"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

COMMISSIONERS

Chair
John Feerick, Esq.
Professor of Law
Fordham University School of Law
New York, NY

Hon. Rolando T. Acosta
Justice of the Supreme Court
First Judicial District
New York, NY

Lenore Banks
League of Women Voters of New York State
Amherst, NY

Helaine M. Barnett, Esq.
President
Legal Services Corporation
Washington, D.C.

Richard J. Bartlett, Esq.
Bartlett Pontiff Stewart & Rhodes, PC
Glens Falls, NY

Eve Burton, Esq.
Vice President and General Counsel
The Hearst Corporation
New York, NY

Kathy Hirata Chin, Esq.
Cadwalader, Wickersham & Taft LLP
New York, NY

Hon. Barry A. Cozier
Associate Justice
Appellate Division, Second Department
White Plains, NY

Vice Chair
Patricia Salkin, Esq.
Associate Dean and Director
Government Law Center of Albany Law School
Albany, NY

Evan Davis, Esq.
Cleary Gottlieb & Hamilton
New York, NY

John Dunne, Esq.
Whiteman Osterman & Hannah
Albany, NY

Dolores Fredrich, Esq.
Vice President for Legal Affairs and General Counsel
Hofstra University
Hempstead, NY

George Friedman, Esq.
Wilson, Elser, Moskowitz, Edleman & Dicker
New York, NY

Nicole A. Gordon, Esq.
Executive Director
New York City Campaign Finance Board
New York, NY

Stewart F. Hancock, Jr., Esq.
Hancock & Estabrook, LLP
Syracuse, NY

Hon. Allen Hurkin-Torres
Justice of the Supreme Court
Second Judicial District
Brooklyn, NY

Michael Klein, Esq.
Supreme Court
Fifth Judicial District
Syracuse, NY

Hon. James J. Lack
New York Court of Claims
Hauppauge, NY

Craig Landy, Esq.
Peckar & Abramson
New York, NY

Hon. George Marlow
Associate Justice
Appellate Division, First Department
Poughkeepsie, NY

James M. McGuire, Esq.
White & Case LLP
New York, NY

Francis T. Murphy, Esq.
Kelley Drye & Warren LLP
New York, NY

Hon. Judith F. O'Shea
Administrative Judge
Sixth Judicial District
Elmira, NY

Basil A. Paterson, Esq.
Meyer, Suozzi, English & Klein, P.C.
Mineola, NY

Hon. Renee R. Roth
Surrogate
New York County
New York, NY

Thomas Schwarz, Esq.
President
Purchase College, State University of New York
Purchase, NY

Toko Serita, Esq.
Executive Assistant to
Administrative Judge Steven W. Fisher
Jamaica, NY

Hon. Robert A. Spolzino
Associate Justice
Appellate Division 2nd Department
White Plains, NY

Judith Toyer, Esq.
Eastman Kodak Co.
Rochester, NY

Legal Counsel
Professor Michael Sweeney
Fordham Law School
New York, NY

TABLE OF CONTENTS

PREFACE vii

INTRODUCTION 1
The Commission Process 2
Judicial Elections in New York State: a Brief History 4
Judicial Selection in New York State: the Current System 4
Judicial Elections in New York State: the Current Environment 5

EXECUTIVE SUMMARY 7

REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK
CHALLENGES TO PUBLIC CONFIDENCE IN JUDICIAL ELECTIONS 11

RECOMMENDATIONS 17
Candidate Selection 17
Public Financing 23
Retention Elections 35
Voter Education 38
Judicial Campaign Practice Committees 44
Campaign Finance Disclosure 46

CONCLUSION 47

LIST OF APPENDICES
A. Interim Recommendations (December 3, 2003)
B. Public Hearings Witness List and Form of Notice
C. A Survey of New York State Registered Voters (December 2003)
D. Focus Group Results and Recommendations (June 2004)
E. New York State Judges: Mail Survey Results (May 2004)
F. Committee for Modern Courts September 2, 2003 Memorandum to the Commission
G. Commission Working Papers
G-1. Judicial Selection in the New York State Court System
G-2. New York State Judicial Districts: Selected Issues and Statistics
G-3. Judicial Campaign Finance Expenditures
G-4. Judicial Elections in New York State: 1996-2003
G-5. Sources of Public Funding
G-6. Public Funding of Judicial Elections Among the States
G-7. Retention Elections
G-8. Voter Education
G-9. Proposed Rules for Judicial Campaign Practices Committees
G-10. Campaign Finance Disclosure

PREFACE

The Commission submits this Report to Chief Judge Judith Kaye with additional recommendations for promoting confidence in judicial elections statewide. In our Interim Report, dated December 3, 2003, we offered four basic sets of recommendations. They involved the process by which judges are selected before their names appear on the ballot; the way candidates' campaign for judicial office; the financing of judicial campaigns; and voter education reforms. In the current Report we build on those recommendations. We particularize the structure for the state-sponsored independent judicial qualification commissions we recommended be established in each Judicial Department. We recommend a beginning to a system of public financing of judicial races. We propose a mechanism for oversight of judicial election campaign activities. We recommend the adoption of a feature in judicial elections enabling incumbent judges to seek election to another term in an uncontested retention election. Finally, we advance additional recommendations to increase public awareness of the judiciary and judicial elections.

The Commission had originally contemplated that this would be its final report but we have been unable to conclude our work on the judicial nominating process associated with Supreme Court justices. Accordingly, we request that Chief Judge Kaye continue the life of this Commission until we have done so. During the interim period, the Commission will assess the response to its recommendations and be available for such assistance as may be required with respect to their implementation.

With respect to our recommendations, we believe that some require legislation, some can be acted upon administratively, and some may be done either way. Legislation would be the preferable process for the establishment of independent judicial qualification commissions; however, in the absence of such action, we believe the purpose of such commissions can be accomplished by the Judiciary itself. We believe that the goal of promoting public confidence in judicial elections is important enough to warrant consideration of such a step. This is reinforced by the public opinion poll, public hearings, focus groups, and judicial survey sponsored by the Commission. They made clear that voters lack basic knowledge about judicial candidates and that the need for judicial candidates to seek contributions to run is a threat to the impartial and independent administration of justice in New York State.

The Members of the Commission and its staff express to Chief Judge Kaye their continued gratitude for the opportunity to serve. We applaud the leadership she has given to judicial election reform. I express my deep gratitude to my colleagues on the Commission and the outstanding staff assembled for purposes of this work. This Report, as the Interim Report, reflects an enormous expenditure of time by the members of the Commission, aided by a splendid counsel, Professor Michael Sweeney of Fordham Law School, 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, Antonio Galvao, Derek Hackett, Adam Itzkowitz,

Daniel McLaughlin, Deepro Mukerjee, Barbara Reed and Jordan Stern.

I wish to single out for special recognition at this time the members of the Commission who chaired our three subcommittees: Helaine Barnett, Nicole Gordon and Professor Patricia Salkin. These subcommittees, which have met often, are responsible for the progress made by the Commission in a relatively short period of time. I thank the members of these subcommittees, all busy professionals, for their dedication to the task given to us by the Chief Judge.

I am 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.

I am especially grateful to Dr. Lee M. Miringoff and Dr. Barbara L. Carvalho of the Marist Institute for Public Opinion and Bill Slate and Ken Eggers of the American Arbitration Association for undertaking 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.

The work of this Commission would not have been possible without the extraordinarily generous support we have received from a number of organizations. We deeply appreciate their confidence and hope that the results of this work will prove worthy of their confidence. 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.

The Commission also owes great 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 Interim Recommendations. Their input was an important part of our deliberations.

As a final note, I would simply add that I have been a participant for a long time in efforts to achieve government ethics reform in New York State. I have never served with a finer or more diligent group than the members of this Commission (including its staff). We can't make reform happen by ourselves. It requires a much larger commitment. We call on our government leaders to make that commitment because protecting and enhancing the Judiciary of New York State is worth it.

John D. Feerick, Chair
Fordham University School of Law

Introduction

An independent and impartial judiciary is critical to democratic society. It is the branch of government responsible not only for resolving disputes between private parties fairly, but also for resolving disputes between the government and private parties. As such, it 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 is the public perception that courts provide an independent and impartial tribunal to resolve disputes and provide basic protections to individuals. Without public confidence in the judiciary, its 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. While history is replete with examples of judiciaries undone by a lack of public confidence, New York's elected judiciary is fortunately not one. It has a long and noble history of integrity, impartiality and independence.

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 to her a blueprint to foster dignified judicial campaigns and improve voter participation. On December 3, 2003, we presented her with an Interim Report that offered recommendations that we believed could be promoted in the short term.

In this Report we build on our interim recommendations. We further develop some of our interim recommendations by specifying a structure for the state-sponsored independent judicial qualification commissions, expanding our recommendation for judicial voter guides, and recommending the authority we believe should be responsible for the expanded campaign finance disclosure system. We also offer recommendations for public financing of judicial races, retention elections for incumbent judges running for re-election, oversight of judicial election campaign activities, and more effective voter education.

If initially we were unsure of what could be accomplished, we were heartened by what we heard from the public, lawyers, judges and political and community leaders. One clear theme was repeated over and over again: New Yorkers should have confidence in their elected judiciary. We believe that the best way to foster public confidence in judicial elections is to ensure that they produce an impartial, independent and well-qualified judiciary.

A witness told the Commission "The surest way to stop progress is to come out four square in favor of it, but never agree on any one improvement because it is not perfect." Clearly, any change will take the cooperation and support of many different parts of New York's political system. Many people have different opinions of what should be done and the Commission tried to listen to as many ideas as people were willing to offer. Our recommendations are the product of long deliberation among a politically, geographically, socially and professionally diverse group.

The Commission Process

The Commission's 29 members, at least one from each judicial district, were selected for their professional, political, geographic and social diversity, and they represent a broad spectrum of expertise, interests and experience with respect to judicial selection. They bring with them a wealth of experience from the judiciary, the legislature, the executive branch, academia, private practice and public service. On April 25, 2003, the Commission met for the first time.

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. Subcommittee meetings were held 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 and March, April and June of 2004, were dedicated to deliberating on subcommittee reports and developing consensus.

The Commission researched judicial elections and public opinion through various means. Commissioners reviewed reports, commentary, court decisions, academic articles and news accounts from around the State and the country. Several organizations lent technical support to the Commission, including research and commentary on specific issues in New York State. In addition to reviewing existing research, the Commission conducted several primary research projects to help inform its work.

During September 2003, the Commission conducted public hearings in Albany, Buffalo and New York City (the "Public Hearings"). Notice was widely disseminated across the state and 56 witnesses offered testimony during three days of Public Hearings. See Appendix B for a copy of the public hearing notice and a list of witnesses. Further, many people submitted written testimony to the Commission. Transcripts from the public hearings and the written testimony are posted on the Commission's website: http://law.fordham.edu/commission/judicialelections.

The Marist Institute for Public Opinion conducted a major public opinion poll on behalf of the Commission in October 2003 (the "Marist Poll"). Marist interviewed 1,003 New York State registered voters via telephone to measure the perceptions throughout the state about judges in New York State and 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 is 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 (December 2003), was published with the Commission's Interim Report to the Chief Judge on December 3, 2003 and it is included with this Report as Appendix C.

The Government Law Center at Albany Law School conducted a series of nine focus groups on behalf of the Commission during March 2004 (the "Commission's Focus Groups"). The focus groups took place in Albany, Clinton, Kings, Monroe, Nassau, New York, Oneida, Onondaga, and Westchester counties, and were designed to elicit citizen

input on the issue of voter participation in judicial elections and the Commission's interim recommendation for state sponsored screening commissions for judicial candidates. In all, 90 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 (June 2004) attached as Appendix D.

The American Arbitration Association and the Marist Institute collaborated to conduct a survey of New York State judges in April 2004 (the "Judicial Survey"). 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 public opinion poll. The survey was mailed to 3,200 sitting judges in New York State and 1,129 judges responded for a response rate of over 33%. The survey results are attached as New York State Judges: Mail Survey Results (May 2004), Appendix E.

The Commission maintains a website in order to make its work publicly available and contribute to the statewide and nationwide dialog on judicial selection. The Commission's website, located at http://law.fordham.edu/commission/judicialelections, contains information about the Commission, reference material, public testimony, and Commission work product, including this Report.

The Commission presented an Interim Report to the Chief Judge of the State of New York on December 3, 2003. It contained recommendations that we believed could be promoted in the short term, including recommendations for the establishment of independent judicial election qualifications commissions to evaluate the qualifications of candidates for judicial office throughout the state; amendments to the Chief Administrator's Rules Governing Judicial Conduct governing 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 attached as Appendix A.

This Report includes our recommendations for the mid and long term horizons. It expands on some of the interim recommendations and addresses other areas that we had not previously commented upon. In particular, we provide more detail on our interim recommendations for state-sponsored independent judicial election qualifications commissions, for a state sponsored voter guide and an update on our campaign finance disclosure recommendation. The Report also addresses issues of public financing, voter education, retention elections, and the enforcement of the judicial conduct rules.

We had originally contemplated that this would be our final report but we have been unable to conclude our work on the judicial district convention process for Supreme Court justices. Accordingly, we request that the Chief Judge continue the Commission to allow us to address the issue.

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. Since that time, most of the judges in the New York State court system (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 change back to an appointive system, with one important exception. In 1977, voters approved a constitutional amendment that provided for the appointment of Court of Appeals judges.

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 the Constitutional Convention of 1846. The resulting constitution provided that the judicial appointment system would be replaced with an elective system.

New York has not returned to a system-wide appointive system for judges, 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 endorsed the system of judicial elections established by the 1846 Constitution. Commissions established by the governor in 1953 and 1973 and charged with improving the judicial system recommended against abandoning the elective system. No changes in judicial selection were proposed by either the Judiciary Amendment of 1962 or the voter-rejected New York Constitution of 1967.

Voters have approved a return to an appointive system in some circumstances. For instance, in 1949, the voters adopted a constitutional amendment establishing the Court of Claims with judges appointed by the governor and confirmed by the senate. And in 1977 the voters approved a constitutional amendment providing for the appointment of Court of Appeals judges by the governor from candidates recommended by the Commission on Judicial Nomination, subject to confirmation by the Senate.

But by and large, New York's judges are elected. In the last major study of New York's elected judiciary, 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.

Judicial Selection in New York State: the Current System

New York's current judicial system is among the most complex in the United States. The constitutional scheme provides for some courts to function statewide, some operate solely in New York City and others 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 others 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 constitution, state election and judiciary laws, and gubernatorial and mayoral executive orders. At the appellate level, judges are selected for the bench in 3 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 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 the City of New York are appointed by the Mayor of the City. Both the Governor and the Mayor employ screening committees established by executive order to evaluate candidates' qualifications. 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 the New York State Court System, attached as Appendix G-1.

Judicial Elections in New York State: the Current Environment

New York's judicial election system has suffered criticism at various times in its history, but recent events have heavily taxed public confidence in judicial elections. Public accounts of undignified campaign activity in local judicial 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 judicial elections in a bad light. The public criticism is confounded by a populace largely uninformed about its elected judiciary and disconnected from courts and judges. Our research over the past 14 months makes one thing clear: public confidence in judicial elections has suffered.

The call for reform of the judicial election system has become a clamor. Public officials statewide have called for change. There are ongoing criminal investigations into the way judicial elections are conducted. Bills calling for change have been introduced into the Legislature. Citizens are challenging fundamental parts of the system in civil litigation. Non-profit organizations, academics and commentators from around the state are demanding improvement. The media in several parts of the state has taken up the cry, ensuring that the public is not deaf to the call for reform.

The current attention on the judicial election system creates an opportunity for change. New York's elective system has served New York well for more than 150 years and produced some of this country's finest jurists. But like any system of selecting judges, it is not perfect. The confluence of voices calling for reform at this time creates an opportunity to build consensus around ideas that will improve the judicial election system.

We offer this 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 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 will contribute to reversing that course and bring to New York's elected judiciary the continued respect and admiration it is due.

EXECUTIVE SUMMARY

When the Chief Judge of the State of New York, Judith S. Kaye, appointed this Commission, she charged us with promoting public confidence in judicial elections and asked us to provide her with a blueprint to foster dignified judicial campaigns and improve voter participation. On December 3, 2003, we presented the Chief Judge with interim recommendations we believed capable of being implemented in the near term. The recommendations covered six areas: candidate selection, the ethics rules governing judicial conduct; promoting ethical campaign activity; campaign finance disclosure; campaign expenditures; and voter education.

This Report presents our recommendations for the mid and longer term. In it we further develop some of our interim recommendations by specifying the structure for the state-sponsored independent judicial qualification commissions, expanding our recommendation for judicial voter guides, and recommending the authority we believe should be responsible for the expanded campaign finance disclosure system. We also offer recommendations for public financing of judicial races, retention elections for incumbent judges running for re-election, oversight of judicial election campaign activities, and more effective voter education. We believe that these recommendations, if implemented, will go a long way towards reaffirming the luster of New York's elected judiciary.

RECOMMENDATIONS ON CANDIDATE SELECTION

When we discussed the issue of judicial candidate selection in our Interim Report, we noted statewide concern over the way judicial candidates are selected and over the voter's role in that process. Witnesses at our public hearings, the media, non-profit organizations, judges, politicians, citizens groups, academics, litigants and law enforcement agencies expressed concern over voter disenfranchisement in the selection of judicial candidates. As a result, we recommended the establishment of independent screening commissions to ensure that every judicial candidate is qualified to serve the bench.

As a result of the Commission's work since the Interim Report, we have further developed our interim recommendation for independent screening commissions. We offer the following recommendation as a fair, credible and realistic plan to promote confidence in judicial elections based on our substantial research and deliberation.

New York State should establish a system of state-sponsored Independent Judicial Election Qualifications Commissions (the "IJEQCs") 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.**

We believe that the IJEQCs will promote public confidence and informed voter participation in judicial elections in New York State. Through independent screening, the commissions assure the public that candidates for judicial office are qualified to serve on the bench. They also promote confidence in New York's elected judiciary generally by preventing unqualified candidates from gaining judicial office. The choice between candidates remains with the voter, but the commissions help voters make informed choices about candidates, educating them about particular candidates and providing objective criteria on which to make decisions. As importantly, by encouraging diversity on the bench the commissions will foster public confidence in all communities.

RECOMMENDATIONS ON PUBLIC FINANCING OF JUDICIAL ELECTIONS

Campaign contributions present a potentially serious obstacle to maintaining the appearance of impartiality that is critical to the judicial function. Simply put, some people find it hard to believe that a judge will not favor a litigant who has contributed generously to his or her campaign over a litigant who has not. Public financing of judicial elections can help break any perceived connection between campaign contributions and judicial impartiality.

We acknowledge that there are significant challenges to implementing a public financing program in New York. Nevertheless, we believe that such challenges can and must be overcome, especially at a time when interest in judicial reform is high. While public financing on a statewide basis may not be feasible as a first step, much can be accomplished and learned by establishing smaller "pilot" programs, which will also be less expensive to run and fund. Therefore, we make the following recommendation.

We recommend that New York State:

- **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.**

Over the long term, we believe the most effective way to address the public concern over the effect of campaign contributions on judicial impartiality is to eliminate private contributions as much as possible and replace them with public money.

Substituting public money for private money removes any concern that there is a connection between contributions and judicial decision-making. Instead, a judge depends for campaign financing on exactly the people he or she serves—all the people that the judge serves. Public financing also serves to open the door to qualified candidates of diverse backgrounds and those not comfortable with raising money.

RECOMMENDATIONS ON RETENTION ELECTIONS

Many of the challenges to public confidence in judicial elections are particularly acute when a judge is running for re-election. Raising campaign finances, soliciting political party support, and engaging in a politically charged election threaten public confidence in judicial impartiality and independence. The threat is greatest when a sitting judge is involved in such activities. Accordingly, we make the following recommendation.

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

We believe that retention elections coupled with judicial screening is the best way to ensure judicial integrity and independence where an incumbent judge is running for reelection.

RECOMMENDATIONS ON VOTER EDUCATION

In our Interim Report, we discussed the importance of voter education to public confidence in judicial elections. We said that knowledge is fundamental to confidence in the judiciary and we noted that New Yorkers are not well informed about their state judiciary. Our research since we released the Interim Report has only reinforced the nexus between voter education and public confidence in judicial elections. Therefore, we present the following recommendations.

We recommend that:

- **New York State produce and distribute voter guides for judicial elections;**
- **Information regarding voter education efforts be centrally coordinated;**
- **OCA establish a multi-media awareness campaign about the judiciary;**
- **The Chief Judge of the State of New York work to build partnerships with existing organizations working on voter education issues.**

We believe that these recommendations will lead to an increase in informed voter participation in judicial elections. Voter guides are an efficient and cost-effective to engage voters in judicial elections, and centralizing and expanding existing information reaches out to the community at large, encouraging an understanding and appreciation of the judiciary and judicial elections.

RECOMMENDATIONS ON CAMPAIGN CONDUCT

Judicial campaign activity has tremendous potential to influence the public perception of judicial elections. Campaigns are public affairs and by their nature they reach out to citizens. Campaigns for judicial office are different from those for other offices because a judicial candidate's public activities must respect the impartiality and independence of the office. Recognizing this, New York State has established rules governing judicial campaign conduct. Witnesses testified at the public hearings, however, that the existing enforcement regime is often not an effective deterrent to inappropriate campaign activity. Acknowledging this enforcement gap, we offer the following recommendation.

We recommend the establishment of Judicial Campaign Practice Committees in each Appellate Department in the State

We believe that these Committees will serve a valuable role as ombudsman for the judiciary, ensuring that inappropriate judicial campaign conduct is addressed both expeditiously and irrespective of whether a candidate wins or loses the election. We think that the Committees strike the right balance between providing candidates with sufficient process to protect their interests and serving the larger goal of preserving the dignity of the judicial office.

RECOMMENDATIONS ON CAMPAIGN FINANCE DISCLOSURE

In our Interim Report, we recommended that 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. In addition, the content and format of judicial disclosure filings should be expanded and revised. We urged that transparency in judicial campaign finance disclosure will promote confidence in the campaign finance system as well as in the judicial elective system. We reaffirm our interim recommendations and add the following recommendation.

We recommend that the Office of Court Administration be responsible for receiving and publicly reporting judicial campaign finance disclosures

These are our final recommendations with one exception. The Commission did not reach a conclusion on the issue of judicial nominating conventions, and we recommend that the Commission remain constituted in order to produce a report and recommendation on the judicial district convention system upon the call of the Chair. In the meantime, the Commission will continue its study of the issue and learn from the various reform efforts that are currently underway.

We believe that the best way to foster public confidence in judicial elections is to ensure that voters participate and that they continue to produce an impartial, independent and well-qualified judiciary. These recommendations are the product of long deliberation among a politically, geographically, socially and professionally diverse group. They reflect the views of a substantial consensus of the Commission as to the best way to promote public confidence in judicial elections.

Challenges to Public Confidence in Judicial Elections

A judge's role in our society makes judicial elections different from elections for other branches of government. We expect judges to apply the law as it is written, impartially and independent of outside influences. We do not require the same impartiality or independence of legislators or executives. The demands of impartiality and independence mean that although judicial candidates rely on the support of others for election, they cannot acknowledge that support as judges. Although candidates compete for office, they must be careful not to campaign in a way that erodes confidence in their impartiality.

Impartiality and independence are so critical to the judicial role that even the appearance of partiality or improper influence degrades a judicial system. The justice system is founded on public confidence and if people do not believe in the impartiality and independence of the judiciary, they will resort to other means to resolve those matters that are properly in the judiciary's realm. A former administrative judge expressed the idea when he was quoted as saying that if the public does not have faith in the judiciary, "people won't go to court, but to the streets or to a gun dealer." This Commission is charged with promoting public confidence in judicial elections. Our mandate requires us to look at those aspects of judicial elections that raise questions about impartiality and independence.

Public confidence in judicial elections is not a uniquely New York concern. Thirty-two states elect trial court judges and all experience challenges to public confidence. National, state and local organizations across the country have sought to address concerns over the effects of campaign conduct, campaign finance issues, political party influence, voter participation and a lack of diversity in judicial elections. We recognize that inappropriate campaign conduct in judicial elections is a threat to public confidence in judicial impartiality, and states protect public confidence through rules that restrict candidates' campaign activity. For instance, the way judicial campaigns are financed can pose a serious threat to public confidence. According to *Justice for Hire*, a 2002 report by the Committee for Economic Development, there has been an "explosion of interest in, and financial contributions to, judicial campaigns." The ABA Commission on the 21st Century Judiciary claims that one result is less diversity on the bench, which in turn fuels a lack of confidence in the court system among many minority communities. Increased campaign costs flag the attendant problem that judicial candidates are "forced to raise funds and accept donations from law firms or special interest groups that might someday appear before them," fueling an increasing public perception that judges are influenced by their contributors. Despite the increasing cost of campaigning across the country, there is often a dearth of impartial public information on judicial candidates, leaving the public uninformed. The lack of knowledge leads to voter apathy.

Every part of New York State is experiencing some of these threats to public confidence in judicial elections. It is not in one county or one part of the State, as some suggest. The Commission conducted extensive primary research in New York, including public hearings, a public opinion poll, focus groups, a survey of judges and countless private interviews. In each case, we made special efforts to ensure that the research was conducted statewide. Public hearings took place in Albany, Buffalo and New York City;

geographic diversity was a statistically significant factor in the public opinion poll, and the focus groups took place in nine locations from Plattsburgh to Brooklyn and from Rochester to Albany. In addition, more than a third of the sitting judges in New York State responded to the Judges Survey, and Commissioners conducted private interviews with leaders in legal, political and civic communities throughout the state. Commissioners also considered government and media accounts from every judicial district. *See* Working Paper on New York State Judicial Districts: Selected Issues and Statistics (2004), attached as Appendix G-2. Although the challenges may manifest in different ways depending on local culture, one message was clear: the threat to public confidence in judicial elections is alive and well in every part of New York.

Our research leads us to focus on five aspects of New York's current system of judicial elections that threaten public confidence: campaign activity, campaign finance, candidate selection, voter participation and candidate diversity.

Campaign Activity

Judicial campaign activity is an important means by which the public develops its opinions of the judiciary. Candidates for judicial office publicly campaign; they advertise their candidacy, raise funds, speak to voters, and attend political functions. Because a judge's role is significantly different from that of people elected to the executive and legislative branches, conduct that might be appropriate in other types of campaigns is inappropriate in judicial elections. For this reason, to ensure campaigns are carried out in a way that maintains public confidence in the integrity, impartiality and independence of the judicial office, New York's Chief Administrator of the Courts promulgated rules (the "Rules") that place restrictions on judicial candidates' campaign activity. The Rules, for example, prohibit judicial candidates from personally soliciting campaign contributions and from making pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office. *See* 22 NYCRR § 100.5.

Despite the Rules, campaign activity that threatens public confidence in the judiciary persists in New York. Several recent cases have attracted national attention including the *Raab* case on Long Island, the *Watson* case in Lockport, and the *Spargo* case in Albany. In each case, judicial candidates campaigned in ways that raised questions about their impartiality and independence. Several witnesses testified at the Commission's public hearings about how campaign conduct can bring down public confidence and instances where it has. The threat of such conduct is prevalent enough that the New York State Bar Association has helped develop local judicial campaign conduct committees to control inappropriate behavior.

Inappropriate campaign activity affects public confidence in judicial elections. Respondents to the Marist Poll chose being "turned off by the way the candidates run campaigns" as the second most common reason why they would not vote in a judicial election, behind a lack of information about candidates. Judging from the level of New York's voter participation in judicial elections, sometimes as low as 17% of registered voters, it seems that the behavior noted by the press and bar has affected public confidence.

Campaign Finance

The current campaign finance system for judicial elections in New York can raise questions about the impartiality so critical to public confidence in the judiciary. Several witnesses testified before the Commission that lawyers are the most common campaign contributors to judicial elections, and that the lawyers who contribute are typically ones that appear before the particular bench. When a judge accepts contributions from people with an interest in the judge's decisions, a threat to impartiality exists. Recent reports by the Commission on Fiduciary Appointments and the Special Inspector General for Fiduciary Appointments on New York's fiduciary appointment system illustrate the threat by documenting a significant correlation between judicial fiduciary appointments and campaign contributions. Although many judges make an effort not to know who contributes to their campaign, several witnesses testified before the Commission that judicial candidates cannot help but know the identities of at least some of the contributors. The testimony was confirmed by almost 70% of the 1,129 judges that responded to the Commission's survey who believe that judicial candidates know who some, most or all of their campaign contributors are.

The public perceives a tension between campaign contributions and impartiality. Even though 71% of the Marist Poll respondents agree that judges as a whole are fair and impartial, many respondents believe that a judge will favor someone who has contributed to his or her campaign over someone who has not. Of the registered voters participating in the Marist Poll, 83% think that campaign contributions have some or a great deal of influence on judicial decisions and 11% more believe the contributions have a little influence. When asked if a judge should hear or rule in a case involving a campaign contributor, 87% of registered voters said no. Criticism of campaign contributions also arose in the focus groups where participants claimed that money in judicial elections has led to an elitist system. For them, the result is a mistrust of the system.

Many judges share voters' perception that campaign contributions can adversely affect judicial impartiality. Of the 1,129 sitting judges in New York that responded to the Commission's survey, 27% believe that campaign contributions influence judicial decisions some or a great deal, and another 18% believe that contributions have a little influence. More than 40% of the judges believe that *any* campaign contribution raises a reasonable question about a judge's impartiality if a contributor appears before the judge and 19% more think that some level of contributions raise a question. In fact, only 19% of the judges surveyed believe that campaign contributions categorically do not raise a reasonable question about a judge's impartiality.

