey was to measure the perceptions of New York State Judges about judicial elections in the state. The survey was administered by mail.

A survey questionnaire was mailed to judges throughout the New York State accompanied by a letter of introduction and explanation from the Commission to Promote Public Confidence in Judicial Elections on April 12<sup>th</sup>, 2004. Judges were asked to respond no later than April 30<sup>th</sup>, 2004. Approximately 3200 survey questionnaires were mailed by the Office of Court Administrators and returned to the AAA. 1,129 completed

survey questionnaires were returned. Sample size counts include: 136 appointed judges, 964 elected judges, 636 elected town and village judges, and 291 elected judges from all other jurisdictions. The AAA was responsible for inputting the responses from each survey and delivered an electronic version of the data along with the paper questionnaires to the Marist Institute for Public Opinion for tabulation. Information collected from survey participants is both confidential and anonymous. Personal identifying information was removed from files after the integrity of the data was verified.

**Demography of the REGISTERED VOTERS' Sample**

Demography

		NYS Registered Voters
		Col %
NYS Registered Voters		100%
Party Registration	Democrat	44%
	Republican	32%
	Independent	23%
	Other	1%
Region	Upstate	43%
	New York City	33%
	Suburbs	24%
Gender	Male	48%
	Female	52%
Race	White	80%
Race	African-American	9%
Race	Latino or Hispanic	9%
Education	Not college graduate	56%
	College graduate	44%
Age	30 or less	13%
	31 to 44	25%
	45 to 60	37%
	Over 60	25%
Household Income	Less than \$50,000	43%
	\$50,000 or more	57%

Marist College Institute for Public Opinion October 2003

**How the telephone survey of NYS registered voters was conducted**

This survey was sponsored by the Commission to Promote Public Confidence in Judicial Elections and conducted by the Marist College Institute for Public Opinion from October 8<sup>th</sup> through October 20<sup>th</sup>, 2003. The goal of the survey was to measure the perceptions of New York State registered voters about judges and judicial elections in the state. Registered voters throughout New York State were contacted by telephone. 1,003 interviews were completed.

The goal of a scientifically designed survey sample is to be representative of the population that is being surveyed. The results obtained from a scientific probability survey are not just answers from those individuals who responded but more importantly, because of the design and methods by which the data is collected, can be used to generalize to the population as a whole. For this study, the results are an estimate of what would have been obtained, within a certain range, if all registered voters throughout New York State were interviewed.

When analyzing the survey results, it should be kept in mind that in all surveys each result is an estimate of what would have been obtained had everyone in the eligible population been interviewed. This difference between the responses if all registered voters throughout New York State had been interviewed and the

survey results is referred to as sampling error. Sampling error is primarily based upon the number of interviews in the survey sample.

The sampling error for the survey results for the 1,003 registered voters interviewed was  $\pm 3\%$  for percentages near 50% at a confidence level of 95%. The sampling error may be interpreted as indicating the probability (95 times out of 100) within which the results of repeated samplings, in the same time period, assuming the same sampling procedures can be expected to fall within a certain range. The sampling error diminishes slightly for questions whose results are at the extremes, and the sampling error increases as the number of interviews for a particular group or sub-group within the sample declines.

For example, 52% of New York State registered voters surveyed think judicial candidates should not be identified with a political party. We may conclude that there is a high probability (95 times out of 100) that the average results for this question of repeated samplings of registered voters throughout New York State will fall between 49% and 55% ( $\pm 3\%$ ).

A stratified random digit dial (RDD) probability design was used to draw the telephone numbers for this survey. RDD ensures representation of both listed and unlisted telephone numbers. Telephone numbers were selected based upon a list of telephone exchanges from throughout New York State. The exchanges were selected to ensure that each county was represented in proportion to the number of registered voters. The phone numbers were obtained from Survey Sampling International (SSI) in Fairfield, Connecticut. The sample file was electronically matched after selection to the yellow pages business directory and screened for business and or disconnected numbers. In order to participate in the survey a respondent needed to be at least 18 years of age or older and be registered to vote at their current address in New York State.

The questionnaire and the telephone sample were programmed for computer assisted telephone interviewing (CATI). A pretest of the questionnaire was conducted on October 7<sup>th</sup>, 2003. A stratified random digit dial (RDD) probability design was used to draw the telephone numbers. 87 interviews with New York State registered voters were completed. As a result of the pretest the questionnaire was updated and revised.

All interviewing for both the pretest and the full survey was conducted from a centralized telephone facility using trained interviewers who were specifically briefed on this study. Interviewers attempted to contact households between 5:15 p.m. and 9:45 p.m. on weeknights and 1:00 p.m. to 5:00 p.m. on weekends. Callbacks were also conducted between 9:00 a.m. and 5:00 p.m. on weekdays. A toll free number was provided for respondents to call the survey center to complete the survey at their convenience. Polling supervisors regularly monitored, evaluated, and provided feedback to the interviewing staff.

Information collected from survey participants is both confidential and anonymous. Personal identifying information was removed from files after the integrity of the data was verified.