If campaign contributions to judicial candidates in their current form can raise reasonable questions about impartiality, they threaten public confidence in judicial elections. The evidence before the Commission strongly suggests that they do.

Political Party Influence

In New York, local political leaders have a strong influence on who becomes a judge. The uncontested evidence before the Commission is that across the state, the system for selecting candidates for the Supreme Court vests almost total control in the hands of local political leaders. Even in judicial primaries, political party leaders typically

control who becomes the party's candidate. And in many parts of the State, being on the dominant party's slate is tantamount to winning the elections. For instance, only four of the State's twelve judicial districts can be considered competitive. In the other eight, the dominant party candidate almost invariably prevails. *See* Working Paper on New York State Judicial Districts: Selected Issues and Statistics (2004), attached as Appendix G-2.

Focusing the power to determine who becomes a judge in a few hands presents a threat to judicial independence. Evidence shows that the overwhelming majority of registered voters are concerned with the influence of campaign contributions on judicial independence, and campaign contributions can come in many forms. Witnesses testified that a political leader's support in a campaign is often far more valuable than even a large campaign contribution. Whether in return for political support or not, evidence shows that some candidates have directed thousands of dollars or more to political parties through political fundraisers and paying exorbitant prices for goods or services. *See* Working Paper on Judicial Campaign Finance Expenditures, attached as Appendix G-3. Reviews of public records by the Commission on Fiduciary Appointments and the Special Inspector General for Fiduciary Appointments confirmed accounts documenting judges assigning a disproportionately large number of fiduciary appointments received by high-level political party officials. See Reports by the Commission on Fiduciary Appointments and the Special Inspector General for Fiduciary Appointments. The threat to judicial independence is piqued when a sitting judge has to run for re-election. In the Judicial Survey, 42% of judges acknowledged that having to run for re-election has some or great deal of influence on judicial decisions, a perception shared by almost 80% of registered voters. Where party leaders control who wins an election, the risk that a judge's independence can be compromised increases.

The perception that political leaders wield substantial influence in selecting judges decays public confidence in judicial independence. The Marist Poll and Judicial Survey show that 90% of voters and judges agree that a judge's independence from political party leaders is important or very important. But in the same surveys, voters and judges indicate that political party leaders have more influence over who becomes a judge than voters do, and the Marist Poll indicates that 80% of registered voters believe political parties have some or a great deal of influence on judicial decisions. Witnesses at all of the Commission's public hearings raised concern over political influence over sitting judges and its effect on public confidence in the judiciary. Almost every focus group expressed concern with the role of political parties in the judicial election process.

Voter Participation in Judicial Elections

Informed voting is a critical part of the judicial election process. An educated, voting public promotes public confidence in many ways. It allows the public to make informed decisions as to who should serve them as judges; it checks the accumulation of political power in a few hands; and it is a principal part of the system of holding public officials accountable for their actions. Unfortunately, voter participation in New York judicial elections is discouragingly low. Only 17% of registered voters cast a ballot for judge 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. But 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 much as 41% in parts of the state.

Voter education is essential in promoting voter participation. In the Marist Poll, registered voters chose a lack of information about candidates as the main reason they would not vote in a judicial election. The sentiment was shared by every focus group. One participant summed it up, "Citizens will not vote without sufficient information about candidates." Judges agree with the citizen evaluation. The Judicial Survey shows that 33% of New York State judges believe that a lack of knowledge is the primary reason for low voter participation, and 43% attributed the low participation to apathy, which is often driven by ignorance.

New Yorkers are poorly educated about judicial elections. They lack both a fundamental understanding of the system of judicial election and knowledge about individual candidates. The Marist 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. A majority suggested that a lack of knowledge about the candidates drives low voter turnout, and in another survey, 75% of New York voters could not recall the judges they had voted for as they left the polling area. Half of the judges surveyed believe that the public has little or no information about judicial candidates.

The lack of knowledge drives low public confidence in the elected judiciary. The majority of registered voters polled showed that more voters believe that elected judges are doing a "just fair" or poor job than believe they are doing a good or excellent job. They lack confidence in fundamental aspects of the judicial election system: the overwhelming majority of voters are concerned that campaign contributions can affect a judge's impartiality and that political parties influence judicial decisions.

Diversity

Many witnesses testified to the importance of diversity to public confidence in judicial elections. It was described as the principle that consideration of a broad range of views is the surest path to sound governance and a foundation of democracy. The testimony established that diversity on the bench promotes confidence in judges in many ways. As one witness said "I think that when you come before the bar of justice, and you see from time to time people reflective of your background and experience . . . it engenders confidence that one can get a fair shake." Diversity promotes participation and confidence in the justice system by involving communities. It promotes confidence by taking into account different perspectives. As a witness said, "Diversity allows justice to see." Focus participants also were concerned with diversity and all nine groups agreed that diversity is important in the judicial selection process. Several groups remarked on the importance of diversity as a way to increase voter participation and confidence in the judiciary.

New York's judiciary does not reflect the diversity of the community that it serves. Many of the witnesses before the Commission, at each public hearing, talked about the lack of diversity in the judiciary. Data for New York's courts of record shows that 18% of New York's population describes itself as African American compared to only 9% of

judges. The lack of diversity among other groups is even greater: 16% of New Yorkers describe themselves as Hispanic or Latino compared to only 4% of judges; 3% of New Yorkers are Asian compared to 1% of judges; and 52% of New Yorkers are women compared to only 27.6% of judges. While the judiciary as a whole lacks diversity, the bench upstate is significantly less diverse than downstate. Further, the Judicial Survey suggests that New York's Town and Village Court justices lack diversity even more. Of the respondents to the survey, 98% described themselves as white or Caucasian, and 87% were men.

The lack of diversity threatens public confidence in the judiciary. According to the Marist Poll, registered voters believed that treatment by judges depends on factors like your race, ethnicity, gender, wealth and language skills. Many believe that poor people, some racial minorities and non-English speaking litigants receive worse treatment by judges, and they overwhelmingly believed that wealthy people had an advantage over all others. The lack of confidence is even greater within segments of society. For instance, African American, Latino and poor voters all are significantly more inclined to believe that they receive worse treatment by the judiciary, and African American and Latino voters also perceive the poor as subject to judicial discrimination. Results of the focus groups bore that out, participants singled out the lack of diversity as a cause of deteriorating confidence in the judiciary and voter apathy. While we understand that a lack of diversity is endemic in the legal profession in general, it clearly has a negative effect on public confidence in the judiciary.

With these challenges in mind, the Commission offers the following recommendations, in addition to those offered in our Interim Report.

Candidate Selection

When we discussed the issue of judicial candidate selection in our Interim Report (pp. 12-16), we noted statewide concern over the way judicial candidates are selected and over the voters' role in that process. Witnesses at our public hearings, the media, non-profit organizations, judges, politicians, citizens groups, academics, litigants and law enforcement agencies expressed concern over voter disenfranchisement when it comes to in the selection of judicial candidates. The result, they claim, is judicial candidates being placed on the ballot based primarily on their allegiance to a political party or their ability to raise campaign funds, rather than for their skills as jurists.

We heard from many witnesses and commentators who strongly support the idea of independent screening of judicial candidates. Several witnesses testified that independent screening promotes a more diverse pool of candidates and ultimately, a more diverse bench. While people expressed different preferences about various details of the screening process, a consensus emerged on several characteristics: the screening process must be inclusive, rigorous and publicly known; screening panels themselves must be independent; and political parties must respect the screening process.

Based on these principles, the Commission in its Interim Report offered Independent Judicial Election Qualifications Commissions ("IJEQCs") as an effective way to promote confidence in judicial elections. The concept is to pre-screen all judicial candidates to ensure they are qualified. IJEQCs are not designed to supplant local screening processes but to ensure that uniform, independent screening is performed throughout New York State. The role of local politics and the election process would not be altered, but the public would at least be assured that that all the candidates are qualified to serve on the bench.

By design our interim recommendation did not include the details of how commissioners for the IJEQCs should be selected or how the IJEQCs should function. We believed then, and continue to believe now, that consensus is possible around the notion of independent screening commissions. Indeed, many of the organizations that submitted comments on the Commission's interim recommendations expressly supported the idea of independent screening of candidates for courts of record. None opposed the idea.

Rather than present a detailed plan prematurely, we promised in our Interim Report to engage legal and political leaders and citizens in a discussion on how such commissions are best composed. To fulfill that promise, the Commission developed a working group of commissioners to reach out to local leaders (the "Working Group"). In addition, we sponsored a series of nine focus groups around the state to meet with citizens of many different backgrounds.

The Working Group reached out to political and legal community leaders across the state to discuss the Commission's work, particularly the concept of judicial screening. We found a general agreement that a formal qualifications review of judicial candidates on a local level would help strengthen what leaders statewide viewed as sagging public confidence in judicial elections. Some non-lawyer political leaders said that screening would help them identify qualified candidates. Despite this general sentiment, there is no formal screening process in many areas of the state, particularly upstate. Indeed, many

leaders knowledgeable about their local candidate selection processes admit that these focus less on a candidate's legal skills than on the applicant's political activity and ability to raise money. While local bar associations perform a screening function in some areas, nowhere is the bar association rating binding. Even where local political leaders have informally agreed to respect bar association ratings there are recent examples of the agreement being dishonored. With few exceptions, there was a general feeling that the influence of bar association ratings is waning.

In a separate project, the Commission asked citizens if they support state-sponsored screening commissions. In a series of nine focus groups around the state, the response was a resounding yes. *See* Focus Group Report, Appendix D. More than 80% of the participants supported the concept of independent screening and only 10% opposed the idea (10% did not express an opinion). As reasons for their support, they noted that screening commissions create a more representative process, that it would "open the judicial candidate door to diverse communities," and that it would promote judicial competency. Participants considered independence, impartiality, integrity, high moral standards, knowledge of the judicial and legal systems, and community involvement to be important characteristics of screening panel members. Almost all the participants believed that lay people should be involved in the screening process. And they expressed concern that screening is done locally.

Diversity was of critical importance to participants in all nine focus groups. There was consensus that screening panel membership should reflect the diversity of the community that the court system is serving, including gender, race, ethnicity, age, geographic, political affiliation, professional, gender orientation, religion, language and physical ability. Participants also suggested that a broad spectrum of organizations and authorities be involved in selecting panelists, such as representatives of the legal community and judiciary, non-profit organizations, academics and representatives of the executive and legislative branches of government.

As a result of the Commission's work since the Interim Report, we have further developed our interim recommendation for IJEQCs. We offer the following recommendation as a fair, credible and realistic plan to promote confidence in judicial elections based on our substantial research and deliberation. While we contemplate that much detail will develop through implementation and practice, we offer the following specific elements of the Independent Judicial Election Qualifications Commissions.

New York State should establish a system of state-sponsored Independent Judicial Election Qualifications Commissions to evaluate the qualifications of candidates for judicial office throughout the state. The commissions should be based on the following principles:

- **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.**

IJEQC should be established in each of New York's 12 judicial districts

The IJEQCs should be charged with reviewing the qualifications of each and every candidate for election to the state Supreme Court, the County Court, the Surrogate's Court, the Family Court, and the Civil, District, and City Courts.

Each IJEQC should have 15 members selected as follows:

- **The Governor will select two members, one of whom shall be a non-lawyer;**
- **The Temporary President of the Senate, the Minority Leader of the Senate, the Speaker of the Assembly, and the Minority Leader of the Assembly will each select one member;**
- **The Chief Judge of the State of New York will select two members, one of whom shall be a non-lawyer;**
- **The Presiding Justice of the appellate division which includes the appropriate district commission will select two members, one of whom shall be a non-lawyer;**
- **The President of the New York State Bar Association will select one member; and**
- **Four local bar associations, located within the appropriate judicial district and designated by the presiding justice of the appellate division of the appropriate district, will each select one member.**

The Chief Judge of the State of New York will designate the chair of each commission from the full membership. The Chief Judge will also fill a vacancy if any other authority fails to make their allotted appointment within a reasonable time (*e.g.*, 30 days). In addition to the 15 regular members, when the office at issue is a court of a county or other lesser jurisdiction, the commission will have an additional member selected by the elected chief executive officer for the county containing the court. The additional member will be a county resident and will participate in the deliberations and voting of the commission for the sole purpose of determining whether candidates for the local court are qualified.

Commissioner Terms Should Be Limited

Each commissioner should be entitled to serve for a single term of three years and should be eligible to serve an additional term only after a one-year interim period. If a commissioner cannot complete the appointed term, the authority that appointed that

commissioner will appoint someone to serve on an interim basis for the remainder of the term. If a commissioner is appointed to an interim term, he or she is eligible for appointment to a full term without a one-year hiatus. The initial terms should be staggered to expire as evenly as possible over the course of the succeeding three calendar years. Anyone professionally disciplined by the court or convicted of a felony should be ineligible to be a commissioner.

Commission Membership Should Reflect the State's Great Diversity

The extraordinary importance of diversity in promoting public confidence in New York's judiciary was a theme repeated in the Commission's public hearings, public opinion poll, focus groups and conversations with judges, lawyers, politicians and citizens around the state. An important reason for our recommendation is testimony establishing that screening increases the pool and diversity of qualified candidates for judicial office. Every consideration should be given to achieve broad representation of the community including but not limited to, geographic, racial, ethnic and gender diversity. Every appointing authority should keep in mind the tremendous importance of diversity in selecting commissioners. The provision for four local bar associations selecting members is particularly designed to provide for the participation of minority bar associations within the judicial districts. In every case, commissioners must be residents of or have a place of business in the judicial district in which they are to serve.

IJEQCs Should Apply Consistent and Public Criteria to All Candidates

The criteria should include superior professional ability; good character, independence and integrity; reasonable decisiveness; reputation for uprightness, fairness and lack of bias; good temperament, including courtesy and patience; and good physical and mental stamina. Any candidate must have substantial legal practice, administrative or academic experience corresponding to the responsibilities of the office sought. The criteria for evaluation should be made public and should be consistently applied. No candidate may be found qualified for judicial office 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 the court to have violated the standards of professional conduct or is presently subject to a court proceeding involving professional misconduct, or has been found guilty of a misdemeanor or a more serious crime. Further, no candidate may be found qualified that that has not met the application procedures required by the IJEQC.

Two-thirds of the quorum's vote is required to find a candidate qualified, with two-thirds of the members of the full commission constituting a quorum for the purpose of conducting any business. All votes should be by secret ballot.

IJEQCs Should Publish a List of All Candidates Found Qualified

The IJEQC will publish an alphabetical listing of the names of all candidates that it finds qualified for election. Reporting out all qualified candidates has at least two benefits: it leaves the selection of an appropriate candidate to local processes, and it encourages diversity. Local considerations, including political processes and ratings by local organizations, should determine which candidate is proper for that community. IJEQCs

are not charged with selecting which candidates are best, only with screening out unqualified candidates. Indeed, experience shows that an open screening process broadens the pool of candidates. The opportunity to achieve an objective rating regardless of political activity or ability to raise funds encourages participation by all qualified applicants. We expect that a broader range of qualified candidates will lead to a more diverse bench.

IJEQCs Should Actively Recruit Judicial Candidates

The chair of each IJEQC is charged with disseminating public notice whenever an open judicial position to be filled by election occurs in the Supreme Court, the County Court, the Surrogate's Court, the Family Court, and the Civil, District, or City Courts located anywhere within an IJEQC's jurisdiction, whether the vacancy exists, is about to occur or is scheduled to be filled at the next general election. The chair will broadly disseminate notice of the vacancy, the procedure prospective candidates must follow to be considered by the commission, and the deadline for submission of completed applications. The chair should encourage qualified candidates from a cross-section of the jurisdiction to apply by using all reasonable means to give public notice to any appropriate media, bar associations, persons and organizations. The chair and individual commissioners are charged with encouraging qualified applicants from all of the district's diverse communities.

IJEQCs Should Apply a Rigorous Process to All Candidates that Apply for Screening

Candidates for evaluation will be required to complete and submit a written application on a form prescribed by the IJEQC rules on or before February 1 of the year of the election. The individual commissions will promulgate rules for open judicial positions to be filled by elections that arise after February 1. The commission will consider the qualifications of any candidate that applies for screening, whether proposed by a political party, a member of the commission, or by any other group or person, including a prospective candidate, provided that the candidate completes a questionnaire and submits to an interview.

An IJEQC may designate subcommittees to investigate the background and qualifications of an applicant and to conduct interviews of specific applicants and make findings for the full commission. The subcommittee's findings shall not be final until the full commission either adopts or rejects them. An IJEQC may not find any candidate qualified until after the candidate has followed the application procedures required by the commission, the commission and its staff or a subcommittee has made a thorough inquiry, and the full commission has conducted an interview of the candidate.

IJEQC Proceedings and Its Members Should Be Governed by Uniform Rules

The Administrative Board of the Courts should establish uniform rules to govern the proceedings of the twelve IJEQCs and commission members' conduct as commissioners. We expect that the uniform rules will further protect and encourage the independence of the commissioners. At a minimum, they should make clear that commission members are obligated to guard and exercise their independence and are not

appointed as instructed representatives of the appointing authority. The rules should provide that members should not support any candidate for judicial office while serving on an IJEQC. The rules should also provide for the strict confidentiality of all commission business.

IJEQCs Should Have the Necessary Resources to Fulfill Their Functions

Commission members should serve without compensation, but each independent judicial qualifications commission should have sufficient resources, including paid staff, to enable it to properly carry out its responsibilities, including adequate investigations into all matters relevant to the qualifications of judicial candidates.

All Judicial Candidates Should Be Required to Participate in the IJEQC Process

We recommend that Rule 100.5 of the Rules of the Chief Administrator of the Courts Governing Judicial Conduct require judicial candidates for courts of record in New York State to participate in the IJEQC independent evaluation process. Judicial candidates that do not participate should be subject to discipline under the Chief Administrator's Rules and, by incorporation under the Disciplinary Rules of the Code of Professional Responsibility, 22 NYCRR 1200.44. While participation in the independent evaluation process would be mandatory, candidates would be free to run for office and political parties free to support them irrespective of the IJEQC finding.

We believe that the IJEQCs will promote public confidence and informed voter participation in judicial elections in New York State. Through independent screening, the commissions assure the public that candidates for judicial office are qualified to serve on the bench. They also promote confidence in New York's elected judiciary generally by preventing unqualified candidates from gaining judicial office. The choice between candidates remains with the voter, but the commissions help voters make informed choices about candidates, educating them about particular candidates and providing objective criteria on which to make decisions. As importantly, by encouraging diversity on the bench the commissions will foster public confidence in all communities.

We recognize that legislation has been introduced in one house of the New York State Legislature to establish independent screening for candidates for election to the Supreme Court. We applaud the scope and substance of the legislation. We also believe that the Chief Judge should implement independent evaluation by rule unless a plan that meets the principles incorporated in this recommendation becomes law in New York State.

Public Financing

In a nation governed by the rule of law, judges occupy a uniquely important and difficult position: they must apply the law as it is written, whether the law is popular or unpopular, and they must apply it impartially. Moreover, they must at all times be careful to avoid even the appearance of partiality, for if the people cease to believe that their judges are applying the law in a manner that is free from the taint of outside influence, the system will fail, whether or not the suspicions are justified.

The other branches of government, the executive and legislative, need not operate in so insular a fashion. Rather, as representatives of the people, it is their role to ascertain and reflect the concerns of their constituents. It is their job not to shun outside influence, but to reflect and refine it. Executives and legislators are expected to champion the views and opinions of the constituents that elect them. Judges cannot and must not. Judicial elections present unique difficulties because of these differences between judges, legislators and executives.

Campaign contributions present a potentially serious obstacle to maintaining the appearance of impartiality that is critical to the judicial function. Simply put, some people find it hard to believe that a judge will not favor a litigant who has contributed generously to his or her campaign over a litigant who has not. The Marist Poll shows that the public suspects that judges can be influenced by campaign contributions. The Marist Poll shows that 38% of registered voters in New York think that campaign contributions have a great deal of influence on judicial decisions and 45% think that campaign contributions have some influence on judicial decisions. Further, 87% of voters participating in the Marist Poll thought that a judge should not be put in the position of ruling on a case where one side has contributed to the judge's campaign. Many judges agree. Of the 1,129 sitting judges in New York that responded to the Commission's survey, 27% believe that campaign contributions influence judicial decisions some or a great deal and 18% more believe that contributions have a little influence. Further, more than 40% of the judges surveyed believe that any campaign contribution raises a reasonable question about a judge's impartiality when the contributing party or lawyer appears before the judge. Indeed, only 19% of the judges believe that campaign contributions categorically do not raise a reasonable question about a judge's impartiality. While the Marist Poll also reflects that 71% of New Yorkers nevertheless agree or strongly agree that judges are fair and impartial, the perception that campaign contributions may influence judicial decisions is legitimately of concern. If there is any area in which every reasonable effort should be made to eliminate concerns about the influence of campaign contributions, it is with respect to the judiciary.

Counteracting any concerns that arise from financial contributions to judicial campaigns has been one of the principal tasks of this Commission. Toward that end, the Commission made interim recommendations that include, among other things, a more open campaign finance disclosure regime, limits on campaign expenditures, and disqualification provisions based on campaign contributions to judicial campaigns. The interim recommendations focused on steps that the judiciary could take now to increase public confidence in judicial elections.

Over the long term, perhaps the most effective way to remove the source of the

perception is to eliminate private contributions as much as possible and replace them with public money. Public financing of judicial elections can help break any perceived connection between campaign contributions and judicial impartiality. Substituting public money for private money removes any concern that there is a connection between campaign contributions and judicial decision-making. Instead, a judge depends on exactly the people he or she serves—all the citizens of New York State, for campaign financing. By breaking that connection, public financing would alleviate the need for some of the Commission's interim recommendations.

Public financing of judicial campaigns arguably carries with it benefits beyond the impact on public perception. Most judges and prospective judges are not comfortable with raising money. The raising of campaign contributions exposes successful candidates to uncomfortable conflicts and public suspicion, and excludes undoubtedly qualified candidates from participating in a process that they find distasteful. Another concern about a system that relies solely on private contributions is the way it favors those with substantial financial resources over those with little or no such resources. Public financing may serve to open the door to a greater number of highly qualified candidates of diverse backgrounds, such as minority candidates, women and attorneys who have spent their careers in public service.

The Commission also recognizes that some consider public financing of judicial campaigns problematic. One concern is that public financing is somehow antithetical to the electoral process as it has developed in the United States, representing (1) an unwarranted intrusion in a realm more properly regulated by market forces and (2) an impermissible restriction of First Amendment rights. As to the first concern, whatever may be said about the propriety of market forces in a typical political election, the election of judges who are supposed to operate on a level unaffected by "market forces" surely should not be regulated solely by such forces. As to the First Amendment, it is the Commission's understanding that public financing programs coupled with voluntary spending limits are entirely consistent with First Amendment rights, as indicated in the Supreme Court case of *Buckley v. Valeo*. So long as candidates choose freely to participate in the public financing program or to reject public financing and spend without limit, the voluntary spending limits that are associated with public financing programs are constitutional. *See* Report of the Commission on Public Financing of Judicial Campaigns, American Bar Association (February 2002) at 31-32.

Another concern raised by those skeptical of public financing arises from the fear that shutting down direct contributions to candidates will only cause the contributors to take their funds and pursue other means of supporting the candidate, for example launching independent ad campaigns. This phenomenon occurs almost uniquely in jurisdictions that elect their appellate bench, which is not the case in New York State. Even if this were to occur in some instances in New York, it is nonetheless preferable from the viewpoint of public perception than the alternative.

A final concern focuses on the critical question of whether it is possible to successfully implement and administer a public financing program in New York State. The Commission acknowledges that there are significant challenges to implementing a public financing program in this State, as described below in Section I. Nevertheless, the Commission believes that the benefits of public financing are such that the effort should be

made to establish pilot programs and a commission to conduct further research on these issues, as set forth in Section II.

Despite the strong policy reasons for publicly financing judicial campaigns, there are numerous practical challenges to the introduction of public financing into judicial elections in New York State. One of the most obvious is the number of races for judicial office in this state. There are 911 seats determined by the election process in the courts of record and an additional 2,300 seats in town and village justice courts. These numbers pose an administrative challenge to any public financing program that attempts to cover all judicial elections—especially when consideration is given to the differing practices that precede the general election for different courts in different districts. In an average year in New York State, there are 27 Supreme Court races and 65 races for courts of lesser jurisdiction, including City Court, Civil Court, County Court, District Court, Family Court and Surrogate's Court. That number varies widely from year to year. Over the past seven years, the number of races statewide has varied from 46 in 1996 to 119 in 2003. *See* Working Paper on Judicial Elections in New York State: 1996-2003, attached as Appendix G-4. The logistical challenge of creating a system that could adequately and fairly disburse public funds in all such races from year to year is a serious one.

To this essentially logistical concern about coordinating funding for many different races must be added the cost of providing public financing for all these races. The Commission has conducted research on the cost of races across the state and the cost of individual races varies widely. For example, focusing on the Supreme Court races, in 2002, 30 seats were open on the New York Supreme Court bench, 108 people declared candidacy and raised a total of $3,840,423. Sixty-six candidates raised under $10,000 for their campaigns; 33 of those 66 candidates did not raise any money at all. The amount raised varied by district, but the average amount was $25,663.

Because of the sheer number and cost of judicial races, because of the variations between districts, and because of the different timetables and practices that precede the general elections for these races, it would be extremely difficult to develop a "one size fits all" system. It should be noted that there are many and varied sources of public financing. *See* Working Paper on Sources of Public Funding, attached as Appendix G-5. It is difficult to predict, however, how well those sources will cover the costs of any public financing program.

There are other practical challenges to introducing public financing into judicial elections in New York State that may be equally difficult to overcome. States across the country continue to grapple with budget shortfalls this year and New York is no exception; in his address to the Legislature on January 20, 2004 presenting his proposed 2004/05 spending plan, the Governor outlined plans for closing the State's estimated deficit of $5.1 billion. Public monies for judicial campaigns will thus have to compete with other core government programs in an extremely difficult fiscal climate.

The Commission believes that such challenges can and must be overcome, especially at a time when interest in judicial reform is high. As suggested in our recommendations, while public financing on a statewide basis may not be feasible as a first step, much can be accomplished, and much can be learned, by establishing smaller "pilot" programs, which will also be less expensive to run and fund.

We recommend that New York State adopt voluntary public financing programs for the Surrogate's Court statewide and for all courts within targeted competitive districts

Recognizing the compelling reasons for publicly financing judicial campaigns and the challenges to implementing a statewide program in New York, the Commission recommends that New York State adopt legislation providing for pilot public financing programs and use the experience gained from those programs to develop an appropriate statewide program in the future. Specifically, we recommend that New York adopt voluntary public financing programs for the Surrogate's Court statewide and for all courts within targeted competitive districts. Further, the Commission recommends that legislation be put in place that enables localities to establish voluntary local public financing programs on their own initiative. Finally, the Commission recommends that a temporary commission be established to study the desirability and feasibility of a program for voluntary public financing of judicial races across New York State. The temporary commission, building on the information received through the pilot programs, could refine the parameters suggested in this report, provide estimates of the costs of the program, and expand the pilots into a statewide system.

The Commission considered many different forms of public financing, including "in-kind benefits" such as publicly funded and reduced cost media and mailing opportunities; monetary benefits to contributors such as tax advantages or refunds to those who contribute to judicial campaigns; and monetary benefits to candidates such as full or partial financing of campaigns. While all the alternatives offer benefits, we believe that full public financing of judicial campaigns best addresses the twin goals of eliminating judicial candidates' dependence on campaign contributors and opening campaigns to a broader diversity of candidates. Accordingly, we recommend that any public financing program provide full funding of judicial campaigns.

Although we believe that full public financing is the best option, we recognize that a matching funds program may be a viable alternative. Under a matching funds program, candidates raise funds and those contributions are matched by public funding. Matching funds do not eliminate the need for judicial candidates to raise money, but reasonable contribution and expenditure limits can go a long way toward addressing any public concern over money's influence over judicial decisions. Further, utilizing a matching funds program rather than full financing reduces the amount of money needed for a public finance system because the candidates themselves bear the burden of raising a percentage of their campaign funds.

The U.S. Constitution prohibits a state from requiring that all candidates for public office participate in a public financing program. Every candidate has the right to use his or her own resources or to raise money independently of a public program. Therefore, any public financing program that New York State establishes must be voluntary. Because a program must be voluntary, it must be a viable alternative to a privately funded campaign. Any successful program must offer sufficient funding for candidates to run a competitive campaign and include provisions to offset excessive spending by a non-participating candidate.

We recommend that New York State establish pilot public financing programs

As outlined above, New York presents numerous challenges to a public financing program for judicial campaigns. Judges are elected to more than 900 seats on courts of record around the state, and many campaigns require significant spending. Public financing for every judicial election is not a task or an expense that can be lightly undertaken. New York does not have experience publicly financing judicial campaigns, and without a track record, the full Legislature may be hesitant to support a statewide public financing program in the near term. Pilot programs can limit the expense of public financing of judicial races while developing the experience needed to determine if a statewide program is feasible and desirable and to establish the right program for all of New York's many different judicial elections.

1. Surrogate's Court Pilot Program

The Surrogate's Court is an excellent candidate for a pilot public financing program for several reasons. First, the Surrogate's Court has suffered criticism in the past for showing favoritism to campaign contributors. Campaigns for Surrogate have historically attracted a significant amount of campaign money in many parts of the state. The influx of so much money combined with the Surrogate's control over a significant number of lucrative fiduciary appointments has led to speculation of perceived judicial favoritism to campaign contributors. Indeed, several authorities, including the Inspector General's office and the Commission on Fiduciary Appointments, have suggested a link between campaign contributions and fiduciary appointments in New York.

Second, publicly financing Surrogate's Court campaigns each year would require substantially less in public funds than many other benches because only a few races occur each year. From 1999 through 2003, there were three races each year on average, with six in the most active year. Although the races attract large amounts of contributions in some parts of the state, the total amount of funding needed is small compared to Supreme, County, Civil, or Family Court races. It should be noted that this recommendation applies to Surrogate's Court judgeships only, and not to the so-called "double-hat" or "triple hat" judges who function as surrogate as well as county and/or family judges in certain jurisdictions.

Third, a public financing program for Surrogate's Court campaigns would be less administratively complex than a program for other benches. Administering a program for three to six Surrogate's Court races per year would require minimal expense compared to a program for other benches. Further, the Surrogate's Court election process, with petitions, primaries and general elections, is more akin to existing campaign finance models than the Supreme Court process, which involves party conventions and the selection of delegates. A program for Surrogate's Court could build on the experience of existing public financing programs in New York and other states.

Finally, the Surrogate's Court is one of the least diverse benches in the State. While this may be due in part to the specialized nature of the court, the fact remains that here are few racial minorities or women on the Surrogate bench in New York. Public funding may help attract a more diverse bench by allowing non-traditional candidates to run for the office.

Accordingly, the Commission recommends that the Legislature establish a pilot program to offer public financing for all Surrogate's Court campaigns in New York State.

2. Pilot Public Financing Programs in Competitive and Geographically Diverse Jurisdictions

Public financing of judicial campaigns will be most effective and most challenging in competitive jurisdictions. Candidates typically raise the most campaign contributions in jurisdictions where elections are competitive because the competition escalates candidate spending. The threat that contributions present to judicial independence and impartiality is at its apex where candidates have to rely heavily on campaign contributors to run a successful campaign. Public financing in competitive districts would eliminate candidates' dependence on campaign contributors and minimize the threat to independence or impartiality created by private funds. In non-competitive jurisdictions—where party supported candidates are not typically challenged or candidates are cross endorsed—public financing will have little practical effect. Non-competitive races typically do not require significant campaign expenditures so the candidates' need to raise money is limited and the accompanying threat to judicial independence and impartiality is likewise limited. Indeed, injecting unneeded public monies into such a setting could produce unwanted side effects.

Furthermore, we will learn more about a public financing program and its suitability for New York from a pilot program in a competitive jurisdiction than in a non-competitive jurisdiction. The demands in a competitive jurisdiction will be greater, both from the perspectives of providing resources and of monitoring candidates' expenditures and activities. While non-competitive jurisdictions will raise their own challenges, they will not be of the same magnitude as those in competitive jurisdictions.

Competitive history, geographic diversity and the various election processes should be important factors in choosing jurisdictions for a pilot program. Programs should be limited to jurisdictions with a history of competitive elections. As political cultures vary greatly across the State, jurisdictions should be chosen to reflect geographic diversity.

Due consideration must also be given to the way judges are elected to different benches. For instance, Supreme Court candidates are elected by delegates at nominating conventions in each judicial district. This unique system presents particularly difficult issues with respect to campaign financing, as candidates are nominated, and thus officially identified, in late September, leaving only six weeks to campaign for office. As a result, much of the campaign spending occurs before the candidate is nominated because the campaign must be ready to start immediately upon nomination. For instance, campaign expenditures for preparing advertising often are incurred prior to nomination. Any campaign financing program for such races would be set up very differently from a program for races that proceed first to a primary and then a general election. At the outset, therefore, we would recommend that the pilot programs not cover races for Supreme Court openings, and that additional analysis and research be conducted before attempting to include such races.

3. Incorporation of Judicial Races into Existing Public Financing Programs

The Commission recommends that judicial races be incorporated into existing public financing programs wherever possible. A good example of an existing program is the public financing program run by the New York City Campaign Finance Board ("NYCCFB"). The program currently offers public financing for campaigns for the offices of mayor, public advocate, comptroller, borough president and city council member in the City of New York. We recommend that its program be extended to serve the City's elected judicial seats.[1] The NYCCFB program is widely considered to be successful. Incorporating judicial campaigns into the program allows a pilot program to take advantage of the NYCCFB's infrastructure, experience and expertise.

We recommend that New York State adopt enabling legislation for local public financing programs for judicial campaigns

The Commission recommends that the State Legislature pass enabling legislation that allows localities to create and implement programs for publicly financing local judicial campaigns, in addition to establishing pilot programs. The legislation should allow local jurisdictions to determine which judicial offices are included in the public financing program, the amount of public financing for each office, contribution and expenditure limits, and the method of funding public financing.

We recommend that New York State establish a temporary commission to study the feasibility of a statewide public financing program for judicial campaigns

The Commission to Promote Public Confidence in Judicial Elections cannot fully address all the issues surrounding the implementation of a statewide public financing program for judicial elections. The State's current experience with public financing of judicial campaigns is too limited to provide the information necessary to make considered and informed decisions for a long-term program. Further, the current judicial campaign finance disclosure regime makes studying campaign contributions and expenditures for races other than the Supreme Court extraordinarily time consuming and expensive.

Therefore, we recommend that a temporary commission be established to study the feasibility of statewide public financing for judicial campaigns and to make recommendations to the Legislature for the implementation of an appropriate program for the future. We anticipate that several of this Commission's recommendations will provide information critical to such a study. For instance, the recommended pilot programs should provide a wealth of data about public financing for judicial campaigns. Also, the Commission recommended in its Interim Report that judicial campaign finance disclosure be made more complete, timely and accessible. The recommendation, if adopted, will provide the temporary commission with important information that will help it make recommendations regarding campaign financing for jurisdictions beyond those involved in the pilot programs. While it makes sense at this stage to focus on the competitive jurisdictions, as noted above, consideration should be given as well to the issues presented by non-competitive jurisdictions.

---

[1] We have not sought the reaction of the NYCCFB with respect to this recommendation, and Nicole Gordon, a member of the Commission, recused herself from this section of the report.

Parameters for a Public Financing Program for Judicial Elections

Implementing legislation for a public financing program must address certain fundamental issues. Primary among them are the sources of funding for the program, the oversight authority, and the operation of the program, including candidate qualifications, reporting requirements, and spending and contribution limits. While many of the details of a public financing program will be developed as New York gains experience with public financing, the Commission believes that what follows are necessary aspects of any public financing program. For a more detailed account of possible funding sources, *see* Working Paper on Sources of Public Funding, attached as Appendix G-5; and for an analysis of public funding programs in other jurisdictions, *see* Working Paper on Public Funding of Judicial Elections Among the States, attached as Appendix G-6.

A. Sources of Funding

A public financing program should have several different sources of funding. An advantage to using several sources is that together they provide a broader base from which to pool monies. If any single source does not provide the expected revenues, other sources can make up for the shortfall. Using multiple sources also insulates against a fall off in any one source and it avoids the challenge of finding a single source sufficient to provide revenues for the entire program. Although some programs rely on a single source of funding, many states with existing and proposed public financing programs for judicial elections employ multiple sources. Among them are Arizona, Illinois, Idaho, North Carolina, Texas and Wisconsin.

A recent study by the Center on Governmental Studies identified four categories of potential revenue sources for a public financing program: new revenue sources; dedication or reallocation of existing state revenues; tax credits; and government mandated private in-kind contributions. New revenue sources are created and employed for the express purpose of funding campaigns. For example, North Carolina's existing public financing program for judicial campaigns depends in part on voluntary contributions solicited from attorneys with their annual license invoice, and Illinois' proposed program requires attorneys to contribute to a fund financing judicial campaigns. Creating new funding sources for judicial system programs is not new in New York State. For instance, the Legislature created the New York State Interest on Lawyer Account Fund (IOLA) to support civil legal service organizations threatened by federal budget cuts.

New York State also could dedicate existing revenues to a public financing program. For instance, the legislation establishing public financing of judicial campaigns could provide that any unexpended amounts distributed under the program and any fines collected for violations of the legislation be returned to the program. An example of dedicating existing revenues to a public financing program is the New York City Campaign Finance Board. Campaigns for the office of mayor, public advocate, comptroller, borough president and city council member in the City of New York are fended entirely from existing tax revenues.

Tax credits are a potential source of public financing for judicial campaigns. Under a tax credit program, a taxpayer's contribution to a public financing program would reduce the amount of taxes he or she owes. Credits should be available to individuals and organizations for qualifying contributions to candidates and for contributions directly to a

public financing fund. Further, credits can be provided for a percentage of a contribution rather than the entire amount, or credits can be given for combinations of contributions. For example, Oregon provides a 100% tax credit for taxpayers who voluntarily contribute to a political campaign or candidate and who make a contribution of equal or greater value to the Public Campaign Finance Trust Fund.

Finally, in certain circumstances, the State may mandate private in-kind contributions. These contributions would provide public funding for campaigns without cost to the taxpayers. For example, federal law permits local franchising authorities to require cable television companies to set aside channel capacity for speech originated and controlled by members of the public, educational institutions, or local governments. This option could provide judicial candidates with free time on cable television "access channels" to present their views to the public.

In considering sources of funding for a public financing program, New York should take note of other states' experience. Several judicial campaign public financing models have been attempted or proposed around the country, *see* Working Paper on Sources of Funding, attached as Appendix G-5. We note in particular North Carolina's recent experience. The North Carolina program relies predominately on taxpayer Public through a tax return check off and voluntary contributions by attorneys. In its first year, the program appears not to have raised the full amount needed to fully fund the program. It may well be that the only way to be certain of adequate funding is to couple a careful study of anticipated costs with a general allocation of state funds, which could be reduced if alternate sources of funding prove successful.

B. Oversight Authority

The Commission recommends that a board be created to oversee the program. The oversight board should be independent and non-partisan and its mandate should be clear. The make-up of the board should be broad based to ensure a balance of interests. Its members should have experience in administering funds and enjoy a reputation for impartiality, independence and integrity. In addition to public financing of judicial campaigns, the board's mandate could be expanded to include public financing of other offices where appropriate.

The oversight board also should have sanctioning authority. The implementing legislation should provide penalties for violations of the public financing limitations. Civil penalties would be appropriate for unintentional violations of the legislation. For example, where a candidate negligently accepts contributions above the prescribed contribution limits, the candidate should be required to return the funds distributed plus interest. In some cases the candidate should incur a monetary sanction. Criminal sanctions would be appropriate where violations are intentional. If a candidate participating in the public financing program knowingly spends public monies in a prohibited way, the candidate should be subject to monetary sanctions or, in certain cases, prison. Any monetary fines, returned funds and interest should be returned back to the public financing fund.

C. Funds Provided

Public financing programs must be voluntary. Therefore a program's success depends on its attractiveness to candidates. Any program should provide sufficient funds to run a competitive campaign in the jurisdiction at issue and legislation implementing a public financing program for judicial campaigns should clearly describe the maximum amounts of funding available to candidates. The figures should address both primary and general elections and regular and rescue funds.

1. Regular Funds

Regular funds are those available to all candidates regardless of expenditures by opponents. Implementing legislation should indicate the maximum amount of regular funds available to participating candidates for both primary and general elections. We recommend that the maximum amount of regular funds available be based on the historical cost of running a successful campaign in a given jurisdiction. We caution, however, that an effort be made to distinguish actual costs of running an election from expenditures that may not be proper use of public funds. In our Interim Report we discussed the reported use of judicial campaign funds to pay inflated prices for goods and services and purchase tickets to fundraising events at prices well beyond the cost of attendance. Such payments should not occur in any case, but would be a strictly prohibited use of public funds. A historical analysis of campaign costs should discount any such practices.

Depending on many factors, the expense of running a campaign can vary greatly across jurisdictions. For instance, a primary election may be significantly more expensive than a general election in a jurisdiction where a single party dominates the registered voters because victory is ensured once the candidate gains a place on the party slate. A general election may be the more expensive to run in a jurisdiction where registered voters are evenly spread among the parties. Therefore, we recommend that the amount of funds available be determined on a jurisdiction-by-jurisdiction basis, using historical costs as guidelines. The figures should be revised on a regular basis as information becomes available for recent campaigns.

Although historical information on the cost of running a successful campaign in a particular jurisdiction is not readily available at this time, it should not be difficult in the near future. As the Commission noted in its Interim Report, campaign finance disclosure for courts other than Supreme Court is very difficult to compile in New York State. Candidates file disclosure on paper with 63 local boards of election. Obtaining the information is costly and tremendously time consuming, and the information is not always complete. Therefore, the Commission encourages the adoption of its interim recommendations for a new electronic disclosure regime. Such a regime will make developing historical information much easier, timely and cost effective.

2. Rescue Funds

The implementing legislation should make rescue funds available to participating candidates in addition to regular funds. These funds are triggered by a non-participating opponent's campaign expenditures or contributions over a certain threshold, usually the limits imposed on participating candidates by the program. For instance, where a non-participating opponent spends over the expenditure limits applicable to participating

candidates, the public financing program should provide additional funds and allow the participating candidate to match some percentage of the excessive spending. If participating candidates do not have access to rescue funds, they could be disadvantaged when facing a non-participating opponent with access to extraordinary campaign funds. Under those circumstances candidates would be reluctant to participate in a public finance program.

A public financing program cannot guarantee rescue funds at every level. The legislation should recognize that excess spending becomes marginally effective at some point and rescue funds for participating candidates become less important. For instance, additional funds might be available on a dollar-for-dollar basis for the first $10,000 spent over the expenditure limit, on a $.75 on the dollar basis for the next $20,000, on a $.50 on the dollar basis for the next $50,000, and the rescue funds would max out at $80,000.

D. Qualification Requirements

The implementing legislation should clearly set out requirements that a candidate must meet to participate in the public finance program. Qualification requirements ensure that people participating in the program are serious candidates, that they understand the program requirements and that they are committed to following the program rules. The requirements should include the following.

1. Filing of a declaration of intent to participate

Every participating candidate should be required to file a declaration of intent to participate in public financing and a sworn statement that the candidate has read and understands all the program requirements and agrees to comply with them.

2. Pre-certification spending limits

The implementing legislation should set limits on candidate spending prior to participation in the public financing program, and provide that any candidate applying for public financing must not have exceeded those limits.

3. Qualifying Contributions

Candidates applying for public financing should have to show that they have received a certain amount of qualifying contributions, that is contributions of a minimal amount of money from a minimum number of residents in the office's jurisdiction within a certain period of time ("qualifying period"). For instance, to qualify for the program, a candidate may have to raise contributions in a small amount, such as $10, from 500 residents in the relevant jurisdiction within two months of declaring candidacy. Care would have to be taken in establishing this qualification requirement, so as not to encourage frivolous candidates or candidates seeking to act only as a "spoiler".

4. Existence of an Opponent

Public financing should be limited to those races in which a candidate has an opponent. A candidate seeking public financing should have to establish that an opponent has met the formal requirements to run for the office on the ballot. For instance, a candidate could be required to show that the opponent has declared candidacy, registered

with the board of elections, collected the required amount of signatures, and taken whatever other official acts are required to appear on the ballot. Even where an opponent exists, public financing should not be available in full unless the opponent has raised a significant amount of money. A candidate should receive only a percentage of the available funds until she can show that her opponent has raised a threshold amount of money.

E. Spending Limits

The implementing legislation should specify limits on candidate campaign spending. The limits should include limits on total expenditures, on the use of funds, and on the timeframe in which the funds may be spent. Further, any spending should be limited to races in which the candidate has an opponent.

F. Contribution Limits

The implementing legislation should set clear limits on permissible contributions. There should be clear limits on what, if any, private contributions are allowed. Limits should address contributions to candidates both prior to joining the public financing program and during the campaign itself, and they should apply to personal contributions by the candidates themselves. Any personal contributions must be within the program's limits, and limits should distinguish between contributions to individual candidates and those directly to the public financing fund.

Contribution limits should also apply to loans. Although candidates should not be prohibited from using loans to finance a campaign, the loans should be subject to the same requirements that apply to other contributions. For instance, any loans combined with contributions cannot exceed the aggregate contribution limitations and repayment must be subject to the limitations on individual contributions. Further, loans should not count towards qualifying contributions.

G. Candidate Reporting Requirements

The implementing legislation should set out a reporting regime for participating candidates. Reporting should be timely and comprehensive and reports should be sworn statements to the overseeing authority. They should include all contributions and expenditures; all qualifying contributions and seed money; and the names, addresses and occupation of all contributors. The reporting requirements should be coordinated as much as possible with existing campaign finance disclosure requirements, but because public funds are at issue, reporting to the public financing oversight authority should not be limited by current requirements.

Retention Elections

Many of the challenges to public confidence in judicial elections are particularly acute when a judge is running for re-election. Raising campaign finances, soliciting political party support, and engaging in a politically charged election threaten public confidence in judicial impartiality and independence, and the threat is greatest when a sitting judge is involved in such activities. We believe that a retention election system in which incumbent judges running for re-election to courts of record are subject to non-competitive, non-partisan elections the year before their terms expire will strengthen public confidence in judicial elections.

Public concern about the effect of campaign contributions on judicial impartiality is at its apex when an incumbent judge campaigns for re-election. The Commission's research shows that the voting public and judges are concerned with the effect of campaign contributions on judicial impartiality. *See* Section __ *supra*. The overwhelming majority of voters and more than a quarter of sitting judges believe that campaign contributions influence judicial decisions some or a great deal. Similarly, almost 90% of voters believe that a judge should not hear a case involving a campaign contributor, and 43% of judges believe that a campaign contribution of *any amount* raises a reasonable question about a judge's impartiality in a case.

Nevertheless, judicial candidates rely on contributions for election and incumbents are forced to raise that money even while sitting on the bench. Lawyers are the most common campaign contributors to judicial elections, and the lawyers that contribute often appear before the very judge to whom they have contributed. While many judges make an effort not to know who contributes, several witnesses testified before the Commission that judges cannot help but know the identities of at least some of the contributors. Indeed, 68% of the 1,129 judges that responded to the Judicial Survey believe that judicial candidates know who some, most or all of their campaign contributors are. The risk that contributions will affect decisions is highest when a judge seeking to retain a seat on the bench must rely on money from those appearing before him or her. Clearly, the risk that campaign contributions pose to public confidence in judicial impartiality is at its height when an incumbent runs for re-election.

Similarly, the fact that an incumbent judge must marshal local political party support for re-election heightens public concerns over judicial independence. In New York's partisan election system, local political party leaders exercise substantial control over who a party nominates as its judicial candidate, and in many areas of the State, winning the dominant political party nomination is tantamount to winning the general elections. A judge running for re-election must seek party leader support because without it the candidate often has little chance of success. When a judge runs for re-election, a balance must be struck between the need to obtain political support and judicial independence. Judicial independence is critical to public confidence in the judiciary. More than 90% of both voters and judges surveyed in the Marist Poll and Judicial Survey said that independence from political party leaders is an important aspect of judicial independence. Even New York's Rules Governing Judicial Conduct requires sitting judges to remain politically aloof while in office. Maintaining an appropriate balance between the two concepts, independence from and reliance on political leaders, is always

difficult; but it is particularly so where a sitting judge has no choice but to seek local political party support for re-election. The risk to judicial independence and public confidence at that point is grave.

In addition to the concerns over raising money and soliciting political party support, a judge's participation in the give and take of a campaign can erode public confidence. Campaigns are by their nature public events, and the way in which some political campaigns are run is inconsistent with the dignity of the judicial office. Indeed, registered voters listed campaign conduct as the second most important reason that they would not vote in a judicial campaign, after a lack of information about candidates. It is particularly important that sitting judges do not compromise their impartiality, real and perceived. Forcing them into the fray of a competitive election risks inappropriate campaign activity.

The uniquely high risk to public confidence posed by judges running for re-election leads us to believe that retention elections coupled with judicial screening is the best way to ensure judicial integrity and independence. Retention elections pose less of a risk to public confidence in judicial elections while (1) minimizing the need for judges to campaign and raise money; (2) promoting a high rate of retention for qualified judges; (3) attracting qualified candidates to the bench by eliminating the prospect of repeated competitive campaigns; and (4) increasing judicial accountability by allowing voters to remove judges based on their performance on the bench.

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

Only incumbent judges who initially won election to a full term should be considered incumbents for purposes of retention elections. Any incumbent judge seeking re-election to a court of record should be required to apply to appear on the ballot for retention the year before his or her term of office expires. To appear on the ballot, an incumbent should be required to participate in the Independent Judicial Election Qualification Commission process and be found qualified. If the incumbent is found qualified, the incumbent's name should be submitted to the electors, separately and without party designation, at the next general election under a proposition substantially similar to "Shall Judge/Justice _____ be retained in the office of _____?" If the candidate receives a majority vote of those voting on the proposition, he or she would be retained for the next term of office. If the incumbent judge is not re-elected in a retention election, the office should be considered vacant and the judge would be free to run for the office in a partisan, competitive election at the expiration of his or her term in the following year.

The Commission considered the concern that retention elections may slow the diversification of New York's judiciary by ensconcing a non-diverse bench in some parts of the state. We found that while a danger in theory, incumbents almost invariably win re-election when they run in contested elections in New York. Therefore, retention elections do little to change the outcome of re-election, but dispense with the need for incumbents to raise money and campaign. A study of Supreme Court races since 2000 showed that 32 incumbents ran in 129 seats up for election and the incumbents were successfully re-

elected in 31 of 32 cases. In addition, the Commission's survey of sitting judges in New York showed that only 4% of elections for judicial office involved a race in which the incumbents did not win. With incumbent success rates so high, the Commission believes that the threat to diversification is outweighed by the gains in judicial independence.

Accordingly, we believe that retention elections coupled with judicial screening is the best way to ensure judicial integrity and independence where an incumbent judge is running for reelection.

(For a more detailed discussion of retention elections, see the Working Paper on Retention Elections, attached as Appendix G-7.)

Voter Education

In our Interim Report (pp. 44-46), we discussed the importance of voter education to public confidence in judicial elections. We said that knowledge is fundamental to confidence in the judiciary and we noted that New Yorkers are not well informed about their state judiciary. Ignorance rarely inspires confidence in elected officials, including elected judges. The Marist Poll showed that more voters believe that elected judges are doing a "just fair" or poor job than believe they are doing a good or excellent job. Voters lack confidence in fundamental aspects of the judiciary: 83% believe that campaign contributions have some or a great deal of influence on judges' decisions, and voters believe that political leaders and campaign contributors have more influence over who becomes a judge than they do. The Marist Poll indicated that the lack of education and public confidence is a core reason that voter participation in judicial elections is even lower than the participation in other races: the main reason almost 60% of New York's voters would not vote in a judicial election is a lack of information. Even when people go to the polls, many do not bother to cast a ballot for a judicial candidate. In some areas of the state only 17% of registered voters participate in judicial elections.

Our research since we released the Interim Report has only reinforced the nexus between voter education and public confidence in judicial elections. Our survey of judges showed that 33% of New York State judges believed that a lack of knowledge was the primary reason for low voter participation, and 43% attributed the low participation to apathy, which is often driven by ignorance. Voter participation in judicial elections was one of the primary focuses of the Commission's focus group study. *See* Focus Group Report, attached as Appendix D. The focus group facilitator asked each group what is helping voter participation, what is hindering it, and what can be done to improve it; voter education played a dominant role in the responses. An overwhelming majority of focus group participants across the state identified voter education as supporting voter participation, citing programs like candidate forums, media coverage, voter guides and youth activities. As importantly, all of the focus groups identified the lack of information about the judicial system and judicial candidates as the greatest hindrance to voter participation. And voter education programs played the dominant role in the participants' recommendations for improving voter participation. They called for media awareness campaigns and educational programs in schools, and they recommended that judges themselves and court personnel play an integral role in voter education to address what they characterized as a disconnect between the judicial system and ordinary citizens.

The Commission presents a series of recommendations in this Final Report to address voter education that fall into two categories. First, we build on our interim recommendation for state sponsored voter guides for judicial elections. Second, we recommend an increase in voter education efforts across the state, including media awareness programs, coordination of existing voter education programs, and collaboration and partnership between organizations working on the issue.

I. VOTER GUIDES

Voter guides should be considered a primary tool to educate voters about judicial elections. They are recognized as efficient and cost-effective and having the potential to "dramatically increase the quantity and quality of voter participation." A guide addresses two important aspects of voter education: familiarizing voters with the office and with the candidates. Thirteen states distribute statewide voter guides and their experience is telling. Public surveys in these states show overwhelming support for voter guides. For example, 85% of Utah voters read all or part of the voter guide, and the state-sponsored voter guide is the most important source of election information for 70% of Californian voters and 64% of Oregon voters.

The Commission's research shows strong support for a state sponsored voter guide in New York. The Marist Poll indicated that 88% of New York's registered voters believe that voter guides are a useful way to educate the public about judicial elections. Focus groups confirmed the support with more than 80% of the focus group participants supporting guides. They believe that voter guides are a good idea because they decrease the mystique around candidates, provide more information than just the names of candidates and provide ready access to information otherwise difficult to collect. New York State judges agreed: almost 80% of those surveyed said that a voter guide would be useful, very useful or extremely useful in informing voters about candidates in judicial races.

In our Interim Report, we made the following recommendation:

- **New York State should produce and distribute voter guides for judicial elections;**
- **Voter guides should be fully financed by the State and distributed to every household with a registered voter;**
- **Voter guides should be distributed by mail in print form and available on the Internet;**
- **Voter guides should serve a dual function of educating the public about the judiciary generally, and about specific judicial candidates; and**
- **The voter guides should undergo periodic evaluations after distribution.**

We also reserved the ability to add to the recommendation in our Final Report and we offer additional recommendations now.

We recommend that a Web-based voter guide be established immediately

While a Web-based voter guide is not an optimal solution, we recognize that securing funding and establishing the framework for a printed guide may require some time. In the meantime, a Web-based version can disseminate valuable information to voters. It can be developed more quickly and requires fewer resources than a printed version because it does not require printing, distribution or mailing. Moreover, it can provide valuable experience because many of the administrative aspects of a Web-based voter guide are the same for a printed version. Developing procedures for collecting candidate information, establishing a calendar and creating an editorial process will expedite the printed version.

We recommend that the voter guide provide a general overview of the court system

A voter guide should describe the role of judges (including the importance of fairness and impartiality), the difference between the appointive and the elective process, retention elections, the various judicial seats, and the Independent Judicial Election Qualifications Commissions ("IJEQC"). It should also provide information about terms of office, salary, and other relevant data. The guide should explain the difference between judicial campaigns and other political campaigns and the ethical restrictions on judicial candidates.

We recommend that the voter guide include specific information about candidates

The information should include the office sought, the candidate's name, current occupation, years of practice (or date of admission to the Bar), educational background, professional/legal background, judicial experience (if any), any community or volunteer service, and a personal, unedited statement from the candidate, in conformity with any applicable requirements.

We recommend that the voter guide include the results of IJEQC screening process

The IJEQC screening results should be the only screening results included as a matter of course, but candidates should be able to refer to other screening results, such as bar association screening, in their personal statements.

We recommend that that a voter guide task force be established

The task force should consist of members of the legal community, judiciary, civic and community organizations, scholars in this subject, and members of the executive and legislative branches. The actual implementation of voter guides is beyond the scope of the Commission's authority, but we believe that the Task Force should continue the work begun by this Commission by studying, evaluating and expediting the implementation of the recommended voter guide.

II. VOTER EDUCATION EFFORTS

In the broadest sense, voter education about judicial elections includes any information about the judiciary that will help people make more meaningful choices when voting for judicial candidates. Given the public's significant information gap about the judicial system, most types of educational activities about the judiciary would help create a more informed citizenry. Such existing activities include judges and other court personnel who engage with the community and speak at schools and civic organizations, bar associations that act as a conduit between the legal profession and the public, civic education leaders and organizations who are actively engaged in educating and nurturing our young citizens of tomorrow, and many civic, community and non-profit organizations concerned about democratic participation.

Our voter guide recommendation is only one way to educate the public about judicial elections. Indeed, the lack of voter awareness about the judiciary calls for more than just voter guides; it speaks to a profound disconnect between the populace and the judicial system generally. How to bridge that information gap is one of the central challenges we face today. Citizens are the fabric of our society, but studies suggest that the gap in voter awareness of judicial elections becomes even wider for citizens the more marginalized they are as voters, whether by virtue of economics, age, gender, language access, race, or cultural background. Accordingly, there is an even more pressing need to disseminate information about judicial elections to those sectors of society.

Voter education is already taking place throughout the state by various people and organizations in legal, civic and education communities. A major concern is whether these efforts are being coordinated and communicated in such a way as to increase public perception and confidence in judicial elections. Many of the Commission's recommendations on voter education are concerned with communication, outreach and coordination of efforts, and how to maximize the work already underway in a manner that will promote public confidence in judicial elections. Our recommendations fall into three categories: coordination of information regarding voter education efforts, multi-media awareness campaigns, and partnership and collaboration.

A. Coordination of Information Regarding Voter Education Efforts

Many voter education resources for judicial elections have been developed; the grass roots community, state or local government, the Office of Court Administration, bar associations, and schools all sponsor programs. But information about the resources and programs is scattered and there is no centralized place to find out about these activities and resources. The lack of access to information is an obstacle to reaching the voting public and it undermines the effectiveness of the various educational endeavors. Thus, on the most basic level, centralizing information in an accessible manner will help make voter education about judicial elections more effective and allow an overview and assessment of judicial and voter education efforts. We recommend several ways that the information can be gathered and disseminated.

We recommend the establishment of a Voter Education Directory

The directory should include information on law-related voter and civic education organizations and individuals throughout the state, including educators, judges, bar associations, civic and non-profit organizations, community groups and the Office of Court Administration. The information should include names and contact information as well as a brief description of each organization or person's relevant educational activity. It is important that the Directory is publicly available, both on-line and in print, for use as resource for the legal and educational community as well as the general public.

We recommend the development of a Web site designed for the general population

This Website should be user friendly attractive, and easy to access. It should include, among other things, the Voter Education Directory and contain an up-to-date calendar of voter education events throughout the state, as well as links to other related

web sites. It should be a collaborative effort between the many different organizations involved in voter education with the goal of disseminating information to the public and fostering an ongoing relationship between the judiciary and organizations and individuals involved in voter education.

We recommend that a State Judicial Directory be established

Almost every focus group attributed low voter turn out to a "disconnect" between the judiciary and the public, and the Marist Poll reinforced the sentiment, suggesting that a lack of information is a prevalent reason for not voting. A State Judicial Directory would help establish a connection between the judiciary and the public by helping them understand who the people are that make up the state's judiciary. Indeed, such a directory exists for other public servants, including federal judges and members of New York State's Legislature. The directory should provide background information about state court judges, including the judge's name, date and place of birth, education, current judicial seat, prior judicial service, information on the judge's professional career, and diversity information.

We recommend that the Office of Court Administration (OCA) play an active role in supporting individual judicial education activities

The Commission's survey of New York State judges showed that 85% of judges believe that their participation in public educations programs about the judiciary are important or very important, but more than half do not participate in programs on a regular basis and only 10% participate in two or more programs in an average month. While OCA performs extensive community outreach at the administrative level, because of the unique relationship between OCA and the judges over whom it has administrative control, many of the community and educational volunteer efforts of individual judges go unnoticed. The wealth of experience from the individual efforts goes largely unappreciated because there is no office within OCA charged with centralizing or coordinating the information.

We recommend that the OCA charge a particular office with supporting voter education about the judiciary

The Office of Public Affairs oversees many of OCA's voter outreach on an administrative level and should be commended for its work, but there is still much that OCA can do to promote public education about the judiciary. For example, regular compilation and dissemination of information about judges' and local court activities would help coordinate voter education efforts. This would acknowledge OCA's achievements, be an effective public relations tool, and allow regular evaluation of efforts to increase public awareness and confidence in the judiciary. Some of the functions a centralized voter education office might perform include:

- Serve as a resource for judges and non-judicial staff engaged in educational efforts in communities and schools;
- Provide linkages and coordinate with other non-judicial groups involved in civic education and increasing civic participation;
- Develop a tool kit and curricula for judges and non-judicial staff to use in speaking

engagements;

- Participate in the annual training of judges and court attorneys with the goal of encouraging involvement with voter education efforts;
- Produce quarterly updates about local educational and community activities related to the courts;
- Maintain a user friendly, easy to access website to support voter education about the judiciary; and
- Produce an Annual Report on voter education efforts.

We recommend that the OCA establish a multi-media awareness campaign about the judiciary

A program to educate voters about the judiciary should be a well thought-out and strategic campaign to educate the public about the importance of voting, the court system, and the citizen's role in judicial elections. It should involve the participation of community, civic, and voter registration groups, and it should be coordinated with different types of multi-media outreach efforts. In designing the campaign, it is important to think creatively. An example of a recent innovative public outreach effort was a series of radio announcements sponsored by the New York State Bar Association's Committee on Public Relations to improve the reputation of the legal profession. Further, target audiences should be broad and include existing and future voters. Targeting youth is particularly important in light of demonstrated problems with young people and civic participation. Focusing on youth not only prepares a new generation of voters but students who are taught about civic education and voting can also involve their parents, who might not have access to the information made available to students.

We recommend that the Chief Judge of the State of New York convene a conference on voter education

An impressive synergy already exists between various organizations involved in partnerships on a variety of voter education issues. These efforts should not be duplicated, but should be augmented to provide additional support to the legal, civic and educational communities. Bringing together the various organizations already involved in voter education issues would facilitate the sharing of information and the development of a statewide agenda around voter education issues.

We recommend that a working group on voter education about the judiciary be established

The working group should enjoy a broad membership including educators, civic and community organizations, politicians, and members of the legal profession, judiciary, and the New York State Board of Regents. This diverse group should be charged with studying and promoting voter education about the judiciary. We expect that such a working would be a natural by-product of the conference on voter education.

(For a more detailed discussion of retention elections, see the Working Paper on Voter Education, attached as Appendix G-8.)

Judicial Campaign Practice Committees

Judicial campaign activity has tremendous potential to influence the public perception of judicial elections. Campaigns are public affairs and by their nature they reach out to citizens. Campaigns for judicial office are different from those for other offices because a judicial candidate's public activities must respect the impartiality and independence of the office. Recognizing this, New York State tries to ensure that judicial campaigns are conducted in ways that maintain public confidence in the impartiality and independence of the judiciary by establishing Rules that restrict campaign activity, *i.e.*, the Rules of the Chief Administrator of the Courts Governing Judicial Conduct, 22 NYCRR 100 ("Judicial Conduct Rules"). The Judicial Conduct Rules directly govern judges running for office, and because candidates for courts of record in New York State must be members of the bar, the Judicial Conduct Rules also govern these candidates via the Disciplinary Rules of the Code of Professional Responsibility, 22 NYCRR 1200.44. The Commission on Judicial Conduct enforces the Judicial Conduct Rules with respect to judicial conduct, and attorney grievance or disciplinary committees established in the four judicial departments enforce the Disciplinary Rules with respect to lawyers. Despite the enforcement regime, some candidates persist in conducting campaigns that undermine public confidence in the judiciary.

Witnesses testified at the public hearings that the existing enforcement regime is not well designed for election campaigns. Sanctions for violating the Judicial Conduct Rules range from private admonishment to removal in the most serious cases. According to several witnesses, in the heat of a campaign, some judicial candidates are willing to risk sanction in order to gain an advantage. If a candidate wins, he or she typically suffers a sanction short of removal. If the candidate loses, the transgression is often forgotten. Therefore, the current system does not sufficiently discourage violations of the Rules—a candidate who wins by virtue of a violation typically remains on the bench and a candidate who loses may suffer no harm. Acknowledging this enforcement gap, we offer the following recommendation to ensure an effective response to violations of the Judicial Conduct Rules during judicial campaigns.

We recommend the establishment of Judicial Campaign Practice Committees in each Appellate Department in the State

The Chief Administrator of the Courts, in consultation with the appropriate Presiding Justice of the Appellate Division, should establish and adopt rules for the operation of a separate Judicial Campaign Practice Committee (the "Committee") for each grievance or attorney disciplinary committee in an Appellate Division. *See* Proposed Rules for Judicial Campaign Practice Committees, attached as Appendix G-9.

Committees should be charged with receiving and evaluating complaints relating to campaign activity from candidates for election to judicial office. They should be composed of no less than five members and include both attorneys and non-attorneys appointed for a four-year term. The Chief Administrator consulting with the appropriate Presiding Justice should determine the total number of members of each Committee and appoint a chair to each for a one-year term. No one should serve longer than one four-year term.

Committees should receive only written complaints and the respondent, *i.e.*, the candidate complained of must receive notice of the complaint. All complaints must include particularized facts and circumstances alleging a violation of a specific provision of the Judicial Conduct Rules. The respondent should be provided with two business days to respond to the Committee.

Committees should issue their determinations no later than seven business days after receiving the complaint and may request any supplemental materials deemed necessary in making its decision. If a majority determines that there is no violation of the Judicial Conduct Rules, the Committee should dismiss the complaint and notify the parties that the matter is closed. If a majority determines that there has been a violation, the Committee should refer the complaint immediately after the date of the general election to the Commission on Judicial Conduct if the respondent has won the election or the appropriate attorney discipline or grievance committee of the Appellate Division if the respondent has lost. Committee business, including any complaints and determinations, should be confidential and should not be disclosed to anyone other than to the parties to the complaint.

We believe that these Committees will serve a valuable role as ombudsman for the judiciary, ensuring that inappropriate judicial campaign conduct is addressed both expeditiously and irrespective of whether a candidate wins or loses the election. We think that the Committees strike the right balance between providing candidates with sufficient process to protect their interests and serving the larger goal of preserving the dignity of the judicial office.

Campaign Finance Disclosure

In its Interim Report (pp. 35-39), the Commission reviewed the current campaign finance disclosure requirements for judicial campaigns in New York. The Commission recommended that 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. In addition, the content and format of judicial disclosure filings should be expanded and revised. For example, the requirements for judicial disclosure filings should be expanded to provide the occupation and the name of the employer for any contributor, as well as information on intermediaries and the disclosure information should be more readily accessible and searchable by computer over the Internet in a variety of ways. Transparency in judicial campaign finance disclosure, the Interim Report urged, will promote confidence in the campaign finance system as well as in the judicial elective system.

The Commission reaffirms its recommendations contained in the Interim Report and notes the critical importance of timely and adequate judicial campaign finance disclosure to public confidence in judicial elections and to the successful implementation of other of the Commission's recommendations.

Since the Interim Report was published, the Office of Court Administrations (OCA) has been made aware of the Commission's recommendations regarding campaign finance disclosure, including the recommendation that OCA (or an entity responsible to OCA) should be the destination for electronic campaign finance disclosures and serve as the authority responsible for making the information publicly available over the Internet. It is the Commission's strong hope that OCA will be able to absorb this crucial function.

Finally, the Commission notes that the campaign finance disclosure function must be accompanied by strong enforcement in order to be meaningful.

(For a more detailed discussion of campaign finance disclosure, see the Working Paper on Campaign Finance Disclosure attached as Appendix G-10; and Committee for Modern Courts September 2, 2003 Memorandum to the Commission, attached as Appendix F.)

CONCLUSION

There is one issue that we have not addressed yet. New York State employs a system of judicial district conventions to select candidates for its court of general jurisdiction that is not only unique among states, but also is unique within the state. The judicial convention system has been the subject of controversy since its inception in 1911, and debate over the value of the system is as heated today as at any time in the system's history. Strong arguments continue to be offered for and against the system, as they have for almost a century, and opinions often vary depending on geography. In the midst of the debate several reform efforts are afoot independent of the Commission's work.

Many of the recommendations in this Report address issues at the core of the debate over the judicial district convention system, but the Commission did not reach a conclusion on whether or how to reform the system itself. We would like to fashion a solution to the debate over the merits of judicial district conventions, but it will not come easily. The effort will take more time than we were initially allotted. Therefore, we recommend that the Commission remain constituted in order to produce a report and recommendation on the judicial district convention system upon the call of the Chair. In the meantime, the Commission will continue its study of the issue and learn from the various reform efforts that are currently underway.

The recommendations in this Report represent what we believe is the best way forward in promoting public confidence in judicial elections. The membership of this Commission is large, representing every judicial district in the State. We all share one thing in common and that is admiration for the judiciary of New York State—its important role, its long and noble history, and for the thousands of men and women who serve it faithfully with the utmost of integrity. They serve as judges, full-time and part-time, as court employees and in administrative positions. We also share in common the view that we can never let up in our efforts to protect and enhance the judiciary, be it state or federal. Our recommendations today are designed to do precisely that, to anticipate and avoid problems, promote greater understanding of the courts and assure that candidates for judicial positions are always well qualified and that the processes from which they come operate in a way that promotes public confidence.

COMMISSION TO PROMOTE PUBLIC CONFIDENCE

IN JUDICIAL ELECTIONS

APPENDIX A

Interim Recommendations
(December 3, 2003)

(As Originally Paginated)

Candidate Selection

Concerns over the way judicial candidates gain access to the general election ballot are at the forefront of discussions across New York State. Many of the witnesses who testified before the Commission addressed the issue of candidate selection. The media, non-profit organizations, politicians, citizens groups, academics and law enforcement agencies have all spoken out on the judicial candidate selection process. They have expressed concerns about many aspects of the process, including political party domination, judicial nominating conventions, cross endorsements, restrictions on campaign activity, and lack of voter participation. Testimony before the Commission, conversations with judges and political leaders, reports from non-profit groups across the political spectrum and media reports all suggest that New York voters have little say in who becomes their political party's candidate for judge.

In much of the State, becoming a particular party's candidate for a judicial position is tantamount to winning the election. Where one party dominates the voting public, which is true in many areas of New York State, candidates that appear on the dominant party ticket all but invariably win the election.

Testimony was given that although the party nod often secures victory, in many cases voters do not choose their party's candidate. For instance, Supreme Court elections do not involve primary elections. Instead, delegates select judicial candidates for the general ballot at a political party nominating convention. Delegates tend to be hand picked by political leaders. Even where primary elections exist, the party-supported candidates often run with little or no real opposition.

The result is that many New York State voters believe that they have little say in who is elected to a judicial seat. According to the Marist Poll, registered voters across the state believe that political parties and campaign contributors have more influence over who becomes a judge than voters. In what can be described as a vicious cycle, the perception of impotence feeds voter apathy. Indeed, two-thirds of New York's registered voters did not know that New York State Supreme Court Justices are elected to office. Judicial elections have exceptionally low participation rates. And even in elections where judicial races appear with executive and legislative races, voters who go to the polls often do not bother voting for judges.

The apathy suggests that either the voting public does not understand or does not respect the political process for selecting judicial candidates. Testimony before the Commission suggested that in many parts of the State that process is hidden from public view. Non-profit organization reports, media accounts and private conversations confirmed that the general public has no knowledge of how the decisions are made, much less access to the process.

Without a meaningful vote and knowledge of the process for selecting judges, the public will not have confidence in judicial elections, a conclusion strongly supported by the Marist Poll. It shows that significant numbers of New York registered voters think that minority populations receive worse treatment than the norm; 83% of the respondents

believe that campaign contributions influence judges' decisions; and 82% believe that political parties influence judges' decisions.

The Commission believes that an effective way to promote confidence in judicial elections is to create independent panels to pre-screen all candidates to ensure they are well qualified. Local politics and the election process would still play a highly important role in selecting among candidates, but the public would have confidence that all the candidates are well qualified to serve.

We heard from many witnesses and commentators who strongly support the idea of independent screening of judicial candidates. While they expressed different preferences on various details of the screening process, a consensus emerged on several characteristics: the screening process must be inclusive, rigorous and publicly known; screening panels themselves must be independent; and political parties must respect the screening process. Based on these principles, we make the following recommendation.

Recommendation: New York State should establish a system of state-sponsored Independent Judicial Election Qualifications Commissions to evaluate the qualifications of candidates for judicial office throughout the state. The commissions should be based on the following principles:

- **Each judicial department should have a commission.**

Each judicial department of the state should have at least one Departmental Independent Judicial Election Qualifications Commission to review judicial candidates. The commissions should have jurisdiction to consider the qualifications of candidates for election to courts of record in the department.

- **The commission members should reflect the state's great diversity.**

In selecting commission members, consideration should be given to the need to achieve broad representations of the community, including geographical, racial, religious, ethnic, political and gender diversity. Each member of a commission should be a resident of or maintain an office in the judicial department in which the member is to serve. In addition, when evaluating candidates for a court with less than statewide jurisdiction, a commission should include residents of the relevant jurisdiction appointed by a local authority. In every case, there should be a reasonable quorum requirement for conducting commission business.

- **The commissions should actively recruit candidates.**

Whenever there is an open judicial position to be filled by election, the commission chair for that department should broadly disseminate: public notice of the vacancy, the commission's procedure for evaluating prospective candidates, and the deadline for applying to the commission for evaluation. At the least, the chair should ensure that notice of the vacancy is given to the electronic and print media, bar associations, and any other persons and organizations that the commission or the chair deems appropriate. Notice should be designed to ensure that well-qualified candidates reflecting a diversity of the jurisdiction involved are encouraged to apply.

- **The commissions should publish a list of all candidates found well qualified.**

Each commission should consider the qualifications of any candidate proposed by any source, provided that the candidate completes a questionnaire, submits to an interview, and satisfies all other requirements of the commission. Commissioners should vote by secret ballot on whether a particular candidate is well qualified and the Commission should report out every candidate that it finds well qualified to serve. Political parties should not nominate or support a candidate for judicial office unless a commission finds that candidate well qualified.

- **The commissions should apply consistent and public criteria to all candidates.**

In considering whether a candidate is well qualified for judicial office, the commissions should strive for candidates with superior professional ability; good character and integrity; independence; reasonable decisiveness; a reputation for fairness, lack of bias and uprightness; good temperament including courtesy and patience; good mental stamina; and consideration for others. In addition, commissions should consider candidates' experience in the practice, administration, or teaching of law.

- **Member terms should be limited.**

Commission members should be eligible to serve for non-consecutive terms of three years in addition to appointment to any interim term of shorter duration, and should be eligible to serve an additional term only after a one-year interim period. The initial terms should be staggered to expire as evenly as possible over the course of the succeeding three calendar years.

- **Uniform rules should govern commission proceedings and its members' conduct.**

- **Commissions should have the necessary resources to fulfill their functions.**

Each commission should have sufficient resources, including paid staff, to enable it to properly carry out its responsibilities.

Perhaps the most important characteristic of any screening body is independence. For the commissions, independence of the members is critical, but so is the independence of the appointing authorities. Any system of appointing members to the panels must be multi or non-partisan, and the commission members must be independent of the appointing authority. Many witnesses and commentators offered suggestions on how to best ensure independence and we incorporate their advice. The authorities that appoint commissioners and the commission members themselves should reflect the diversity of New York State, including geographical, racial, religious, ethnic and gender diversity, and no one source should be able to dominate the commission. Membership terms should be limited.

We expect that the uniform rules will further protect and encourage the independence of the commissioners. At a minimum, the rules should provide that commission members are not appointed as instructed representatives of the appointing authority and are obligated to guard and exercise their independence, and that while serving on the commission, members should not support any candidate for judicial office.

The rules should also provide for the strict confidentiality of all commission business.

The screening process must be inclusive as well as independent. We recommend that the commissions broadly disseminate public notice of any vacancy and that the notice include all the relevant information necessary for applying for evaluation. Further, the commission should actively encourage qualified candidates from a cross-section of the jurisdiction to apply. Members should reach out to their communities and encourage candidates they believe are qualified to apply. Anyone or any organization should be able to propose a candidate, including candidates themselves. The commissions should include guarantees of objective evaluation, such as clear, consistent and public criteria for evaluating candidates and a requirement that commissions report out all well-qualified candidates to encourage non-traditional candidates to apply.

Diversity is critical among commission members as well as candidates, and it will encourage candidates from all sectors of society to apply. Community makeup, including geographical, racial, ethnic, religious, political and gender diversity should be an important factor in appointing commission members. Commissions should include non-lawyers and local members, and every member should live or work in the department in which the commission sits.

Political party participation is necessary for the commissions to succeed. Several political leaders testified before the Commission that they supported the idea of independent screening panels, and one commented that he believed that the best candidates would come out of such a process. Whether in a local or Supreme Court race, political parties should not designate, nominate or support candidates for judicial office that a commission has not found well qualified. To do so would be to allow a candidate that is not qualified to serve as a judge, and party leaders would be violating the trust of their constituency and their responsibility to the judicial institution. In every case, public confidence would suffer.

An effective screening process requires that clear, consistent and public criteria be applied to every candidate. Such criteria will encourage qualified applicants to apply and dispel the notion that candidate selection is an insider's game. The Commission reviewed judicial evaluation criteria used by organizations across the country, and several witnesses testified as to what characteristics are important in a judge. Certain characteristics are consistently used and we believe that the commissions should incorporate them. They include superior professional ability; good character and integrity; independence; reasonable decisiveness; a reputation for fairness, lack of bias and uprightness; good temperament including courtesy and patience; good physical and mental stamina; and consideration for others. In addition, we believe that professional experience is an important factor in evaluating candidates.

The Commission strongly believes that the qualifications commissions should not replace local rating systems. Witnesses at the Public Hearings established that bar associations, civic organizations and local political party ratings help voters choose between well-qualified candidates. Indeed, local groups are in a much better position to determine which candidate would be the best one. The commissions should only be concerned that all candidates appearing on the ballot are well qualified. Therefore, they should employ a single rating system that applies statewide: either a candidate is well

qualified or not. All candidates found well qualified should be reported out and local processes should determine who is the best candidate for that jurisdiction.

Perhaps the greatest consensus among witnesses at the public hearings was that the screening process must be rigorous. We recommend that every commission require candidates to complete and submit a detailed and thorough questionnaire at the outset of the screening process. Several witnesses from bar associations offered excellent questionnaire examples as addenda to their testimony. Commissions should also investigate every candidate, including conducting background and qualifications checks. Finally, every candidate should appear in person before the commission for an interview. Only then would a commission be able to meaningfully evaluate a candidate.

To ensure proper attention to every applicant, each commission should have the necessary resources to carry out its function. Primary among those resources is staff. We recommend that each commission have an executive director who will be responsible for the administration of the commission, including coordinating investigations, ensuring that appointed commissioners met the qualifications, recruiting and administering confidential voting. We also suggest that there be a statewide executive director with responsibilities to coordinate the functions of the departmental commissions.

Finally, the qualifications commissions can serve a vital voter education function. The voter guides called for in this Interim Report should include a description of the commissions' role and process, the criteria they apply to candidates, and the significance of the rating system. As importantly, the voter guides should prominently list the commissions' objective ratings of candidates. Armed with objective evaluations and an understanding of the evaluation process, voters will be able to select candidates well qualified to serve as judge.

We believe that the independent judicial election qualifications commissions will promote public confidence in judicial elections. Their success will depend on participation from many different segments of society. But if there was one thing that encouraged the Commission's work over the past six months more than any other, it was the common dedication among everyone we met to the idea that the New York judiciary should be the best it can possibly be. We believe that people will be able to rally around the notion of qualifications commissions and carry with them the great tide of public opinion.

CAMPAIGN ACTIVITY

Judicial elections nationwide have grown more contentious and partisan. New York has been fortunate to date not to have experienced some of the problems prevalent in other states, but it has seen its own share of problems arising out of judicial elections. In many parts of the state, judicial campaign conduct that erodes public confidence in an impartial and independent judiciary.

Judicial campaign activity is an important means by which the public develops its opinions of the judiciary. Candidates for judicial office publicly campaign; they advertise their candidacy, raise funds, speak to voters, and attend political functions. All of these activities are subject to public scrutiny and should be carried out in a way that maintains public confidence in the integrity, impartiality and independence of the judicial office.

The Commission sees two areas in which changes to judicial candidate campaign activity can help promote public confidence in judicial elections: enhancing the rules governing judicial conduct taking into account recent case law involving the First Amendment and dealing with the role of financial contributions, and promoting campaign activity that fosters confidence in the judiciary. We recommend amending the Rules of the Chief Administrator of the Courts that govern judicial conduct (22 NYCRR § 100.0 *et seq*.) (the "Chief Administrator's Rules"), and expanding existing resources to help promote judicial campaign conduct consistent with the integrity, impartiality and independence of the office.

AMENDING THE RULES GOVERNING JUDICIAL CONDUCT

In New York, the Chief Administrator's Rules govern judicial campaign activity. Rule 100.5(A) directly applies to all candidates for election to judicial office, whether the candidate is an incumbent judge, lawyer or layperson, and other sections apply indirectly to campaign activity. We recommend changes to the Rules that we believe will help maintain the dignity of judicial elections and the integrity, impartiality and independence of the bench. In particular, we recommend (1) that the Chief Administrator's Rules include commentary that clarifies and gives guidance; (2) that the Rules' restrictions on campaign activity be amended to reflect the balance that the Supreme Court struck in *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002); (3) that the Rules include strong disqualification provisions based on campaign activity and financial contributions to help dispel the appearance of partiality; and (4) that the Rules define the integrity, impartiality and independence so essential to the judiciary. Appendix C to this Report includes a more complete version of the rules that we propose to change.

Adopting Commentary to the Rules

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

Commentary to the Chief Administrator's Rules will clarify certain Rules and provide greater guidance to judicial candidates. For example, the commentary to Rule 100.2, which broadly proscribes that a judge shall avoid impropriety and the appearance of impropriety in all activities, would now include examples of such proscribed activities. Additionally, including commentary in the Rules is not a new notion. The New York Code of Judicial Conduct adopted by the New York State Bar Association includes commentary, as does the ABA Model Code of Judicial Conduct. And many states include commentary along with their rules of judicial conduct. New York's Lawyer's Code of Professional Responsibility embraces the use of commentary through its ethical considerations.

The commentary accompanying the Code of Judicial Conduct adopted by the New York State Bar Association should be the basis for the commentary to the Chief Administrator's Rules. See McKinney's Judiciary Law, Book 29, Code of Judicial Conduct 2003 Pocket Part. The Commission's recommendations suggest certain revisions to that commentary.

Rules Governing Campaign Activity

Since the U.S. Supreme Court decision in *White*, states have had to change their notions of what restrictions on judicial campaign activity are consistent with the First Amendment to the U.S. Constitution. The Court in *White* addressed the balance between free speech and states' interest in an independent and impartial judiciary. While the Court's decision did not reach New York's Rules on judicial campaign conduct specifically, it clearly raised questions as to whether they would withstand strict scrutiny. We reviewed the existing restrictions in light of the *White* decision.

The Commission appreciates that there is a healthy balance between protected speech and New York's interest in the integrity, independence and impartiality of its judiciary. The Supreme Court's message is that judicial candidates' political speech enjoys strong protection under the federal constitution. And the New York Court of Appeals pointed out in two recent decisions that New York has a compelling interest in an impartial and independent judiciary. See *In re Raab*, 793 N.E.2d 1287, 763 N.Y.S.2d 213 (2003), and *In re Watson*, 794 N.E.2d 1, 763 N.Y.S.2d 219 (2003). The American Bar Association recently adopted changes to its Model Code of Judicial Conduct in an attempt to strike the proper balance, and several states followed suit by amending their own codes. Several witnesses and commentators testified at the Public Hearings regarding where the balance between free speech and New York's interest should lie. Even the most zealous advocates for free speech, however, recognized that allowing judicial candidates the unfettered ability to make pledges or promises regarding issues and controversies that they may hear as a judge would impair public confidence in the impartiality and independence of the judiciary.

Recommendation: 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.

Although the *White* decision dealt with a clause not included in the Chief Administrator's Rules, the Supreme Court's concerns affect the Rules' speech restrictions. The Minnesota "announce clause" prohibited candidates from announcing their views on disputed legal or political issues. The New York Rules do not include the announce clause, but Rules 100.5(A)(4)(d)(i) and (ii) do restrict judicial candidates' speech. While the Court in *White* did not address these provisions, commonly known as the pledges and promises clause and the commit clause, it did express concern over the breadth of candidate speech restrictions. In that light, the Chief Administrator's Rules should be only as broad as is necessary to protect the state interest in the integrity, impartiality, and independence of the judiciary. Therefore, we recommend that Rule 100.5(A)(4)(d)(i) and (ii) be revised to read as follows.

> (4) A judge or a non-judge who is a candidate for public election to judicial office:
>
> * * * *
>
> (d) shall not
>
> (i) make pledges or promises of conduct in office <u>*that are inconsistent with*</u> the impartial performance of the <u>*adjudicative*</u> duties of the office;
>
> (ii) make statements that commit the candidate with respect to cases, controversies or issues that are likely to come before the court;

The Commission's recommendations with respect to Rule 100.5(A)(4)(d)(i) and (ii) track closely the language that the ABA adopted earlier this year for its Model Code of Judicial Conduct. The ABA Committees' Report to the House of Delegates that accompanied the recommendations provides the rationale behind the changes.

> The new wording of the provision provides a clear enumeration of the restricted speech ("with respect to cases, controversies or issues that are likely to come before the court") and a clear statement of what is being protected by the restriction of this speech ("inconsistent with the impartial performance of the adjudicative duties of the office").

This form of the Rule accords with the Supreme Court's decision in *White* by clarifying the restrictions. No longer is a judge or judicial candidate's speech restricted by

the vague category of statements that *appear* to commit. Only those statements that *actually* commit a judge or candidate with respect to cases, controversies or issues that are likely to come before the court are prohibited. Our language deviates slightly from the ABA-adopted language in that we recommend that the pledges and promises clause and the commit clause be set forth in separate subsections. We believe that both will withstand strict scrutiny, but should they be challenged, keeping them in separate clauses requires that each be analyzed separately.

The adopted commentary to Rule 100.5(A)(4)(d) currently cross-references Rule 100.3(B)(9). If the Commission's recommendations are adopted, the commentary reference should read as follows.

> See also Section<u>s</u> 3(B)<u>*(8) and*</u> (9), the general rule<u>s</u> on public comment by judges.

The Commission recommends that the Chief Administrator adopt a new Rule 100.3(B)(9) that addresses judges' ability to speak on certain matters. To be consistent, that Rule should be included in the commentary to Rule 100.5(A)(4)(d) that references restrictions on sitting judges' speech.

Recommendation: 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 speech restrictions that the Chief Administrator's Rules impose on judicial candidates serve to maintain the integrity, impartiality and independence of the judiciary and it is critical that they apply to both sitting judges and candidates. The Supreme Court in *White* expressed concern that restrictions on the speech of judicial candidates only are a "woefully underinclusive" remedy. The Court was concerned that the restrictions Minnesota placed on judicial candidates did not apply to a candidate before the candidacy period, even if that candidate was a sitting judge running for re-election or another bench. Therefore, we recommend that the following addition become the new Rule 100.3(B)(9) and the remainder of Rule 100.3(B) be re-sequenced.

> <u>*(9) A judge shall not:*</u>
>
> <u>*(a) make pledges or promises of conduct in office that are inconsistent with the impartial performance of the adjudicative duties of the office;*</u>
>
> <u>*(b) make statements that commit the judge with respect to cases, controversies or issues that are likely to come before the court.*</u>

The recommended addition to the Rules makes explicit what was implicit before,

that the Rule restricting judicial candidates from making inappropriate pledges, promises and commitments applies to sitting judges as well. The language mirrors the speech restriction on candidates embodied in the revised Rule 100.5(A)(4) and is substantially similar to the 2003 ABA amendments to the Model Code of Judicial Conduct.

Recommendation: The commentary to the Chief Administrator's Rules 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.

We recommend that the adopted commentary to Sections 100.3(B)(8) and (9) be revised to read as follows.

> *The restrictions in paragraphs (B)(8) and (9), like all other provisions of this Code, are essential to the maintenance of the integrity, impartiality, and independence of the judiciary. A pending proceeding is one that has begun but not yet reached its final disposition. An impending proceeding is one that is reasonably foreseeable but has not yet been commenced.* The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition. *However, the New York State Advisory Committee on Judicial Ethics has opined that a judge within the confines of a college or university classroom, while teaching a regular class to students who are part of a regular course of study in criminal justice, may comment on a relevant case mentioned in published textual course materials that is pending outside of the Judge's general jurisdiction in another state (Op. 95-105). A judge also may participate as a panelist at a judicial seminar open only to judges and comment on "issues that are being discussed [that] may soon come before a judge" (Op. 01-41). There are of course many other educational fora in which comment on pending or impending cases by judges might be expected. While such comment may be appropriate in some limited instances, as non-public comment in nature and effect, judges contemplating participation as speakers in such venues would be best advised to consult with the Advisory Committee on Judicial Ethics (Unified Court System, 25 Beaver Street, NY, NY 10004) before engaging in such speaking activities. Having done so, the actions taken by a judge who follows the Committee's written advice "shall be presumed proper for the purposes of any subsequent investigation by the state commission on judicial conduct" (Judiciary Law, Sec. 212{l}*

> *{iv}).* A judge should not be influenced by the potential for personal publicity when making decisions in pending cases. Release of decisions to the media or notifying the media that the decision is available before counsel for the parties have been notified may be embarrassing or prejudicial to the private rights of the litigants. Filing an opinion with the clerk's office does not constitute release of the decision to the media. *Paragraphs (B)(8) and (9) do* not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity, but in cases such as a writ of mandamus where the judge is a litigant in an official capacity, the judge must not comment publicly. The conduct of lawyers relating to trial publicity is governed by DR 7-107 of the Code of Professional Responsibility.

The revisions to the commentary serve several functions. The first sentence makes clear that Rule 100.3(B)'s restrictions on speech are necessary for the compelling state interest of maintaining the integrity, impartiality and independence of the judiciary. Making the statement the first sentence in the commentary reaffirms the importance of the notion that the restrictions are essential. The second and third sentences clearly define the types of proceedings covered by Rule 100.3(B)(8). These additions are substantially the same as those adopted by the ABA in its 2003 amendments to the Model Code of Judicial Conduct, although in the interest of greater clarity we recommend a definition of impending proceeding that uses a reasonably foreseeable standard.

Discussing New York State Advisory Committee on Judicial Ethics opinions in the commentary highlights both the contours of Rule 100.3(B)(8) and the role of the Advisory Committee. The Advisory Committee has opined that a judge may be able to comment on pending or impending cases not before her or him in certain circumstances. Giving examples in the commentary helps judicial candidates understand the limits of the Rule. The Commentary also informs judicial candidates that the Advisory Committee stands ready to assist them if they are unsure of their responsibilities under the Chief Administrator's Rules and that the Committee's opinions offer the judge some protection from discipline. Equally important, the Commission's availability to offer guidance and interpretation to judges and candidates in specific situations should make the rules much less vulnerable to constitutional attack on the grounds of vagueness.

Recommendation: Commentary to 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.

Rule 100.2(A) provides that "a judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." At least one court has found that the provisions in Rule 100.2 are unduly vague. See *Spargo v. Commission*, 224 F. Supp. 2d 72 (N.D.N.Y. 2003).

Therefore, we recommend the following addition to the first paragraph of the commentary to Rule 100.2.

> Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. *Examples are the restrictions on judicial speech imposed by Rules 100.3(B)(8) and (9) that are indispensable to the maintenance of the integrity, impartiality, and independence of the judiciary.*

The addition to the commentary clarifies the rule. Adding a specific example of what restrictions Rule 100.2(A) contemplates gives candidates guidance as to what is permissible and impermissible conduct. It also makes clear that the speech restrictions in 100.3(B)(8) and (9) serve to promote the integrity, impartiality and independence of the judiciary and public confidence in it. The recommended language is substantially the same as adopted by the ABA in its 2003 amendments to the Model Code of Judicial Conduct.

Recommendation: The Chief Administrator's Rules should include preserving the impartiality of the judiciary as a restriction on political activity.

The current Rule 100.5(A)(4)(a) properly includes preserving the integrity and independence of the judiciary as restrictions on a judicial candidate's campaign activity. Judicial integrity and independence are compelling state interests and should act as restrictions on a judicial candidate. As the New York Court of Appeals pointed out in *In re Watson*, 794 N.E.2d 1, 763 N.Y.S.2d 219 (2003), impartiality is a compelling state interest too. It also should act as a restriction on judicial candidates' campaign activity. Therefore, we recommend that Rule 100.5(A)(4)(a) be revised as follows:

> (4) A judge or a non-judge who is a candidate for public election to judicial office:
>
> a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the *impartiality,* integrity and independence of the judiciary, and shall encourage members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as apply to the candidate;

Rules Governing Disqualification

The current Rules require disqualification of a judge from a particular matter whenever the judge's impartiality may be reasonably questioned. Rule 100.3(E)(1). It is important to note that the Rule's objective standard emphasizes the importance of the appearance of impartiality. A candidate's activity, including campaign activity, can give rise to reasonable questions about his or her impartiality once the judge takes the bench. In particular, certain campaign contributions and speech may raise reasonable questions about a judge's ability to carry out judicial responsibilities impartially. Therefore, we recommend that the Rules be amended to require a judge's disqualification from a case based on campaign contributions and speech.

Recommendation: The Chief Administrator's Rules should require disqualification where a party or counsel's contributions to a judge's campaign exceed $500.

One of the most problematic areas for public confidence in judicial elections is campaign contributions. Several witnesses at the Public Hearings testified to the problematic nature of having judges raise money from the lawyers that appear before them. Commentators around the country attribute the erosion of public confidence in elected judiciary to campaign contributions. The Marist Poll strongly supports these opinions. It indicates that 87% of the registered voters in New York State believe that a judge should not be allowed to hear or rule in cases when one of the parties has given money to the judge's campaign. Further, 83% of the respondents thought that campaign contributions had some or a great deal of influence on judges' decisions. These results are consistent with polls conducted across the country both on state and national levels.

To address this problem, the full scope of which we continue to study, the Commission recommends at this time the adoption of a new Rule 100.3(E)(3) that would require a judge's disqualification where a party or its counsel has made campaign contributions to the judge during the immediately preceding 5 years of more than $500.

> *(3) Pursuant to 22 NYCRR 1200.45(e), immediately upon assignment of a matter to a judge, the parties and their counsel shall disclose any campaign contributions made to the judge. In the event that contributions in excess of $500 have been made in the past five years to the judge's campaign by a party or counsel to the party, the judge shall disqualify himself or herself upon timely application made by a party who has made no contribution to the campaign. This subdivision shall not preclude disqualification based on Rule 100.3(E)(1) with respect to contributions less than $500 in amount or made more than five years before the assignment of the matter to the judge.*

The Commission also recommends the adoption of the following commentary to the new Rule 100.3(E)(3).

> *Campaign contributions are an unavoidable aspect of our system of judicial elections. This subdivision acknowledges that fact, while requiring first, that full disclosure be made of any campaign contributions and secondly, requiring recusal in the event of campaign contributions in excess of a certain threshold. To avoid abuse of this section, it is intended that only the party that has not made a campaign contribution may make a disqualification application. Nothing in this rule speaks to the question of attribution of contributions by individual members of an entity, nor does the Rule prevent a party from bringing a disqualification motion for any other reason, including campaign activity by a lawyer or party on behalf of a judge as a judicial candidate.*

In conjunction with the new Rule 100.3(E)(3) governing judicial conduct, the Commission recommends the adoption of a new attorney disciplinary rule.

> 22 NYCRR 1200.45: Avoiding even the appearance of impropriety.
>
> * * * *
>
> *(e): A lawyer shall disclose to all parties to a proceeding any contributions the lawyer or the lawyer's firm has made and any contributions that the lawyer knows the client has made to a judge's campaign immediately upon the assignment of a matter to the judge. See 22 NYCRR 100.3(E)(3). The lawyer shall be liable for any costs and fees, including attorneys' fees, that result from the lack of timely disclosure.*

While campaign contributions are an integral part of running for elected judicial office, the Commission recognizes that there is a point at which a campaign contribution to a judge may create an appearance of impropriety in the public eye. The new rule requires mandatory disqualification where, in the preceding five years, a party or lawyer has contributed to the judge's campaign in excess of $500. The rule cannot be used offensively, *i.e.*, a party cannot move for disqualification on the basis of his or her own contribution. Litigants may still move for a judge's disqualification under the existing rule 100.3(E)(1) regardless of the amount or timing of a campaign contribution or activity. Under that rule, a judge is required to disqualify him or herself whenever the judge's impartiality might reasonably be questioned.

Disclosure of campaign contributions is an important element of the proposed new rule. Elsewhere the Commission recommends making all campaign finance disclosures,

including campaign contributions, publicly available on the Internet. Such disclosure would allow lawyers and parties to quickly discover who has made campaign contributions, for example, to a judge's most recent campaign. The Commission further recommends the adoption of an attorney disciplinary rule that requires lawyers to immediately disclose campaign contributions when they appear before a judge. Attorneys who violate the rule would be subject to professional discipline and liable for any costs and fees resulting from their violation. The burden of disclosure should not fall on judges. Judges are not permitted to solicit campaign contributions personally and many judges are careful to remain uninformed about who contributes to their campaigns. Requiring a judge to disclose campaign contributions would force the judge to discover and repeatedly revisit who contributed and in what amount, and that is a practice that itself could adversely affect public confidence.

Recommendation: 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.

When a judge publicly commits him or herself with regard to an issue or controversy, the judge's impartiality is called into question when that issue or controversy later comes before that judge. Such a prior statement suggests that the judge has predetermined the issue or controversy. No matter how the judge rules, the specter of the prior statement will raise a question of his or her ability to be impartial in the proceeding—if the judge is consistent with the prior statement, the public may well suspect the judge predetermined the issue and if the judge changes his or her position, the public may well suspect that the judge did so to dispel any questions of impartiality. Additionally, where a judge publicly commits on an issue and latter changes his or her position, the public may believe that the original statement was disingenuous and that the judge lacks the integrity required of the office. Therefore, we recommend the following addition become Rule 100.3(E)(1)(f) and the remainder of Rule 100.3(E)(1) be re-sequenced.

> (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:
>
> * * * *
>
> *(f) the judge, while a judge or while a candidate for judicial office, has made a public statement not in the judge's adjudicative capacity that commits the judge with respect to*
>
> *(i) an issue in the proceeding; or*
>
> *(ii) the controversy in the proceeding.*

To avoid the appearance of partiality, this new rule requires disqualification where a judge's prior speech has committed the judge to a position on an issue or controversy in a particular proceeding. We modeled the Rule's language on the disqualification standard

adopted in the 2003 ABA amendments to the Model Code of Judicial Conduct. Additional language makes clear that a judge's public statements made in an adjudicatory capacity are not subject to this rule.

Recommendation: 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.

The previous recommendation addresses when a judge has publicly committed with respect to an issue or controversy that comes before the judge. Many of the same concerns arise even when a judge only appears to have committed him or herself with respect to a controversy or issue in a proceeding before the judge. Therefore, we recommend the following addition become Rule 100.3(E)(2) and the remainder of Rule 100.3(E) be re-sequenced.

> *(2) Upon application by a party or attorney for a party, a judge may disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, where the judge has made statements that appear to commit the judge, under the same circumstances and with respect to the same matters, as set forth in subdivisions (E)(1)(f)(i) & (ii).*

When a judge only appears to commit on an issue or controversy the challenge to the judge's ability to be impartial is less clear, and so is the balance between a judge's duty to hear a case and the duty to disqualify him or herself. As importantly, an "appears to commit" standard may be vague. To avoid unnecessary disqualifications and a vague standard, the new rule gives a judge discretion to disqualify him or herself from a proceeding where a prior statement only appears to commit the judge.

Defining Impartiality, Integrity and Independence

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

Impartiality, integrity and independence are terms used throughout the Chief Administrator's Rules, and Rule 100.0, the terminology section, should include clear definitions of them. In *White*, the U.S. Supreme Court noted that the term "impartiality" a defined in the Minnesota Code of Judicial Conduct was ambiguous. The Court offered several possibilities but did not know which one the Code intended. Impartiality should be defined in the Rules so that no such confusion exists about New York's interest in judicial impartiality, integrity and independence. Therefore, we recommend the addition of the

following definitions to Chief Administrator's Rule 100.0, the Terminology section.

> *"Impartiality" denotes absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintaining an open mind in considering issues that may come before the judge.*
>
> *An "Independent" judiciary is one free of inappropriate outside influences or control.*
>
> *"Integrity" denotes probity, fairness, honesty, uprightness and soundness of character. "Integrity" also includes a firm adherence to this Code and its standard of values.*

Further, we recommend the additions of the definitions of integrity and independence to the commentary to Chief Administrator's Rule 100.1.

> Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depends in turn upon their acting without fear or favor. *The term integrity as applied to the judiciary refers to judges known for their probity, fairness, honesty, uprightness, and soundness of character. An independent judiciary is one free of inappropriate outside influences or control.* Although judges should be independent, they must comply with the law, including the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.

Although integrity and independence are currently discussed in the commentary to New York's Code of Judicial Conduct, the definitions should be in the Rules' Terminology section. The language that the Commission recommends is the same as that which the ABA recently adopted for its Model Code of Judicial Conduct. We believe that the language is narrowly tailored to meet New York's compelling state interest in an impartial and independent judiciary. The definitions also belong in the commentary to Rule 100.1, "A Judge Shall Uphold the Integrity and Independence of the Judiciary." Incorporating them into the commentary reiterates that the concepts of integrity and independence are critical to a judiciary that fosters public confidence. Again, the Commission's recommendation is consistent with the recommendation adopted by the ABA in 2003 for its Model Code of Judicial Conduct.

PROMOTING ETHICAL CAMPAIGN ACTIVITY

Campaigns are by their nature contentious affairs. Judicial candidates constantly must balance activity that will lead to victory with activity that is consistent with the integrity, impartiality and independence of the office. In addition there are important First Amendment considerations that limit placing government mandated constraints on judicial candidates.

Recommendation: The creation of the New York Judicial Campaign Ethics and Conduct Center.

The Commission offers the recommendation that the New York Judicial Campaign Ethics and Conduct Resource Center (the "Center") be created. This Center would address two fundamental and pressing needs in our aim to improve public perception regarding the election of judges in New York State.

This Center would allow for one-stop shopping for all judicial candidates who want to be assured that their conduct is within the bounds of the spirit and letter of the law as defined by the Chief Administrator's Rules. Fast and predictable non-partisan advice would be easily available during judicial election season utilizing the resources of the Unified Court System ("UCS"), and specifically the Advisory Committee on Judicial Ethics (the "Advisory Committee"). Since 1987, the Advisory Committee has provided over 3000 written opinions to judges and judicial candidates on what campaign activity is permissible under the Chief Administrator's Rules. The Center should be associated with the UCS, which should provide sufficient funding and personnel so that the Center is assured the resources necessary to fulfill its mandate.

As importantly, the Center would be a place for the public, the press and others to get basic questions answered about the judicial election process. It is important that the Center be seen as independent in its thinking about judicial elections, and, in fact, have involved with it, committed, creative lawyers and non-lawyers who are knowledgeable and informed about the judicial process.

To accomplish this mandate we suggest that the Center have an Advisory Board that is comprised of 10 members, appointed by the Chief Judge of the State of New York. These members should be a cross section of business leaders, academics, and individuals familiar with communities across the State, and should include retired judges and at least one member of the working press. The Board would be responsible for choosing, subject to the advice and consent of UCS, an executive director responsible for managing the Center and working with the Advisory Committee on Judicial Ethics. While the executive director should be an employee of the UCS, the Board should have oversight of the executive director's work.

Specifically, the Commission recommends that the Unified Court System establish this Center and that its functions should include the following:

- Publicize the importance of high standards in judicial campaign conduct.

- Provide information regarding judicial elections to the candidates, public, media and educators.
- Disseminate information regarding the Center's role.
- Distribute ethics information to all candidates for judicial offices.
- Publish an ethics newsletter.
- Develop and present seminars to judicial candidates on campaign ethics.
- Maintain a statewide toll-free hotline to immediately respond to candidate questions regarding their own campaign activity.
- Establish and maintain a Subcommittee of the existing Advisory Committee to give written responses, within 48 hours, to questions that the hotline cannot answer.
- Create and maintain a website of all published opinions of the Advisory Committee.

- **The Center should establish a mechanism under the auspices of the New York State Advisory Committee on Judicial Ethics to issue fast, reliable rulings on campaign conduct.**

The first goal of the Center is to provide quick and effective guidance under the auspices of the Advisory Committee to judicial candidates on their campaign conduct. The Center's candidate response function has two dimensions. The first is a statewide toll-free hotline staffed with people available to answer judicial candidates' campaign activity questions. Year-round staffing for the Center would be necessary to maintain the hotline but the Center would also need additional staffing during judicial campaign periods. The goal of the hotline staff would be to respond to each caller having an ethics question. Responses would include 1) permissible, including Advisory Committee on Judicial Ethics opinion citations where available, 2) impermissible, again including citations where available, or 3) unsettled legal issue. Staff would maintain a log identifying the caller, setting forth the question and the answer, and fax a copy of the log entry to the caller at the conclusion of the call.

The second dimension of the candidate response function would be a newly formed Conduct Subcommittee that would have the ability to respond to judicial candidate questions where the hotline response is that the legal issue is unsettled. The Advisory Committee should appoint five Subcommittee members. The Subcommittee would be charged with responding within 48 hours to questions referred to it, and three of the five members could act on a request. Where an applicant follows the Subcommittee advice, there should be a rebuttable presumption that protects the individual caller from professional discipline, but the advice should not have precedential value. Only Advisory Committee opinions should establish precedent. (22 NYCRR Part 101.3 should be amended and updated to reflect the Committee's current practice, including the practice that the Committee provides advisory opinions to all judicial candidates, not just to judges

and justices.)

The second goal of the Center is presenting its services to judicial candidates and publicizing ethical judicial campaign practices and their importance to candidates, the press, educators and others. We suggest several ways that the Center can meet this goal. It should broadly disseminate information about its role and resources, including to all boards of election, political party chairs and sitting judges across the state. The Center should distribute packets that include information about its role to every judicial candidate, the Advisory Committee's Judicial Campaign Ethics Handbook and a guide to researching judicial ethics opinions (to be developed). The Center should also develop an ethics newsletter and circulate electronic updates to the judiciary and judicial candidates. Furthermore, the Center should develop and present seminars to judicial candidates on campaign ethics.

At the heart of this proposal is the idea that any serious change in the conduct of judicial candidates—including those candidates who engage in the most offensive conduct and are most difficult to bring under any legitimate accountability system—involves voluntary compliance. Although the boundaries are not clear as to what state restrictions on judicial campaign conduct are permissible, the best solutions avoid the question. The Center provides a resource for all judicial candidates and the public to understand what constitutes ethical campaign activity and why it is important. Getting ahead of the conduct and allowing the marketplace of ideas to work, rather than sanctioning and prosecuting bad acts after they occur, is a better way to regain the public's confidence in judicial elections.

- **The Center should create an electronic-based tool for researching judicial campaign conduct ethics opinions.**

The Center under the direction of the Executive Director should be charged with developing a website and electronic database that hold all 3000 plus opinions of the Advisory Committee. These opinions encompass a broad variety of topics, including opinions on judicial campaign conduct, and have the potential of providing important guidance on ethical issues. Although the campaign activity conduct opinions are a discrete and easily identifiable sub-class within the Advisory Committee's opinions, the opinions are difficult to access and to search. The goal of this recommendation is to produce a user-friendly, high-tech tool for researching the Advisory Committee's opinions addressing judicial campaign activity. The Advisory Committee recently made a major step in this direction by publishing a judicial campaign conduct handbook that summarizes its opinions on frequently asked questions. We believe that a permanent research tool should be created so candidates for judicial office can easily access all opinions, including new ones. Accordingly, we recommend the creation of a user-friendly, high-tech tool for researching the Advisory Committee's ethics opinions regarding judicial campaign conduct. The tool should include the following features.

- It should be available both electronically and in hard copy.
- It should be available via the Internet and CourtNet (the UCS Intranet).
- It should include a separate index system for judicial ethics opinions involving judicial campaign conduct.

- It should be updated and maintained by the Center.

Categories for the index should be based on Section 100.5 of the Chief Administrator's Rules. Category titles should reflect straightforward concepts, *e.g.*, campaign literature and attending political functions; and next to each category the index should indicate the rule from which the category was derived. The number of categories should be limited to 15 with a maximum of 40 subcategories. The Advisory Committee on Judicial Ethics or the Judicial Campaign Ethics and Conduct Center should develop the index and it should be no more than five pages in length.

We recommend that the web-based research tool be premised on this index. The tool should be available on CourtNet and the Internet. It should present the index with links under each category to a list of all opinions in that category, listed by subcategory and including short descriptions of the opinions' holdings. The tool should divide the descriptions into "permissible actions" and "impermissible actions" categories. Each description should include the opinion's year and number highlighted (multiple opinions with the same holding should be listed under one description). The highlighted year and number should have a link to the full opinion. Further, the index page should include a search engine that permits a user to search for a specific opinion by title or opinion year and number.

Although the research tool should be web-based, we appreciate the need for versions in other formats as well. We recommend that the entire tool be available in hard copy and the index and descriptions be available in a CD version that provides links from the ethics opinion description to the full opinion on the CourtNet and Internet site and to the hard copy volume citation. Additionally, the CD version should indicate that a user can call the Judicial Campaign Ethics and Conduct Center to obtain copies of opinions.

Once developed, a copy of the CD version of the index should be provided to all boards of election and all judicial candidates. The research tool and CD should be updated yearly and all versions of the research tool should make multiple references to the Center and Advisory Committee on Judicial Ethics, indicating that candidates can address judicial campaign ethics questions to the Center via a toll-free telephone number.

- **The Center should oversee and develop campaign ethics courses for candidates for judicial office.**

Another role of the Center will be administering a required ethics course for candidates for judicial office. An important part of running an ethical campaign is knowing what ethical campaign activity is. With all the pressures of a political campaign, candidates may not be fully aware of their obligations under the Rules. Therefore, we recommend that the following rule be added to the Chief Administrator's Rules as Rule 100.5(A)(4)(f).

> (4) A judge or a non-judge who is a candidate for public election to judicial office:
>
> * * * *

> *(f) shall complete an educational program, either in person or by videotape or by internet correspondence course, developed or approved by the judicial campaign ethics and conduct resource center within 14 days after receiving the nomination or 90 days prior to receiving the nomination for judicial office. The date of nomination for candidates running in a primary election shall be the date upon which the candidate files a designating petition with the Board of Elections. This provision shall only apply to candidates seeking selection for or retention in public office by election for a full time judgeship in the Unified Court System.*

Requiring a course in judicial campaign ethics ensures that every candidate understands what constitutes ethical behavior and why it is important. Testimony before the Commission and private discussions suggested that judicial candidates want to abide by ethical campaign standards. We expect that informing candidates as to what those standards are and why they are important will go a long way toward preventing ethical violations. The courses can promote ethical campaign conduct by ensuring that candidates for judicial office understand the importance of the role of judicial ethics, their ethical obligations under the Rules of Judicial Conduct, their campaign finance disclosure obligations, what resources are available to them with respect to campaign conduct issues, the existence of the Commission on Judicial Conduct and its authority to discipline a successful candidate for ethical violations during the campaign, and that the New York Lawyers Code of Professional Responsibility requires lawyers running for judicial office to comply with both the Code of Judicial Conduct and the Chief Administrator's Rules with respect to judicial campaign activity.

The judicial campaign ethics and conduct center should have the responsibility for designing and conducting the course. The Center's mandate and its close working relationship with the Advisory Committee make it uniquely able to provide the most up-to-date and comprehensive information available. Courses should be available in live, electronic and video formats so that candidates from around the state can easily complete them, and the course should be open to all candidates for any judicial office in the state. As an incentive for lawyer candidates, the completion of the course should earn continuing legal education credits.

- **The Center should make candidates for judicial office aware of bar association judicial campaign oversight committees.**

Based on testimony at the public hearings, the Commission continues to consider whether there is a need for a state-sponsored judicial campaign oversight authority. We recommend, at the least, that the Unified Court System make candidates for judicial office aware of existing bar association judicial campaign oversight committees that review complaints about campaign activity in judicial races and privately mediate resolutions to controversies. Although local committees are not available in every part of the state, we note that the New York State Bar Association has created a Special Committee on Judicial

Campaign Monitoring to address areas not presently covered by local committees. We plan to continue to study ways that the bar association judicial campaign oversight committees may be more uniform and effective.

CAMPAIGN FINANCE

Running for judge in New York State can be an expensive undertaking. A single Surrogate Court race in 2000 involved more than a half million dollars in campaign funds and between 1999 and 2001, one candidate for Supreme Court raised more than $223,000 and nine others raised more than $150,000. Many factors go into the high cost of judicial campaigns. For instance, in judicial districts covering large geographic areas, expensive television advertising is considered the most effective way to campaign, and any campaign can incur substantial costs through direct mailing, hiring political consultants, printing costs and many other ways. While campaigning incurs legitimate costs, the presence of so much money can raise the opportunity for corruption.

Raising and spending money in judicial campaigns can have an adverse effect on public confidence in judicial elections. The need to raise substantial amounts of money breeds concerns about a judge's independence from campaign contributors. According to the Marist Poll, 83% of New York registered voters believe that campaign contributions have some or a great deal of influence on judges' decisions. Further, in New York where political party support is crucial to a successful campaign, campaign money flowing from a judicial candidate to political parties raises concerns about a quid pro quo. Allegations that campaign money is being used to buy political support have been on the rise recently. Perhaps driven by those accounts, registered voters believe political leaders and campaign contributors have more influence on who becomes a judge than voters do.

The Commission offers recommendations that we believe will promote public confidence in two areas of campaign financing, and consequently promote confidence in the judicial election system. First, we recommend more open, accessible and timely campaign finance disclosure. Second, we recommend tightening the restrictions on campaign expenditures by judicial candidates.

CAMPAIGN FINANCE DISCLOSURE

New York Election Law requires substantial campaign finance disclosure from judicial candidate campaign committees. Committees typically do the reporting because judicial candidates themselves may not personally solicit campaign contributions, they must form committees to raise campaign funds. The committees must file at least three reports for each election and have to report separately any extraordinary contributions or loans received late in the election cycle. In addition to the election reports, the committee must file semi-annual disclosure reports throughout its existence. All receipts, disbursements and loans must be disclosed with detailed documentation. Additionally, committees must continue to report all loans so long as they remain outstanding and report repayments.

Candidates for New York State Supreme Court generally are required to file their reporting obligations electronically with the New York State Board of Elections ('NYSBOE"). NYSBOE makes the information available on its website as soon as practicable and the public has access to it via a database posted on the NYSBOE website. The website allows the public to do limited searches for specific information. For

instance, the public can search for disclosure statements by selecting the Supreme Court candidate, and then the candidate's authorized committee, the statement filed, and the schedule.

Candidates for other levels of judicial office are not required to file electronically or with the NYSBOE. Of the judicial seats filled by election in New York State, 85% are required to file their disclosure statements on paper with their local boards of elections. They are required to file on the same forms, and provide the same disclosure, as Supreme Court candidates, but they do so on paper forms in most of the 63 local boards of elections in New York State. Of those local boards, the Commission knows of only one that allows judicial candidates to file their financial disclosure statements electronically and permits limited public search access online. That program is voluntary and few candidates participate.

The electronic filing of campaign finance reports by Supreme Court candidates has been a successful experiment. Despite the limitations of the NYSBOE database, the Commission found the ability to research campaign finance disclosure information fast and efficient compared to the paper filing system in effect before 1997. Witnesses at the Commission's public hearings testified that access to campaign finance information on the Internet in a searchable format has simplified what had been a time consuming and difficult process. Unfortunately, the paper filing system lingers for candidates for judicial office other than the Supreme Court. The Commission believes that a transparent and accessible campaign finance disclosure system will promote public confidence in judicial elections. Indeed, according to the Marist Poll, 65% of New York's registered voters agree. Therefore, we make the following recommendations.

Recommendation: 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.

Filing judicial campaign finance disclosures on paper in local boards of election makes access to the information unnecessarily difficult. At the Commission's request, the Committee for Modern Courts sent interns to local county boards of election to assess the accessibility of campaign finance information. They found a lack of uniformity in the access to candidate campaign finance disclosure filings. Moreover, requesting and reviewing the filings was a cumbersome process. For example, although some filings were submitted electronically, the interns were unable to review those filings through a computer. Instead, the process involved filling out a form pursuant to the Freedom of Information Law (FOIL) to request paper files. Furthermore, in some instances the interns were informed that they could only request and review one candidate's file at a time. Other times they had to await the presence of an observer before they could review files. Their complete findings are contained in the Committee for Modern Courts September 2, 2003 Memorandum to the Commission, attached as Appendix D. It suggests that the present system is essentially one of non-disclosure.

Public hearing witnesses highlighted the irony that the judicial races that are often the most visible—those for local seats—are the ones for which the information is the most difficult to unearth. Obtaining paper filings for local judicial races is typically much more confusing and time consuming than for a Supreme Court race. Often filings at local boards of election are in disarray or missing important disclosure statements, and trying to cross reference contributions and contributors can be almost impossible. While the information may be at the local board, all the disclosure in the world is worthless unless people can get to it.

The Commission believes that electronic filing will benefit candidates and others required to file; the public and press; and aid the audit and enforcement functions; academic study and evaluative research. Electronic filing is a boon from the perspective of an entity or person required to file. Properly administered electronic filing requires a single filing that can be posted to the appropriate website or e-mailed to the proper authority from a computer anywhere. Under the current system, filers may need to file several copies of the same disclosure report in several locations. For example, county committees must file with their respective county boards of elections, but they must also file a copy of any reports showing support for a candidate for Justice of the Supreme Court with the NYSBOE. Given the serious penalties and consequences for failing to file required financial disclosure statements, being required to make a single filing can avoid trouble. Further, a sophisticated software program, like that used by the New York City Campaign Finance Board, allows candidates to keep track of contributors and can alert the filer when contribution limits have been exceeded.

The public and the press also benefit from electronic filing. The Committee for Modern Courts Memorandum and testimony from newspaper editors made clear that the current system discourages even persistent interns and reporters from obtaining information. Beyond the need to physically visit a local board of election, members of the public must wait for the relevant files to be located and produced. In some cases, only one candidate's file was available at a time. Many filings were in disarray, incomplete or illegible. Copies of files require written requests and can be expensive, and some offices lacked adequate table space or chairs to view statements on premises. Requiring electronic filing and timely posting the information on the Internet would cure many of these problems by allowing the public and media to access information immediately from their homes or offices and download the information that they need for free.

Electronic filing will allow for effective auditing and enforcement of judicial campaign finance disclosure. The New York State Comptroller's Office recently expressed concern over potentially serious enforcement lapses at the local boards of election and recommended requiring local campaign committees to electronically file their financial disclosure data at the state level. Unfortunately, the NYSBOE does not believe it currently has the authority to require such filing, even though it acknowledges that establishing a single source for all campaign financial disclosure would provide "truly meaningful" financial disclosure. Given the NYSBOE limitations, we believe that the Office of Court Administration or some entity answerable to the OCA should be the destination for electronic campaign finance disclosure and the authority responsible for making the information publicly available over the Internet. The Commission stands ready to help identify an acceptable process.

Electronic filing promotes meaningful academic study and evaluative research. Academics and researchers report that among the major obstacles in compiling judicial campaign finance information is erratic record keeping by state agencies. In describing an effective disclosure system, researchers focus on timing, accessibility, cost and format. Unfortunately, New York is not among the forerunners in this area—our disclosure ranked 25th in a 50-state ranking by the California-based California Citizens Voter Foundation. Electronic filing can vastly improve our position by providing inexpensive, timely, effective, and accessible information.

Electronic filing of judicial campaign finance disclosure has great potential but it must be thoughtfully done. Several witnesses noted that information in electronic format can be inaccessible too. Indeed, the current electronic filing system for Supreme Court races is better than paper filing in local boards of election, but it could be greatly improved. It is limited by both the format of the information provided and the content of the database. The current database construction has limited searching ability. Much of the information is stored in a non-searchable format, hence viewing expenditures across a single candidate or multiple candidates is cumbersome and the contribution information search function is inflexible. Further, the information storage method makes downloading information difficult. The database is also limited by the information it does not contain. For instance, it does not provide the occupation or the name of the employer for any contributor or information on "intermediaries" (those who deliver the contribution of others to the candidate). Therefore, the Commission makes the following recommendation.

Recommendation: The content and format of judicial disclosure filings should be expanded and revised and Internet access should be improved.

- Judicial disclosure filings should provide the occupation and the name of the employer for any contributor, as well as information on intermediaries;
- The user should be able to download disclosure information for a particular candidate, rather than having to download all disclosures filed for the desired period;
- The disclosure information should be readily accessible and searchable by computer over the Internet in a wide variety of ways;
- Contribution information should be searchable by date or range of dates, rather than by an entire filing year;
- Contributions should be searchable by particular amounts specified by the user, rather than by a predetermined range of amounts;
- The public should be able to search by subcategories of type of contributor, for example, family, candidate, spouse, candidate committee, political party committee, political action committee, limited liability company, or union;
- The database should be able to sort contributions by transaction date, or across candidates and contributors;
- There should be the ability to search expenditures by payee (*e.g.*, by consultant or

publicist), by purpose code (*e.g.*, radio ads) across candidates or committees, or by subcontractor;

- There should be a summary report for each candidate or committee that provides a running total for the year of contributions and expenditures, rather than requiring the user to add up each category every time a report is filed;
- There should be a capability by the agency to aggregate data for enforcement purposes.

Transparency will promote confidence in the campaign finance system. Timely, public disclosure should be the basis of campaign finance law. It allows voters to evaluate candidates and gives them confidence in the elective system. One witness before the Commission characterized the current inaccessibility of campaign finance information as a hurdle to public understanding. Confidence cannot be built on a lack of understanding. New York should be among the leaders of the growing number of jurisdictions around the country that are putting campaign finance information on the Internet where it is timely, accessible and inexpensive part of a meaningful enforcement scheme.

CAMPAIGN EXPENDITURES

A reality of any election system is that competing costs money. Judicial candidates are required to make campaign expenditures to inform voters of their qualifications and why they deserve a vote. The current rules recognize this and allow judicial campaign expenditures for media advertisements, brochures, mailings and candidate forums and other means not prohibited by law. 22 NYCRR § 100.5(A)(5). Although the law generally prohibits judicial candidates from making political contributions of any kind, it includes a limited exception for purchasing tickets to and attending politically sponsored dinners and other functions.

Recent reports have dealt a blow to public confidence in judicial elections by alleging that judicial candidates are using campaign expenditures to direct money to political parties in turn for party support. We recommend revising the rules for campaign expenditures to reassure the public that these expenditures are not channels for prohibited political contributions.

Attending Political Functions

New York has a general rule that judicial candidates cannot contribute money or any thing of value to a political organization or candidate other than him or herself. New York Election Law explicitly prohibits judicial candidates from directly or indirectly making political contributions. N.Y. Elec. Law § 17-162. The current Rules of the Chief Administrator of the New York Courts also prohibit a judge or non-judge candidate for judicial office from "making a contribution to a political organization or candidate," other than in support of one's own candidacy for judicial office. 22 NYCRR § 100.5(A)(1)(h). The New York Court of Appeals explained the reason for the prohibition:

> The contribution limitation is intended to ensure that political parties cannot extract contributions from persons seeking nomination for judicial office in exchange for a party endorsement . . . It also diminishes the likelihood that a contribution, innocently made and received, will be perceived by the public as having had such an effect.

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

As an exception to the general prohibition against political contributions, a judge or non-judge who is a candidate for public election to judicial office may currently purchase two tickets to politically sponsored events. The "two-ticket" exception is limited to the judicial candidate's election cycle or "Window Period" as defined in Chief Administrator's Rules, 22 NYCRR § 100.0(Q).

> During the Window Period . . . a judge or non-judge who is a candidate for public election to judicial office, except as prohibited by law, may . . . (v) purchase two tickets to, and attend, politically sponsored dinners and other functions, even where the cost of the ticket to such dinner or other function exceeds the proportionate cost of the dinner or function.

22 NYCRR § 100.5(A)(2)(v).

While seemingly innocuous, this exception has been identified as a loophole that could defeat the purposes of the contribution limit rules. In effect, it allows judicial campaigns to serve as channels for money to flow to political parties and their favored candidates, thereby greatly diminishing confidence in the elected judiciary (see Marist Poll, Appendix B).

The wisdom of allowing judicial candidates to purchase tickets to political fundraisers has been publicly challenged for at least three decades. The last major study of judicial elections in New York State, the 1988 *Becoming a Judge Report* of the New York State Commission on Government Integrity, found that the exception was being used to channel large sums of money to political organizations, and some judges felt pressured to buy tickets and believed that the practice was linked to the political party support that was critical to gaining office. Recent media accounts from across the state detail judicial candidates directing large amounts of money to political fundraisers for organizations and candidates. The Commission compared public campaign financing records with selected media accounts and found the reports to be credible and not limited to a single part of the state. Further, several witnesses at the public hearing suggested that the two-ticket exception is problematic around the state because it acts to pressure judges into buying tickets to political functions. Based on this information, the Commission makes the following recommendation.

Recommendation: Limit the price that judicial candidates pay to attend political functions to the proportionate cost of attending.

> During the Window Period . . . a judge or non-judge who is a candidate for public election to judicial office, except as prohibited by law, may:
>
> (v) purchase two tickets to, and attend, politically sponsored dinners and other functions, *provided that the cost of the ticket to such dinner or other function shall not exceed the proportionate cost of the dinner or function. The cost of the ticket shall be deemed to constitute the proportionate cost of the dinner or function if the cost of the ticket is $125 or less. A candidate may not pay more than $125 for a ticket unless he or she obtains a statement from the sponsor of the dinner or function that the amount paid represents the proportionate cost of the dinner or function.*

The Commission recognizes that attendance at political events is a legitimate campaign activity for judicial candidates. It is at such functions that judicial candidates are able to meet and discuss their candidacies and qualifications with political leaders, party committee members and political activists who can be influential supporters and important resources for the judicial campaign. Depriving judicial candidates of these opportunities would significantly impair the legitimate efforts of judicial candidates to garner support and may even run afoul of their constitutional rights as political candidates.

At the same time, a review of selected races throughout the State and a study of media reports indicate that there is reason to believe that judicial campaigns in New York State are often perceived as conduits, passing donations from lawyers and the candidates themselves into the coffers of political parties or their selected candidates. The two-ticket exception can be a vehicle through which this occurs because it allows judicial candidates to contribute to political parties and other candidates through the purchase of fundraiser tickets, a practice that would be impermissible but for the exception.

We feel strongly that any solution to the problems raised by the two-ticket exception should not create additional difficulties for those candidates who seek judicial office without the blessing of party leaders. For instance, prohibiting judicial candidates and their campaigns from purchasing tickets to political dinners, thereby allowing them to attend such events only as guests of the sponsor, could disadvantage certain candidates. Such a provision would empower political leaders to provide an advantage to their favored candidates by inviting only the favored candidates to an event. Non-favored candidates would be at a distinct disadvantage, not having the same access to meet, and possibly to gain support from, the party officials, committee members and activists who attend the event.

The solution must focus on the problem, *i.e.*, the potential use of politically

sponsored dinners and other functions to pass judicial campaign funds to political parties. Although the current two-ticket limitation addresses this problem by limiting a candidate to purchasing two tickets to any event, its effect can be easily defeated. The rule allows judicial candidates to purchase tickets to multiple events benefiting either the same or related political organizations, and in some cases, ticket prices can run more than $1,000. Further, in those parts of the state where the nomination of a political party is tantamount to election, the present rule does not prohibit judicial candidates from raising funds and attending such events after they have received the nomination.

We believe that our recommended rule strikes a balance between allowing judicial candidates to seek support at political functions and preventing the exception from swallowing the general rule that judicial candidates cannot contribute to political organizations. Maintaining the two-ticket exception allows judicial candidates to seek the political support necessary to run for office because it allows candidates and their designees to attend political dinners or other functions so long as they do not pay more than the cost of their attendance. As long as the price a candidate can pay is restricted to the cost of attending, there is no threat that the two-ticket exception will be used for otherwise illegal contributions to a political organization or candidate. The rule recognizes the multitude of local, casual political functions that many candidates attend during the Window Period by requiring sponsors to verify that the ticket price represents the proportionate cost of the attendance only when candidates pay more than $125 for a ticket.

Expenditures for Campaign Services

A variety of sources, including law enforcement, allege that political consultants have billed judicial candidates for work they never did and that candidates have been pressured to use a party's preferred purveyor. The Commission is not in a position to independently verify the accuracy of the reports but finds troubling that the basis for the claims are sometimes statements of the candidates themselves. Because such allegations can diminish public confidence in the elective process, we make the following recommendation.

Recommendation: Require that purchases of campaign-related goods and services by judicial candidates represent reasonable fair market value.

- **The Chief Administrator's Rules should be amended to clarify that no candidate for public election to judicial office may permit the use of campaign contributions or personal funds to pay for campaign-related goods or services for which fair value was not received.**
- **The restriction should be supported by a prohibition on the payment for any campaign-related goods or services of more than $500 except on the basis of a written statement from the provider identifying the goods or services provided and attesting that the amount charged represents the reasonable fair market value of the goods or services provided.**

Running for elective office requires expenditures and judicial office is no

exception. The cost of organizing and maintaining an election campaign can be significant and includes expenditures for television and radio advertising, mailing, travel, forums, press releases, printed materials and myriad other details. The Commission heard testimony that an effective campaign can cost from $125,000 to $200,000 in some parts of the State. Many of the campaign expenditures are legitimate expenses that go to service providers such as political consultants, printers, and mailing houses. Further, we understand that the reasonable fair market value of goods and services varies depending on many circumstances.

We believe that requiring individuals or organizations to certify that the amount they charge judicial candidates for goods or services represents reasonable fair market value will help promote public confidence in judicial elections. A written statement is an unobtrusive way of reminding candidates and goods and service providers of the limitations on judicial campaign expenditures.

VOTER EDUCATION

Voter education is critical to public confidence in judicial elections. Knowledge about the specific candidates and judiciary in general gives people the information they need to make informed choices between candidates.

Unfortunately, many New Yorkers are not well informed about the state judiciary. Whatever the cause, even New York registered voters lack fundamental knowledge about the court system and the selection of judges. The Marist 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.

Knowledge is fundamental to confidence in the judiciary, and New Yorkers' lack of knowledge cannot help but lead to a lack of confidence. Registered voters in New York believe that campaign contributors and political leaders have more influence on who becomes a judge than voters. According to the Marist Poll, 83% of voters think campaign contributions have some or a great deal of influence on judges decisions, and voters think that political leaders and campaign contributors have more influence over who becomes a judge than voters do. The same poll shows that more voters think elected judges are doing a "just fair" or poor job than are doing a good or excellent job.

Another manifestation of the lack of confidence is borne out in low voter participation in judicial elections. While voter participation in New York is low, it hits its lowest point in judicial elections, with only 17% of registered voters casting a ballot for judge 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. The phenomenon, known as voter roll off, reaches as much as 41% in parts of the state.

The need for voter education about judicial elections in New York is indisputable. Lawyers, academics, non-profit representatives and lay witnesses at the Public Hearings all concurred that voter education is a critical part of fostering public confidence and voter participation. They expressed concerns that voters lack the necessary information to make intelligent choices and referred to both voters' and judges' concern with the vacuum. Academic literature and reports from non-profit organizations and government groups consistently call for voter education efforts to promote confidence and participation in judicial elections.

One of the areas of greatest consensus among commentators is that voter guides are an effective way of educating the public about judicial elections. Many witnesses at the Public Hearings strongly supported the idea of voter guides as a way of increasing voter participation. The Marist Poll showed 88% of New York voters believed that voter guides

are a useful way to inform them about judicial elections, and surveys from states already providing voter guides show that voters value the guides and use them. While voter guides inform the public about individual candidates, they are also valuable sources of information about the judiciary and the court system. An educated public is more likely to vote in judicial races because they will understand the importance of judicial elections and be able to distinguish between candidates. Therefore, we make the following recommendation.

Recommendation: New York State should produce and distribute voter guides for judicial elections.

- **Voter Guides should be fully financed by the State and distributed to every household with a registered voter.**
- **Voter Guides should be distributed by mail in print form and be available on the Internet.**
- **Voter Guides should serve a dual function of educating the public about the judiciary, generally, and about specific judicial candidates.**
- **The voter guides should undergo periodic evaluations after distribution.**

New York State should fully finance voter guide production and distribution. State funding ensures that sufficient resources are available to produce and distribute the voter guides every election cycle. The cost of producing and administering a guide is not prohibitive—thirteen states already produce and distribute guides. Although additional costs are involved, they are a small price to pay to ensure confidence of the people in their judiciary. State sponsorship of the voter guides is also important because it carries the imprimatur of impartiality and neutrality. Further, New York already dedicates resources to developing the information that should be included in a judicial voter guide, such as general information about the judiciary, maps, sample ballots, etc., and state sponsorship would insure that work is not duplicated. While the State should guarantee funding, it should also investigate cost saving measures such as a federal franking privilege and the availability of federal monies to subsidize the cost of the guide.

Every registered voter's household should receive a voter guide in print form via the U.S. mail. Mailing is the best way to ensure that all registered voters receive the guides. In addition, mailings should be supplemented by additional forms of distribution that are coordinated with bar associations, community groups and other governmental offices for maximum outreach. The voter guides should be available on the Internet. Even though a significant portion of the population does not yet have access to the Internet, on-line voter guides are an inexpensive way to disseminate information. In all cases, voter guides should be available in other languages to meet the minimum requirements of the Voting Rights Act.

Voter Guides will serve a dual function of educating the public about the judiciary generally and about specific judicial candidates. They are an excellent opportunity to inform registered voters about the court system in New York State, including the role of

the judiciary, the judicial selection processes, terms of office, and other relevant data. Of course, guides should include information about individual candidates, such as educational and occupational background, party affiliation, professional background and any community service. We also strongly recommend that personal, unedited statements from the candidates be solicited.

We recognize that significant questions about voter guide implementation remain unanswered. For instance, whether the guides should include non-judicial candidates, what kinds of information should be included, and the geographic breakdowns for guide versions. The Commission can address these questions during the course of its mandate, but measures should be put in place to take over that function once the Commission's work is done. Part of that function should be periodically evaluating the voter guides.

COMMISSION TO PROMOTE PUBLIC CONFIDENCE

IN JUDICIAL ELECTIONS

APPENDIX B

Public Hearings Witness List and Form of Notice

LIST OF PUBLIC HEARING WITNESSES

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, 64th 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 Thuiellez, 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 Womens Bar Association

Hon. Kevin G. Young, Syracuse City Court

Hon. Anthony J. Paris, Justice of the Supreme Court, 5th District

Hon. John V. Centra, Justice of the Supreme Court, 5th District

Hon. David G. Klim, Onondaga County Family Court

Stephen F. Downs, Esq.

Benjamin Ostrer, Benjamin Ostrer & Associates, P.C.

Richard Denis

NOTICE OF PUBLIC HEARINGS

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	BUFFALO	ALBANY
SEPT. 16, 2003	**SEPT. 23, 2003**	**SEPT. 30, 2003**
9:00 A.M. – 6:00 P.M.	**11:00 A.M. – 5:00 P.M.**	**10:30 A.M. – 5:00 P.M.**
New York County Lawyers Association, 14 Vesey Street	Old County Hall 92 Franklin Street, Part 6	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 or by 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

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/judicialelections

COMMISSION TO PROMOTE PUBLIC CONFIDENCE

IN JUDICIAL ELECTIONS

APPENDIX C

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

Commission to Promote Public Confidence in Judicial Elections

Public Opinion and Judicial Elections

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

Public Opinion and Judicial Elections

TABLE OF CONTENTS

EXECUTIVE SUMMARY IV

PERCEPTIONS OF JUDGES IN NEW YORK STATE 6

REGISTERED VOTERS RATE ELECTED JUDGES IN NEW YORK STATE 6
PERCEPTIONS OF NEW YORK STATE JUDGES' PRIMARY RESPONSIBILITY 7

PERCEPTIONS OF FAIRNESS 9

HOW FAIR AND IMPARTIAL ARE NEW YORK STATE JUDGES? 9
IS JUSTICE BLIND? 10
WHAT FACTORS INFLUENCE JUDGES' DECISIONS? 13

PERCEPTIONS OF THE JUDICIAL CAMPAIGN PROCESS 14

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

INDEPENDENCE OF JUDGES 18

HOW IMPORTANT IS IT TO VOTERS FOR JUDGES TO BE INDEPENDENT? 18
SHOULD JUDGES BE IDENTIFIED WITH A POLITICAL PARTY ON THE BALLOT? 20

VOTERS AND JUDICIAL ELECTIONS 22

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

HOW THE SURVEY WAS CONDUCTED 26

BACKGROUND 26
HOW TO INTERPRET THE NUMBERS 26
METHODOLOGY 27
Sample Design 27

Data Collection *27*
DEMOGRAPHY 28

APPENDIX 29

QUESTION WORDING AND RESULTS 29

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 8th through October 20th, 2003.
- The sampling error for the survey results is ±3%. The error margin increases for cross-tabulations.

Section 1

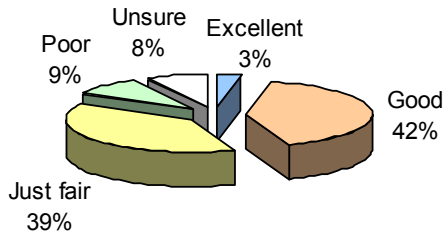
Perceptions of Judges in New York State

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.

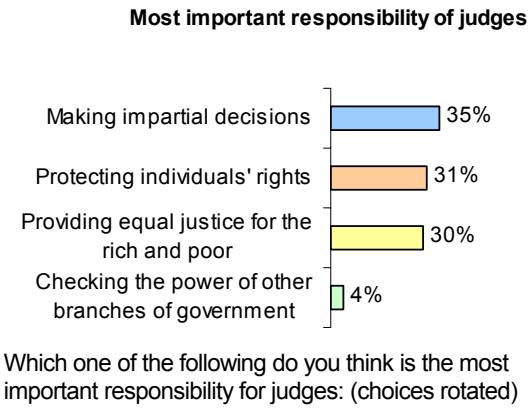
Elected judges in New York State receive low ratings from African-American and Latino voters. Only 29% of African-American voters and 33% of Latino voters rate judges who are elected in the state positively. Nearly half of white voters, 49%, rate the job being done by judges as excellent or good.

		Upstate	NYC	Suburbs	White	African-American	Latino
		%	%	%	%	%	%
Rate job of elected judges in New York State	Excellent/good	54	30	48	49	29	33
	Excellent	3	2	4	3	4	2
	Good	51	28	44	46	25	31
	Just fair/poor	42	58	44	43	65	58
	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.



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%.

		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	Strongly Agree/agree	71	70
	Strongly agree	8	9
	Agree	63	61
	Disagree/strongly disagree	22	22
	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

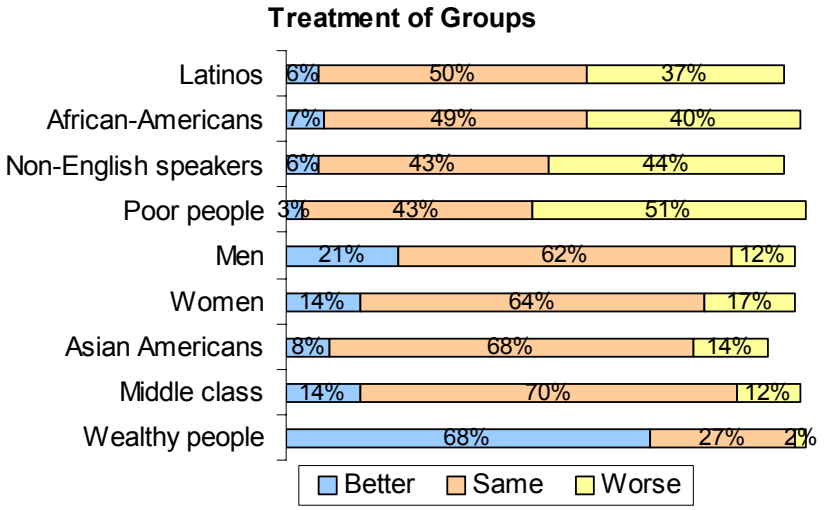
throughout the state are fair and impartial and 75% who hold this view of judges in their county.

		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	Strongly agree/agree	76	75	51	43	60	61
	Strongly agree	8	10	7	7	7	7
	Agree	68	65	44	36	53	54
	Disagree/strongly disagree	17	18	43	48	35	34
	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.

		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	A great deal/some	79	78	69	66	64
	A great deal	35	35	28	27	13
	Some	44	43	41	39	51
	Just a little/not at all	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?

Section 3

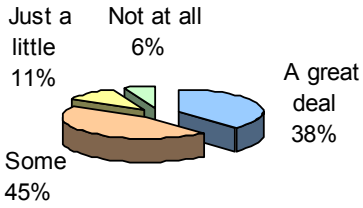
Perceptions of the Judicial Campaign Process

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



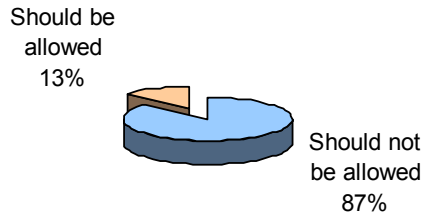
Some judges in New York State are elected and therefore have to raise money for their election campaigns. How much influence do you think campaign contributions made to judges have on their decisions: a great deal, some, just a little, or not at all?

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	A great deal/some	86	78	75	74
	A great deal	48	39	31	36
	Some	38	39	44	38
	Just a little/not at all	15	22	25	26
	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	Great deal/some	76	68	77
	Great deal	40	28	38
	Some	36	40	39
	Just a little/not at all	24	32	22
	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.

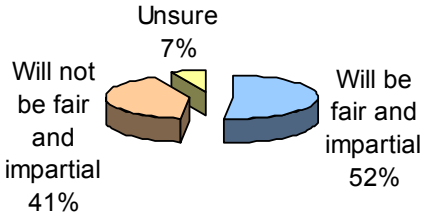
		Upstate	NYC	Suburbs
		%	%	%
Influence of campaign contributors on who becomes a judge	Great deal/some	76	82	78
	Great deal	33	44	43
	Some	43	38	35
	Just a little/not at all	24	19	21
	Just a little	16	14	15
	Not at all	8	5	6

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	Very important/important	90	90
	Very important	56	56
	Important	34	34
	Not very/not at all important	9	10
	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.

		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

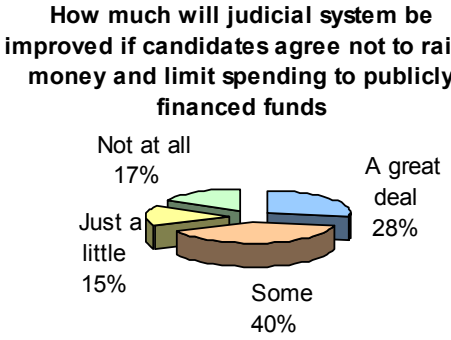
The public's perception of campaign finance reform

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.

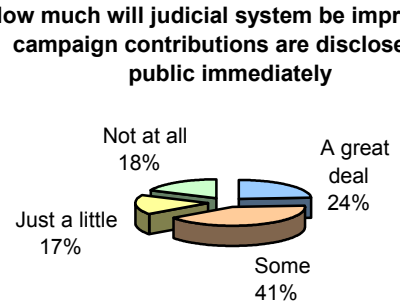
Sixty-eight percent of New York State registered voters believe that this measure will improve the justice system at least some. About one-third of registered voters, 32%, think this reform measure will improve the justice system just a little or not at all.



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.



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?

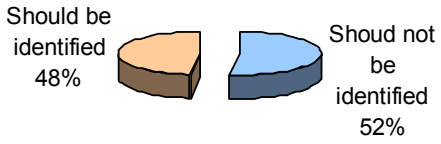
Should judges be identified with a political party on the ballot?

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

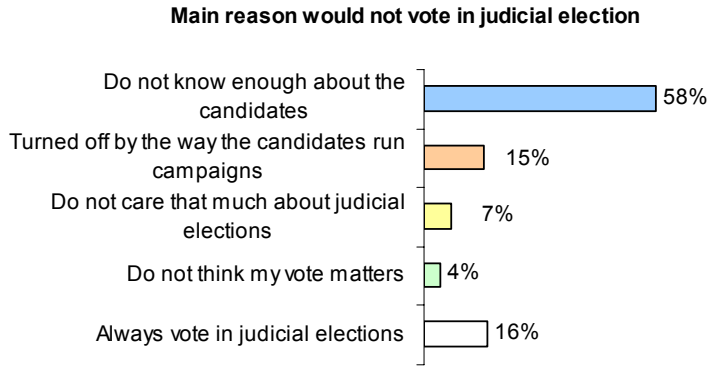
Section 5

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.

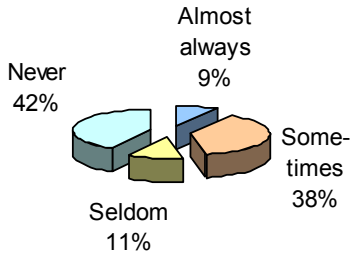
More than eight in ten, 84%, registered voters report that they use newspapers or magazines almost always or sometimes to learn about judicial elections. About seven in ten registered voters use television, 72%, and word of mouth, 67%, almost always or sometimes to learn about judicial elections.

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.

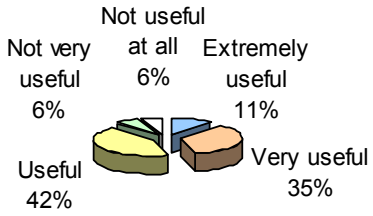
Frequency of Using Voter Guides



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?

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 8th through October 20th, 2003. The sampling error for the survey results is ±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% (±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 7th, 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%

Marist College Institute for Public Opinion October 2003

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

		NYS Registered Voters
		Col %
Registered to vote	Yes	100%

Marist College Institute for Public Opinion October 2003

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%

Marist College Institute for Public Opinion October 2003

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%

Marist College Institute for Public Opinion October 2003

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%

Marist College Institute for Public Opinion October 2003

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%

Marist College Institute for Public Opinion October 2003

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%

Marist College Institute for Public Opinion October 2003

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%

Marist College Institute for Public Opinion October 2003

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%

Marist College Institute for Public Opinion October 2003

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%

Marist College Institute for Public Opinion October 2003

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%

Marist College Institute for Public Opinion October 2003

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%

Marist College Institute for Public Opinion October 2003

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%

Marist College Institute for Public Opinion October 2003

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 contributers	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%

Marist College Institute for Public Opinion October 2003

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

APPENDIX C

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

Commission to Promote Public Confidence in Judicial Elections

Public Opinion and Judicial Elections

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

Public Opinion and Judicial Elections

TABLE OF CONTENTS

EXECUTIVE SUMMARY IV

PERCEPTIONS OF JUDGES IN NEW YORK STATE 6

REGISTERED VOTERS RATE ELECTED JUDGES IN NEW YORK STATE 6
PERCEPTIONS OF NEW YORK STATE JUDGES' PRIMARY RESPONSIBILITY 7

PERCEPTIONS OF FAIRNESS 9

HOW FAIR AND IMPARTIAL ARE NEW YORK STATE JUDGES? 9
IS JUSTICE BLIND? 10
WHAT FACTORS INFLUENCE JUDGES' DECISIONS? 13

PERCEPTIONS OF THE JUDICIAL CAMPAIGN PROCESS 14

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

INDEPENDENCE OF JUDGES 18

HOW IMPORTANT IS IT TO VOTERS FOR JUDGES TO BE INDEPENDENT? 18
SHOULD JUDGES BE IDENTIFIED WITH A POLITICAL PARTY ON THE BALLOT? 20

VOTERS AND JUDICIAL ELECTIONS 22

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

HOW THE SURVEY WAS CONDUCTED 26

BACKGROUND 26
HOW TO INTERPRET THE NUMBERS 26
METHODOLOGY 27
Sample Design 27

Data Collection *27*
DEMOGRAPHY 28

APPENDIX 29

QUESTION WORDING AND RESULTS 29

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 8th through October 20th, 2003.
- The sampling error for the survey results is ±3%. The error margin increases for cross-tabulations.

Section 1

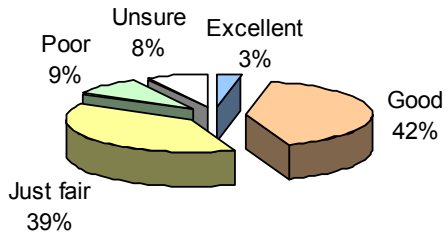
Perceptions of Judges in New York State

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.

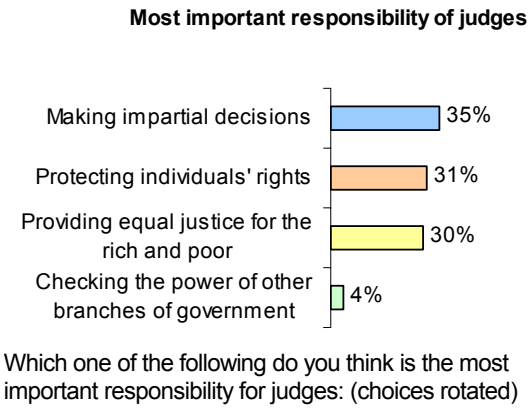
Elected judges in New York State receive low ratings from African-American and Latino voters. Only 29% of African-American voters and 33% of Latino voters rate judges who are elected in the state positively. Nearly half of white voters, 49%, rate the job being done by judges as excellent or good.

		Upstate	NYC	Suburbs	White	African-American	Latino
		%	%	%	%	%	%
Rate job of elected judges in New York State	Excellent/good	54	30	48	49	29	33
	Excellent	3	2	4	3	4	2
	Good	51	28	44	46	25	31
	Just fair/poor	42	58	44	43	65	58
	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.



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%.

		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	Strongly Agree/agree	71	70
	Strongly agree	8	9
	Agree	63	61
	Disagree/strongly disagree	22	22
	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

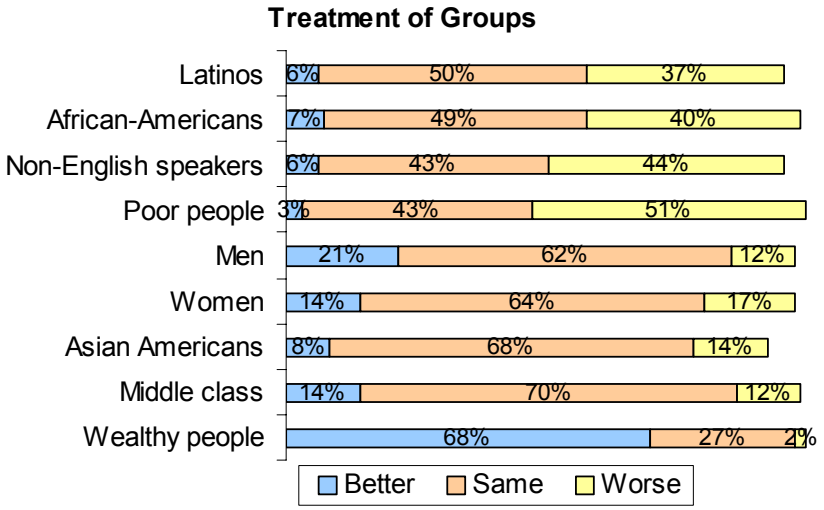
throughout the state are fair and impartial and 75% who hold this view of judges in their county.

		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	Strongly agree/agree	76	75	51	43	60	61
	Strongly agree	8	10	7	7	7	7
	Agree	68	65	44	36	53	54
	Disagree/strongly disagree	17	18	43	48	35	34
	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.

		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	A great deal/some	79	78	69	66	64
	A great deal	35	35	28	27	13
	Some	44	43	41	39	51
	Just a little/not at all	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?

Section 3

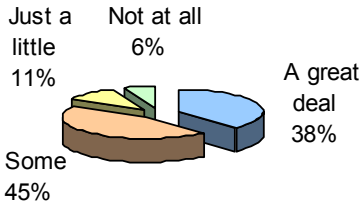
Perceptions of the Judicial Campaign Process

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



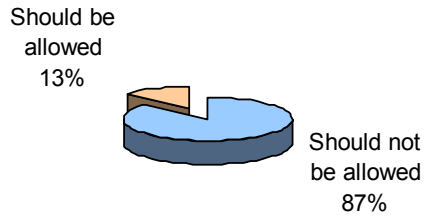
Some judges in New York State are elected and therefore have to raise money for their election campaigns. How much influence do you think campaign contributions made to judges have on their decisions: a great deal, some, just a little, or not at all?

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	A great deal/some	86	78	75	74
	A great deal	48	39	31	36
	Some	38	39	44	38
	Just a little/not at all	15	22	25	26
	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	Great deal/some	76	68	77
	Great deal	40	28	38
	Some	36	40	39
	Just a little/not at all	24	32	22
	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.

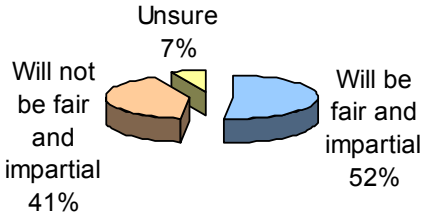
		Upstate	NYC	Suburbs
		%	%	%
Influence of campaign contributors on who becomes a judge	Great deal/some	76	82	78
	Great deal	33	44	43
	Some	43	38	35
	Just a little/not at all	24	19	21
	Just a little	16	14	15
	Not at all	8	5	6

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	Very important/important	90	90
	Very important	56	56
	Important	34	34
	Not very/not at all important	9	10
	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.

		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

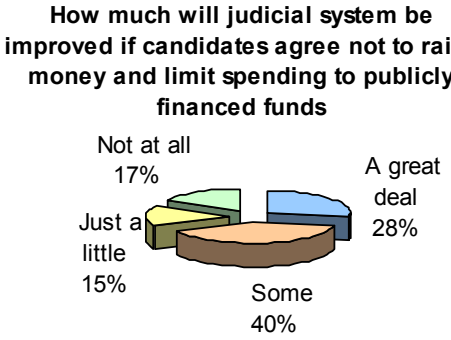
The public's perception of campaign finance reform

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.

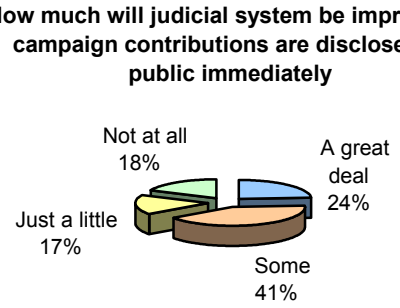
Sixty-eight percent of New York State registered voters believe that this measure will improve the justice system at least some. About one-third of registered voters, 32%, think this reform measure will improve the justice system just a little or not at all.



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.



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?

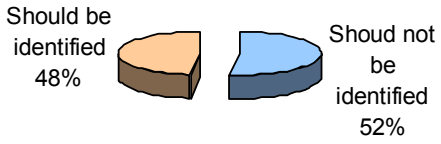
Should judges be identified with a political party on the ballot?

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

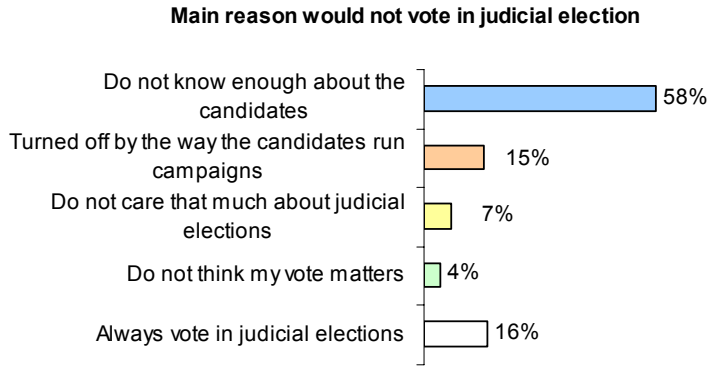
Section 5

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.

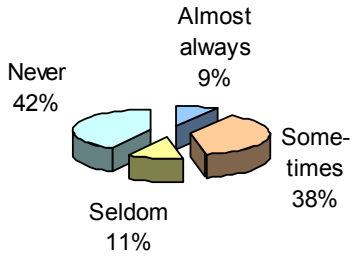
More than eight in ten, 84%, registered voters report that they use newspapers or magazines almost always or sometimes to learn about judicial elections. About seven in ten registered voters use television, 72%, and word of mouth, 67%, almost always or sometimes to learn about judicial elections.

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.

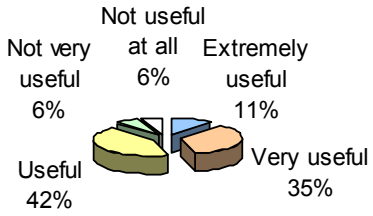
Frequency of Using Voter Guides



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?

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 8th through October 20th, 2003. The sampling error for the survey results is ±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% (±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 7th, 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%

Marist College Institute for Public Opinion October 2003

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

		NYS Registered Voters
		Col %
Registered to vote	Yes	100%

Marist College Institute for Public Opinion October 2003

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%

Marist College Institute for Public Opinion October 2003

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%

Marist College Institute for Public Opinion October 2003

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%

Marist College Institute for Public Opinion October 2003

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%

Marist College Institute for Public Opinion October 2003

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%

Marist College Institute for Public Opinion October 2003

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%

Marist College Institute for Public Opinion October 2003

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%

Marist College Institute for Public Opinion October 2003

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%

Marist College Institute for Public Opinion October 2003

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%

Marist College Institute for Public Opinion October 2003

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%

Marist College Institute for Public Opinion October 2003

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%

Marist College Institute for Public Opinion October 2003

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 contributers	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%

Marist College Institute for Public Opinion October 2003

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

APPENDIX D

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

Government Law Center
Albany Law School

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

I. Introduction 1

II. Methodology and Process 2
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

III. Voter Participation 6

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

IV. State Sponsored Screening Commissions 26
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

V. Contributions to Judicial Campaigns 30

VI. Conclusion 32

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.

© Government Law Center of Albany Law School 2004

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

© Government Law Center of Albany Law School 2004

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

© Government Law Center of Albany Law School 2004

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

© Government Law Center of Albany Law School 2004

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.

© Government Law Center of Albany Law School 2004

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?"

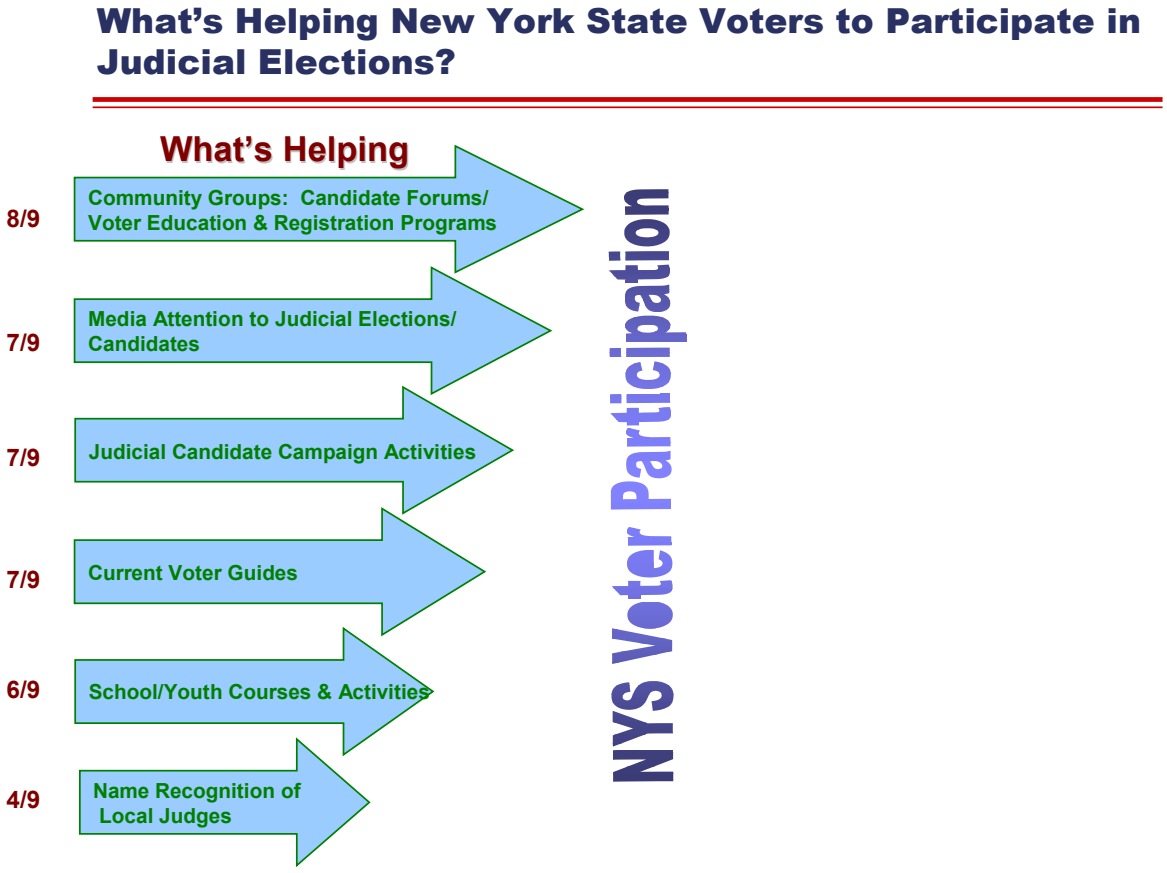
© Government Law Center of Albany Law School 2004

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?



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**

© Government Law Center of Albany Law School 2004

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

© Government Law Center of Albany Law School 2004

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

© Government Law Center of Albany Law School 2004

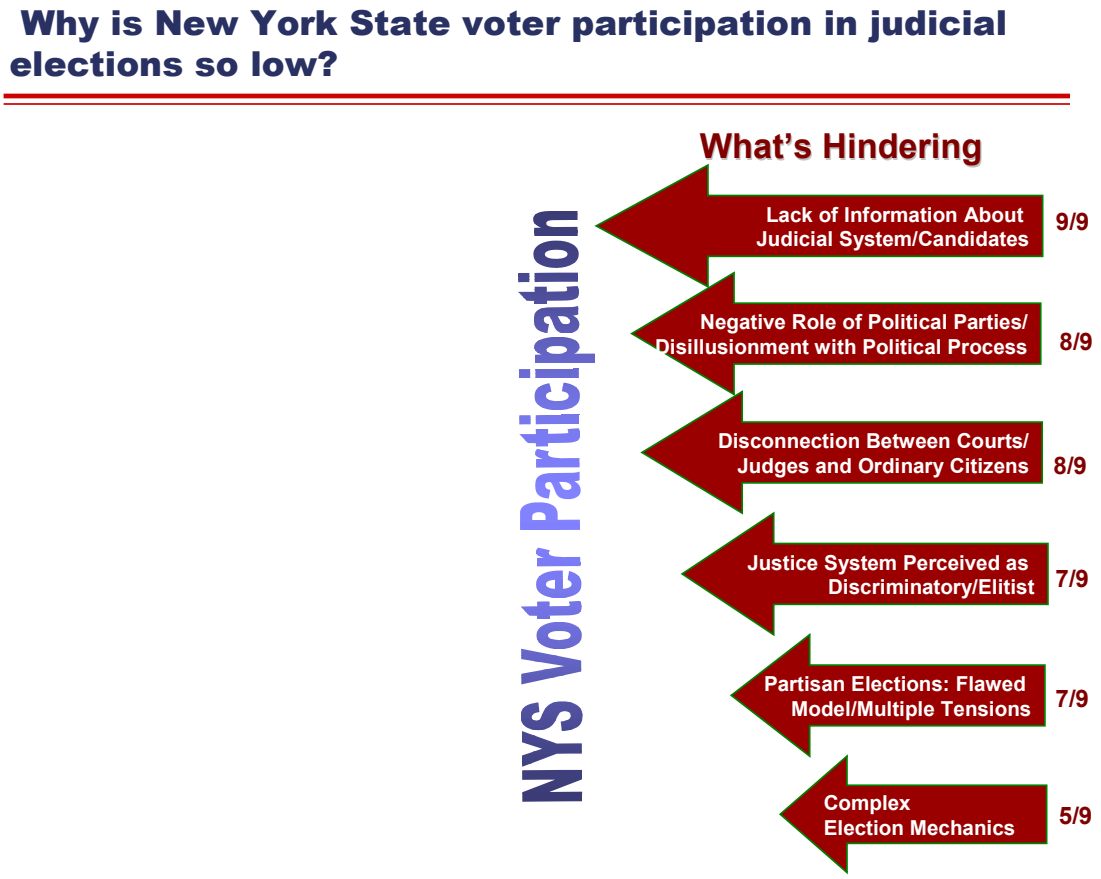
B. Question 2 – Why is voter participation in judicial elections so low?

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).

© Government Law Center of Albany Law School 2004

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



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.

© Government Law Center of Albany Law School 2004

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

© Government Law Center of Albany Law School 2004

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.

© Government Law Center of Albany Law School 2004

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.

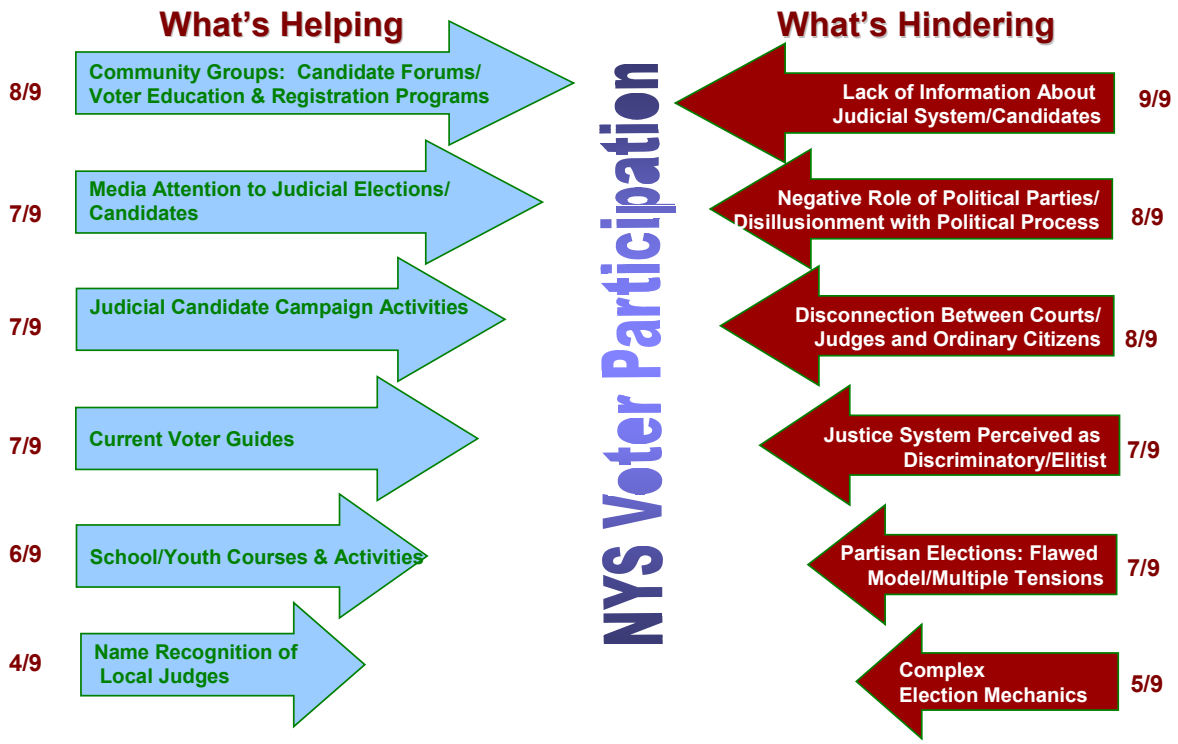
In 3 of the 9 groups participants stated that the tensions that surround campaign speech, campaign contributions and political affiliation lead to difficult campaigns. For example, it was expressed that restrictions on speech contribute to judicial candidate isolation, and it was noted that criticisms 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.

© Government Law Center of Albany Law School 2004

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

© Government Law Center of Albany Law School 2004

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.

© Government Law Center of Albany Law School 2004

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.

© Government Law Center of Albany Law School 2004

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.

© Government Law Center of Albany Law School 2004

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.

© Government Law Center of Albany Law School 2004

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.

© Government Law Center of Albany Law School 2004

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.

© Government Law Center of Albany Law School 2004

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.

© Government Law Center of Albany Law School 2004

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.

© Government Law Center of Albany Law School 2004

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.

© Government Law Center of Albany Law School 2004

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.

© Government Law Center of Albany Law School 2004

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).

© Government Law Center of Albany Law School 2004

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).

© Government Law Center of Albany Law School 2004

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:

© Government Law Center of Albany Law School 2004

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

© Government Law Center of Albany Law School 2004

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.

© Government Law Center of Albany Law School 2004

APPENDIX A

© Government Law Center of Albany Law School 2004

COMMISSION TO PROMOTE PUBLIC CONFIDENCE IN JUDICIAL ELECTIONS
John D. Feerick, Chair
Fordham University School Of Law
140 West 62nd Street, New York, NY 10023-7485

(Ph) 212/636-6873 (fax) 212/636-6775 jfeerick@law.fordham.edu

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/judicialelections-- 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.

© Government Law Center of Albany Law School 2004

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. 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

© Government Law Center of Albany Law School 2004

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/judicialelections.

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.

© Government Law Center of Albany Law School 2004

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.

© Government Law Center of Albany Law School 2004

APPENDIX B

Commission To Promote Public Confidence In Judicial Elections

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

© Government Law Center of Albany Law School 2004

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

© Government Law Center of Albany Law School 2004

COMMISSION TO PROMOTE PUBLIC CONFIDENCE

IN JUDICIAL ELECTIONS

APPENDIX E

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

Marist College Institute for Public Opinion
Poughkeepsie, NY 12601 ◆ Phone 845.575.5050 ◆ Fax 845.575.5111 www.maristpoll.marist.edu

Commission to Promote Public Confidence in Judicial Elections
New York State Judges
Mail Survey Results
May 2004 [1]

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

[1] 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: [2]

		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 indentity 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

[2] 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? [3]

		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? [4]

		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

[3] 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?

[4] 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? [5]

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

[5] 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: [6]

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

[6] 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: [7]

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 contributers	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

[7] 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: [8]

		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

[8] 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: [9]

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

[9] 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: [10]

		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

[10] 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%

Marist College Institute for Public Opinion May 2004

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 12th, 2004. Judges were asked to respond no later than April 30th, 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 8th through October 20th, 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 ±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% (±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 7th, 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.

Appendix F

Committee for Modern Courts September 2, 2003 Memorandum

To The Commission

Initial Comparative Research of Accessibility to the Public of Candidate Campaign Finance Information at the New York City, Westchester and Nassau County Board of Election Offices

MEMORANDUM

To: Nicole Gordon & Craig Landy
Cc: Ken Jockers & Jane Eggers

From: Chris Cesarani

Date: September 2, 2003

Re: Initial Comparative Research of Accessibility to the Public of Candidate Campaign Finance Information at the New York City, Westchester and Nassau County Board of Election Offices

---

The following document represents a compilation of observations and information collected by summer interns Danielle Brogan, Kevin Kim and Alex Vanderweide. On four separate occasions, these interns visited the New York City, Westchester, and Nassau County Board of Election offices. The interns recorded their observations in the form of a narrative journal and then reflected upon particular aspects of their experiences with a rated checklist.

The attached narrative and ratings clearly portray a lack of uniformity in the accessibility of candidate campaign finance filings to the public. Moreover, requesting and reviewing candidate campaign financial filings was a cumbersome process. For example, although some filings could be submitted electronically, the interns were unable to review the same filings through a computer. Instead, the process generally involved filling out a f
orm pursuant to the Freedom of Information Law (FOIL) to request paper files. Furthermore, in some instances the interns were informed that they could only request and review one candidate's file at a time. Other times they had to await the presence of an observer before they could review files.

The interns also observed varying levels of resources available to the different boards of elections visited, as well as variant conditions within the public facilities. Certainly, processing candidate election and campaign finance filings is the primary concern of the board of election offices. However, the procedural, staff and facilities related difficulties that the interns encountered during their trips to the boards of elections are disconcerting. Making the completed filings available to the public should be a function of the resources and procedures in place at the boards of elections.

INTRODUCTION

The judicial selection group, comprised of Danielle Brogan, Kevin Kim, and Alex Vanderweide, visited the board of elections of the following counties: New York, Nassau, and Westchester. The purpose of the visits to the boards of elections was to determine what resources and information are available to the public and to candidates in each of the respective counties. In our attempt to quantify this information, we used a checklist (see attached) to systematize the information that we gathered at each office. We asked the employees certain questions about the office (the number of employees, the volume of filings in the office, etc.), and also gave subjective scores (both in rank and narrative form) to other categories.

Questions & Checklist for Board of Elections Visits

1. Are the files complete?

a. Does someone check the files for compliance?
b. If they are not complete, does someone contact the candidate, what happens?

2. What is the technology like here?

3. What is the demand for these files?

a. Who comes in, what types of people ask for files?
b. What is the volume of judicial filing at this board?
c. How many judicial races are there in a given year in this county?

4. Are papers usually filed on time? How assessed – stamped / dated? Is there a follow-up on non-compliance?

5. Staffing – Number of employees, is this office adequately staffed?

6. How do candidates file? (Walk in, internet, by mail?)

I. High-Low Ratings: 1-4 lowest rating and 16-20 highest rating

A. 1-5 6-10 11-15 16-20

Rated

Technology

Friendliness / Courteous

Ease of Access

Quality of Copies

Price of Copy

Speed of Copy

Legible Files / Completeness

WESTCHESTER COUNTY BOARD OF ELECTIONS

II. JULY 31, 2003

The Westchester County Board of Elections is easily accessible by Metro-North Railroad. The Board of Elections is a few blocks from the White Plains stop and is housed in its own quaint building, which initially appeared to have all the modern amenities. Two employees at the front desk, whom we communicated with throughout the day, greeted us. We were informed that there was a workspace open to the public, right in front of the front desk, which contained a large table and chairs.

Our first inquiry was in regard to how we might gain access to campaign finance disclosure information submitted by judges and learned that a form must be filled out for each request pursuant to the Freedom of Information Law (FOIL). Once the form was complete, we were given a large binder that contained all the candidates who ran in 2002 and the results of the elections. Initially, we were told that we could only look at one file at a time and that no one would be able to copy files. A staff person explained that the office had a backlog of tasks to do, as a result of the July 15th filing date.

Files were given to us in a timely manner, however we were first told that that files could only be viewed one candidate, per party, at one time. (Later on in the day, we were able to view many files simultaneously.) We only had about ½ hour to view the files before another employee, whom we later found out to be the Republican coordinator, interrupted us. She told us that we would have to turn in the files because she was taking her lunch hour. After questioning her as to why this was the case, she informed us that the other coordinator, the Democrat, was also out to lunch and that no one would be "watching us." We suggested that both of the front desk employees could watch us, as they seemingly were not working on anything, and she agreed to let us continue to view the files.

The Board of Elections presented the files we viewed in a particular order, in that the most recent filing statement was kept on top of the pile. We were informed that the files were kept that way, and that we were to keep them that way as well. We viewed three files, *Committee to Re-Elect Joan Cooney*, *Irene Ratner*, and *Committee to Elect Sam Walker*. The size of the files seemed to depend on whether or not a candidate ran in a primary or special election. For instance, Joan Cooney, who only ran in the general election, had a much smaller file than Irene Ratner's, whose file contained two periodic reports, and both pre- and post- primary and general reports. In the process of reviewing these and other files, we noticed that some files contain all schedules, no matter if they are needed and filled out or not, while other files contained only the necessary schedules. Ms. Cooney's files were handwritten and legible. Ms. Ratner, the County Court Republican, had some illegible files that were missing contributor's addresses information on the expenditures. Also, three disclosure statements were stamped days later than they were due. For example, a January 15, 2003 filing deadline was stamped January 27, 2002, while a statement due December 11, 2002 was stamped December 13, 2002; we also noticed an 11 Day Pre-General Disclosure Statement was dated October 29, 2002 but stamped October 30, 2002. Irene Ratner's file also included a separate typed out sheet for Schedule A instead of using the board of elections issued schedule (this seems easier for candidates who have a long list of payments or expenditures). Mr. Walker, a County Court Democrat Candidate who ran against Ms. Ratner, did file his statements on time. His files appeared to have been electronically filed, but he neglected to fill out

the statement inventory. Thus, a reader would not know what was included in that particular statement.

Through interviews with the front desk personnel and the Democrat coordinator, we learned that the Westchester Board of Elections does grant a grace period of 10 business days to candidates for filing. If a certain document is not received when it is due, the board actually contacts the candidate via a mailed notice. Candidates may hand deliver, mail or submit through email the required documents. All files are kept in hard copy. Scanners do exist but they are not currently used to load information onto the web for public access. The demand for files is great. The individuals who come in to view files range from the candidates themselves and employees of candidates, to retired persons and students. The volume of judicial filings seemed to depend upon the individual candidate's number of donations and the type of campaigns that they run.

WESTCHESTER COUNTY BOARD OF ELECTIONS

III. SUBJECTIVE RATINGS

TECHNOLOGY: 11-15 (for candidates)/ 6-10 (for public)

Westchester was the first Board of Elections that we visited that allowed candidates to file their financial disclosure statements on line. However, this is only voluntary- thus the public does not have easy access to this information. Since this service has been available since July 15, 2001, and after utilizing the website options currently available, we were only able to a find a few candidates as of the date of this memo who have filed their disclosure statements online (Robert A. Neary, Annette L. Gurarino, Sam L. Walker). The Board itself has modern computers and scans in documents to keep a record of all the documents that they receive. There is no computer access for the public. The website (http://www.westchestergov.com/boe/) for the Board has good deal of general information for the public, along with the above mentioned nascent financial disclosure information.

FRIENDLINESS / COURTEOUS: 11-15

The Westchester Board of Elections was by far the most pleasant trip. There was a large table for reading and research with comfortable chairs and plenty of light, due to the large glass front doors. Pens and paper were available for the general public. The staff itself initially treated us with some hesitance and suspicion, but by the end of the day the staff seemed to come around and to talk to us more freely. For example, when we started to question the front desk employees, they immediately said they could not answer some of our questions and proceeding to call another employee who did. The employee came to the front right away and also provided quick responses for us. The only unusual moment was when a distinguished looking man came over to our table and asked how everything was going. We later surmised that he might have been the Commissioner.

EASE OF ACCESS: 16-20

The information at the board of elections is readily available to either candidates or to members of the public. The front desk has copies of the yearly election results, so it is possible to find the names of candidates and the information that requests are processed quickly.

QUALITY OF COPIES: 16-20

The copies we received were of high quality, easily readable, and contained all of the information that was in the originals.

PRICE OF COPY: 6-10

The copies were the standard $0.25 a page. Though $0.25 is the standard price for copies throughout all of the offices, this seems to be relatively costly. Copies at copy centers such as Kinko's can be done for a much cheaper price (usually around $0.10 a page). There is no reason that such a high premium should be placed on public information that the general public should be able to obtain at a reasonable cost.

SPEED OF COPY: 6-10/11-15

We gave the Westchester Board of Election a mixed grade under the category of "speed of copy" due to the mixed signals that they conveyed to us. As previously mentioned, we were initially told that there would be no chance that we could get any copies done due to the backlog caused by the July 15th Periodic Filing Deadline. This was told to us after we reviewed the files and requested

copies- we even discussed with them how to get the copies mailed to us. However, a couple of minutes later, we were told that they could make the copies for us, and received the copies in less then half an hour (three files with a total of around 160 pages).

LEGIBLE FILES / COMPLETENESS: 11-15/6-10

As discussed above, the different files varied in their completeness and legibility. Generally, the files were legible, with the expected problems when a file is handwritten. The files tended to be missing similar pieces of information: some were devoid of the address of a couple of donors or a blank inventory statement on the front of the disclosure statement. When filed, the files seemed to contain the proper information and the financial numbers added up.

NASSAU COUNTY BOARD OF ELECTIONS
AUGUST 5, 2003

The Nassau County Board of Elections is easily accessible by the Long Island Railroad; the Board is within walking distance from the train station (the Mineola stop). The Board of Elections is in the middle of a large complex of cement buildings, which houses much of the bureaucracy of Nassau County. The interior of the Board of Elections is painted an unprepossessing brownish-yellow hue, and is furnished with metallic folding chairs and old wooden foldout tables. On the day we visited, there were power problems: only one of the front-desk staff's computers was functioning and the air conditioning was not working at all.

> When we arrived at the Board of Elections, four desk receptionists greeted us. We immediately had to fill out a FOIL request, and then were told to wait; the form needed the appropriate signatures before we could view the files. We arrived at the Board of Elections at around 11:00 a.m. and waited until 11:30 before anyone spoke to us again. As we waited we listened to employees' personal accounts of what they had done the night before, what they were doing the coming weekend or for lunch; a variety of items were discussed, none of which pertained to their work. Because of the power outage we were informed that the "man" who is in charge of getting the files probably took an early lunch: the staff recommended that we should too. As 11:30 seemed a little early, we asked one of the receptionists some general questions about the office such as how busy the office typically is, and how many people are employed. The receptionist responded that approximately 100 employees work for their office, and that the workload varied in relation to when filings are due.
>
> We left the office around 12, and arrived back at the Board of Elections an hour later. Again, we were told to wait. We inquired if someone else could retrieve the files and were told that the man who would retrieve the files was sitting right next to us in the waiting room. We sat and waited as this man talked to another, not about campaign finance information but family pictures, which they viewed together. After about an hour, he approached us and apologized, claiming that he was unaware that we were waiting for files, even though the desk attendants had told us they left our request on his desk hours before. Again, we waited as he got up to get us the files. He consulted with the Democratic coordinator, whom we had not seen before this point, and finally was able to show us some files. With the files in hand, we decided to review them quickly and decide what to copy: now that we had the Democrat and Republican coordinator in the area and did not want to lose their attention. We looked at the files of a number of judges who had run for both family and county court judges in 2002. We focused on the files of candidates Peck, Bates, and Sullivan, who ran against each other for two judicial vacancies on the county court bench.
>
> As we received these files for review, the Board of Election sent out two people- one a Democrat and one a Republican- to "watch" us as we looked through the files. We were told that this was done to make sure that nothing was taken out of the files, and to ensure that no one made marks made on them: we were forbidden to use pens while we took notes examining the files and had to ask for pencils. This was very obtrusive and made us feel very uncomfortable. The job of the "observers" amounted to sitting in their chairs and staring at us as we reviewed the files.

The files were unremarkable. Their legibility varied with the quality of handwriting of the filer, though some of the judges had enclosed computer printouts for schedules. Occasionally, a

schedule would be missing the address of a donor or two. The financial figures for the candidates seemed to add up. Of concern was a non-compliance letter in Judge Peck's file. The letter stated that the committee for Judge Peck did not file a periodic January 15th disclosure statement, yet the file lacked a follow up letter, a filing, or any indication that the issue had been addressed. We asked the coordinator who reviewed the file about the follow up policy; he explained that a five-business day grace period was given to people who did not file, a response that did not answer the issue with this file.

We then returned the files and asked if we could have them copied. We were then told that we needed to fill out a new FOIL to get copies and that this too needed the appropriate signatures. So again we waited. Finally, at 3:30pm, after 4 and ½ hours of waiting, we were told that it would take the office 5 days to copy files as they "needed the appropriate signatures to use the specific copier downstairs." We were informed that the five-day rule was Nassau's policy, but could not help noticing a copier that was not being used and employees who were reading magazines or talking on the telephone. When we questioned this procedure, we were told that they were just following their policy and that it was summer; everyone was covering for someone else in this Board of Elections that employs over 100 people. We requested the copies and asked the Board to call us when they would be ready, at which time we would send them a check. As we left, the Republican and Democrat coordinator made faces at us and laughed. Obviously, this was no way to treat members of the public.

NASSAU COUNTY BOARD OF ELECTIONS

IV. SUBJECTIVE RATINGS

TECHNOLOGY: 1-5

The Nassau Board of Elections lacks technological services for the public and for candidates. First, it does not have a website for general information. All forms must be handwritten, and there is no apparatus for on-line filing or to obtain forms or documents online. Additionally, on the day we visited there was a power outage so the employees there did not have full computer access. More significantly, there is no computer access for the public use.

FRIENDLINESS / COURTEOUS: 6-10/1-5

As described above, the Nassau Board of Elections is not user friendly or particularly efficient. The staff people needed to retrieve files were unavailable, but when finally available, they were attentive and helpful. However, we felt that it was very unprofessional for the document coordinators to snicker at us as we departed.

EASE OF ACCESS: 1-5

Getting files and viewing them took quite a long time. Though staffed by approximately 100 employees, it seems that only a few individuals can authorize the release of public information to members of the public. When these people are not available, people are forced to sit around and wait for them to return. After the files are received, highly obtrusive observers then watched us. And finally, once the records are obtained, Nassau also makes the general public wait five business days before they will release any files.

QUALITY OF COPIES: 1-5

The physical conditions of the copies were acceptable and easily legible. The reason for this low grade is that the entire file requested was not included. For example, when first reviewing the file for Hon. Peck, we noticed that there was a letter that stated that she had not filed her January 15, 2003, periodic disclosure statement. We had requested the entire file be copied, but this letter was not included in the copy of the file that was sent to us.

PRICE OF COPY: 6-10

Copies are the standard $0.25 a page. Although this is the same price for copies that the other board of elections offered, this seems to be a high price for public information.

SPEED OF COPY: 1-5

The Westchester Board of Election did not release information on the day we requested- we were told that they would get us copies within five business days. We gave them the names of the files that we wanted to have copied and our information. We received a call two days later, and were informed that our copies were ready and that we had to send them a check for the price of copies, postage paid and self-addressed envelopes for the return mail, and a letter re-requesting that the copies be sent to us. It took the Board of Elections over one week to get the files to us.

LEGIBLE FILES / COMPLETENESS: 11-15/6-10

As discussed above, the different files varied in their completeness and legibility. For the most part these files were legible, with the expected problems when a file is handwritten. Generally, the files tended to be missing similar pieces of information, such as the address of a couple of donors, and

blank inventory statement charts. When filed, the files that we reviewed seemed to contain the proper information and the financial numbers seemed to add up.

V. MANHATTAN BOARD OF ELECTIONS

JULY 15 AND AUGUST 14, 2003

Located at 32 Broadway in downtown Manhattan, the Board of Elections is easily accessible. Visitors do not have to sign in nor show identification to any building personnel when entering the lobby. However, once one arrives on the 7th floor, access to documents is more inhibited. Approaching the office, we were confronted by dark and dreary doors that were rather foreboding, and made the office look closed. Nonetheless, we entered, and found ourselves in the reception area.

The first time we visited this building the receptionists told us that it was a very bad day to visit as it was the deadline for the first periodic filing for all candidates running in this year's elections. Since we did not want our trip to be in vain nor leave empty handed we asked the receptionist a few questions. First, we asked, "If I were a candidate what would I do? What would I file or what documents would I need?" The receptionist immediately handed us a packet that contained the *New York State Board of Elections Handbook of Instructions for Campaign Financial Disclosure* and other document related material. Then we began questioning him more about how the public might gain access to campaign finance information. Though helpful, he kept insisting that July 15th was not a good day to visit them, and suggested that we come back in two weeks: "someone would be more than happy to give you a tour." After we conferred among ourselves and looked at the packet we had been given, we then asked the receptionist more questions such as, "How soon could the public look at such information on candidates who are filing campaign disclosure information today (July 15th)?" This seemed to be the breaking point for the receptionist, as he immediately called for his co-worker to bring us to where the campaign disclosure documents were kept.

In the backroom, approximately ten employees sat at their desks, reading the New York Post, browsing the internet, and talking on the telephone. When we asked for the most up to date disclosure information on Supreme Court judges, the office staff people were rather unfriendly. First, we were correctly informed that only Albany houses Supreme Court judge disclosure information. In response, we asked what judgeships they had on file. "Only New York City Civil Court judges," they responded. So we asked for the civil court judges of all 5 counties in the most recent 2003 election. "That's impossible," they claimed, we "absolutely could not have all of the information on the civil court judges." Requests can only be made by filling a request form, which includes the disclosure information of a named candidate. We had no names at our disposal, so we asked where we could find a list. We were told to look on the Web. But we did not have access to a computer, and there were none provided to the public by the BOE. Fortunately, one of the employees behind the desk (after getting approval from a man who appeared to be his superior) printed out a list of the relevant candidates for 2003 civil court judgeships, and we randomly selected judges. When a proper request was submitted, one of the BOE employees looked up our request on a computer and got a file number for the particular candidate. He then told one of his fellow employees, who sat just five feet behind him, unengaged, to go to the file cabinets and retrieve the files requested. The man then got up and retrieved the document.

Since July 15 was the first filing day for 2003 primaries in September, and the elections in November, the individual candidate files were sparse. No disclosure forms or schedules were attached. Only basic registration forms, such as that which documents the name of the candidate's

treasurer, were included. In order to review more complete files, we looked up a past candidate at random from the late 90's. This proved more useful, as all relevant schedules and cover pages and summaries for the various disclosure statements were included. Any missing filing documents were reflected in copied letters from the Board of Election to the candidate informing the candidate of their failure to file certain periodic filings. However, no "in lieu of" statements were included to further clear up the missing documents. The file also contained copies of the candidate's previous election campaign materials (fliers, handouts, etc.), which are not available to the public online.

Of note is the fact that we were clearly shunned by the Board of Election's legal counsel, who occupied the entire main table and chair area, when we tried to find a space to review the financial documents we had been given. We were told to go over to the public's table, a table no bigger than a few feet across. Counsel and his team were reluctant to give up any of their chairs despite the fact that most of them were empty, save a few papers.

The second visit we had to this office was certainly more productive. Our access to the files was much easier, as we knew the system and the Board of Election employees seemed less harried. We asked the front desk for financial disclosure information and, after signing in and putting on a nametag, were led to the same backroom where the files were kept.

During this second trip on a more "normal day" the file room had less employees staffing desk- this time there were six men- who seemed to be engaged in the same activities their co-workers were during our first trip. We had come armed with a list of candidates that we wanted to see, so we were directed to fill out a FOIL request with their names, position, and year of election. After looking up the correct number, which is kept on a computer database, the Board of Election employee was able to find and retrieve the appropriate file. This was done expediently; we had received five different files in approximately five minutes. As the legal team was not occupying the main table, we were able to use the large table available for public use.

The files that we requested were all randomly picked judges, one from each of the boroughs, who had won election in 2002. As most judges in New York County do not face appreciable opposition, we did not look at the financial filings of any existing oppositional candidates. We looked at the filings for Judges Debra Rose Samuels (Manhattan), Fernando Tapia (Bronx), Wavny Toussaint (Brooklyn), Timothy Dufficy (Queens), and Judith McMahon (Staten Island). As a general rule, all of these files were somewhat miskept, as they did not seem to be in any particular order. We noticed that some seemed to be filed from most recent to least, while other files did not seem to have any order. The files tended to be filled with a lot of other documents, such as campaign literature, which also clutters the files. All files were handwritten and none of them contained any printed schedules. The most common error that the files shared was that they lacked statement inventories on the front of the disclosure statements, and donor addresses and check numbers. The file of Hon. Wavny Toussaint is of note, as his file was extremely large and convoluted. His full file was too large to copy, partially due to the large amounts of money that he raised, and partially due to the problems he had in filing. After reviewing his file it seemed quite apparently the Judge Toussaint and his committee's treasurer were having problems with the filing process. For example, his first filing for the July 15th periodic filing date was very long (over 100 pages), as each individual donor was listed on a separate page, rather than multiple donors per page, as is typically the format of the schedules. Later filings were not sent in time to the Board of Elections and non-compliance letters were sent out to the committee by the board (This portion of the file has been copied and is included).

We then spoke to the file clerk who told us that late filing is common among candidates. He told us that candidates typically get a one-week grace period, after which a phone call is placed to the committee of the offending candidate. If compliance is still not met following that phone call, the Board of Elections will then send out a letter warning the candidates. If the filing is still not received after this warning, then the name of the candidate is given to the Commissioner who will then proceed with legal action.

After reviewing the files, we requested copies that be made for our records. We had part of Hon. Toussaint's file copied (the part with all of the non-compliance letters and issues with his treasurer) along with the files of Hon. McMahon and Hon. Tapia, as theirs seemed to be quite typical. When we requested the copies, we were asked to fill out another FOIL. The file clerk who we spoke asked if we had any specifications for the copies of the files. We were able to point out to him the part of Hon. Touissant's file that we wanted, and also able to point out a duplicate filing in Hon. McMahon's file that was not needed. The file clerk then made copies, which were given to us in less then half an hour.

MANHATTAN BOARD OF ELECTIONS

VI. SUBJECTIVE RATINGS

TECHNOLOGY: 6-10

The New York County Board of Elections does not have extensive technological services for either the public or for candidates. The website for the Board of Elections (www.vote.nyc.ny.us/index.jsp) has valuable general information for both candidates and the public: voter registration, election results and statistics, financial disclosure rules and forms, an election calendar. However, if more in-depth information and filings are needed, this process must be done in person at the Board of Elections. Furthermore, none of these forms are available in computer format for the candidates—thus, all forms have to be handwritten or typed. At the Board of Elections there are no computers available to the public, however, the employees themselves do have computers and all the files are listed on their computer. We were told that the New York County Board of Elections currently does not scan in the files they receive, and that the only copies of the files they have are the hard copies in their drawers.

FRIENDLINESS / COURTEOUS: 11-15/6-10

As described above, we received competent service from the New York County Board of Elections. Though there seemed to be more employees behind the desk then necessary, when we did speak to a file clerk our requests were handled expeditiously and professionally.

EASE OF ACCESS: 16-20

Getting files and viewing them were easy and done very quickly. The building is easy to get to and when we visited on a less harried day, we had no problem getting into the financial disclosure area. However, access is fair on the busiest days of the year. As previously stated, on our first trip we were discouraged from entering the building and asking for information, even though it was easily retrieved when we finally were allowed into the filing area.

QUALITY OF COPIES: 16-20

The physical conditions of the copies were acceptable and easily legible. We were asked to specify exactly what we wanted copied and received everything in the file that was asked for.

PRICE OF COPY: 6-10

Copies are the standard $0.25 a page. Although this is the same price for copies as in other board of elections offices, this price seems to be very high for public information.

SPEED OF COPY: 16-20

The New York County Board of Elections did a great job in getting us our copies as quickly as possible. The same employee who gave us the file and got our specifications for the copy job was the one who took the file back and copied it. We were able to get our copy request of 3 different files—a total of over 160 pages—in a little under half an hour.

LEGIBLE FILES / COMPLETENESS: 6-10

What distinguished New York County from the other counties that we visited was that many files were handwritten and lacked typed schedules. Though most of the files were legible, many of them were a little bit hard to read, as the handwriting on the files was not very neat. The files also seemed to lack any sense of order as many of the filings seemed to have been placed in the files haphazardly. Beyond the internal disorganization of some of the files, everything else seemed to be

in order. The files appeared complete and contained the requisite information and schedules. The files were coherent and the numbers added up- it just took a minute to find the information.

APPENDIX G

Commission Working Papers

G-1. Judicial Selection in the New York State Court System
G-2. New York State Judicial Districts: Selected Issues and Statistics
G-3. Judicial Campaign Finance Expenditures
G-4. Judicial Elections in New York State: 1996-2003
G-5. Sources of Public Funding
G-6. Public Funding of Judicial Elections Among the States
G-7. Retention Elections
G-8. Voter Education
G-9. Proposed Rules for Judicial Campaign Practices Committees
G-10. Campaign Finance Disclosure

WORKING PAPER ON JUDICIAL SELECTION IN NEW YORK STATE COURTS

Appendix G-1

New York has one of the largest and most elaborate judicial systems in the United States. Article VI of the New York constitution establishes a unified court system for the state. The constitutional scheme provides for some courts to function statewide, such as the Court of Appeals, the Supreme Court including the appellate divisions thereof, the Court of Claims, the County Court, the Surrogate's Court, and the Family Court. Some courts, such as the Civil and Criminal Courts of the City of New York, operate solely in New York City, whereas other courts exist only outside of New York City, including the County Court, District Court, City Court, and Town and Village Justice Courts.

The general jurisdictional structure of the New York court system can be described as consisting of four levels: the court of last resort, intermediate appellate courts, court of general jurisdiction, and courts of limited jurisdiction. The judicial selection process for judges is governed by various bodies of law, including the state constitution, state judiciary laws, state election laws, New York City laws, and executive orders. Some state judges are appointed using a variety of appointment methods. The vast majority of judges, however, are elected by voters. The electoral processes by which judicial candidates get onto the ballot vary. Whereas Supreme Court candidates are first nominated at judicial conventions, most other judicial candidates first compete in primary elections.

This part of the report provides a detailed description of the various state courts followed by judicial selection methods.

I. New York State Court Structure

A. Appellate Courts

The appellate structure in New York is composed of the court of last resort, the Court of Appeals, and the intermediate appellate courts, the Appellate Division of the Supreme Court and the Appellate Terms of the Supreme Court. In addition, County Courts act as appellate courts in the Third and Fourth Departments.

1. Court of Appeals

As New York's highest court, the Court of Appeals generally focuses on broad issues and principles of law. It has final appellate jurisdiction in civil and criminal cases and hears direct appeals over questions involving constitutional provisions and death sentences.[1]

[1] N.Y. CONST. art. VI, § 3.

2. Appellate Division of the Supreme Court

The Appellate Division of the Supreme Court resolves civil and criminal appeals from the trial courts.[2] It also reviews civil appeals taken from the Appellate Terms of the Supreme Court and the County Courts that act as appellate courts.[3]

The Appellate Division is divided into four judicial departments.[4] Each judicial department exercises appellate jurisdiction in a separate geographic region in the state consisting of a number of counties grouped within certain judicial districts. There are twelve judicial districts: the first and twelfth judicial districts make up the First Department; the ninth, tenth, and eleventh judicial districts are in the Second Department; the Third Department consists of the third, fourth, and sixth judicial districts; and the Fourth Department is composed of the fifth, seventh, and eighth judicial districts.[5]

3. Appellate Terms of the Supreme Court

According to the state constitution, the judicial departments of the Appellate Division may create Appellate Terms of the Supreme Court to handle civil and criminal appeals from courts of limited jurisdiction.[6]

At present, only the First and Second Departments have created Appellate Terms. The Appellate Terms hear cases on appeal from the Civil and Criminal Courts of the City of New York.[7] The Appellate Term in Second Department additionally handles appeals from civil and criminal cases originating in the District Courts, City Courts, and Town and Village Justice Courts.[8]

4. County Courts Acting as Appellate Courts

Although County Courts are primarily trial courts, they additionally have appellate jurisdiction over cases originating in District Courts, City Courts, and Town and Village Justice Courts in the Third and Fourth Departments.[9]

B. Court of General Jurisdiction

There are eleven types of trial courts in New York, one of general jurisdiction and the others of limited jurisdiction. The trial court of general jurisdiction is the Supreme Court.

---

[2] Office of Court Administration, New York State Unified Court System, *Appellate Divisions*, *at* http://www.courts.state.ny.us/courts/appellatedivisions.shtml.
[3] *Id.*
[4] N.Y. CONST. art. VI § 4(a); N.Y. JUDICIARY LAW § 70.
[5] N.Y. JUDICIARY LAW § 140.
[6] N.Y. CONST. art. VI, § 8(a); N.Y. JUDICIARY LAW § 79.
[7] Office of Court Administration, New York State Unified Court System, *Appeals From Lower Courts*, http://www.courts.state.ny.us/courts/lowerappeals.shtml.
[8] *Id.*; *see also* N.Y. CONST. art. VI, § 8(e).
[9] N.Y. CONST. art. VI, § 11(c).

The Supreme Court is the principal trial court in New York. A Supreme Court has been established in each of the twelve judicial districts.[10] It has general jurisdiction over questions of law and equity.[11] In New York City, the Supreme Court has exclusive jurisdiction over felonies and misdemeanors prosecuted by indictment.[12]

C. Courts of Limited Jurisdiction

The remaining trial courts described below are courts of limited jurisdiction.

1. Court of Claims

The Court of Claims has jurisdiction over claims asserted against the state,[13] as well as certain other state-related entities such as the New York State Thruway Authority, the City University of New York, and the New York State Power Authority.[14]

2. County Court

One County Court has been established in each of the fifty-seven counties outside of New York City.[15] As a trial court, the County Court exercises jurisdiction over civil law and equity proceedings under $25,000.[16] It also has criminal jurisdiction over all offenses.[17]

3. Surrogate's Court

The Surrogate's Court has one branch in each of the sixty-two counties in the state.[18] It handles matters relating to decedents' estates, probate of wills, adoptions, and guardianships.[19]

4. Family Court

A family court division has been established in New York City and each of the fifty-seven counties outside of New York City.[20] The Family Court handles cases involving adoption, child protection, family offenses, support, custody, paternity, and juvenile delinquency.[21]

---

[10] N.Y. JUDICIARY LAW §140-a.
[11] N.Y. CONST. art. VI, § 7(a); N.Y. JUDICIARY LAW §140-b.
[12] N.Y. CONST. art. VI, § 7(a).
[13] N.Y. CONST. art. VI, §9.
[14] New York State Court of Claims, *at* http://www.nyscourtofclaims.state.ny.us.
[15] N.Y. CONST. art. VI, § 10.
[16] N.Y. CONST. art. VI, § 11; N.Y. JUDICIARY LAW § 190.
[17] N.Y. CONST. art. VI, § 11(a).
[18] N.Y. CONST. art. VI, § 12(a).
[19] N.Y. CONST. art. VI, § 12(d).
[20] N.Y. CONST. art. VI, § 13(a).
[21] N.Y. CONST. art. VI, § 13(b).

5. Civil Court of the City of New York

The Civil Court of the City of New York has jurisdiction over civil law and equity under $25,000.[22] It includes a small claims part for informal dispositions of matters under $3,000 and a housing part for landlord-tenant matters and housing code violations.[23]

6. Criminal Court of the City of New York

The Criminal Court of the City of New York handles offenses involving fines less than $1,000 or sentences less than twelve months.[24]

7. District Court

Twelve District Courts exist in Nassau and part of Suffolk counties.[25] District Courts handle civil actions not exceeding $15,000 and criminal offenses with fines less than $1,000 or sentences less than twelve months.[26]

8. City Court

The state constitution provides that a City Court may be established by the legislature in cities outside of New York City.[27] Currently, there are sixty-one City Courts that resolve small claims and civil actions under $5,000 as well as criminal offenses involving fines of less than $1,000 or sentences of less than twelve months.[28]

9. Town and Village Justice Courts

The Town and Village Justice Courts form the first level of trial courts in New York. There are 1,487 Town and Village Justice Courts that have jurisdiction over minor civil and criminal matters, including civil claims under $3,000 and criminal cases entailing fines of less than $1,000 or sentences less than twelve months.[29]

[22] N.Y. CONST. art. VI § 15(b).
[23] Office of Court Administration, New York State Unified Court System, *New York City Courts*, *at* http://www.courts.state.ny.us/courts/nyc/index.shtml.
[24] N.Y. CONST. art. VI, § 15(c).
[25] BNA's DIRECTORY OF STATE AND FEDERAL COURTS, JUDGES, AND CLERKS (4th ed. 2004) [hereinafter BNA's DIRECTORY].
[26] N.Y. CONST. art. VI, § 16(d).
[27] N.Y. CONST. art. VI, § 17(a).
[28] Office of Court Administration, New York State Unified Court System, *Upstate NY Courts*, *at* http://www.courts.state.ny.us/courts/upstateny.shtml.
[29] BNA's DIRECTORY, *supra* note 25.

II. Judicial Selection Methods in New York State

A. Court of Appeals Chief Judge and Associate Judges

A chief judge and six associate judges sit on the Court of Appeals, each for fourteen-year terms.[30] The judges of the Court of Appeals are appointed by the governor through a procedure that involves a judicial nominating commission.[31]

A twelve-member Commission on Judicial Nomination evaluates the qualifications of candidates and makes recommendations to the governor.[32] Among the judicial nominating commission's considerations are the character, temperament, professional aptitude, and experience of the candidates.[33]

For the office of chief judge, the judicial nominating commission makes seven recommendations to the governor; for the office of associate judge, the commission nominates between three and seven candidates.[34] Choosing from the judicial nominating commission's recommendations, the governor appoints a judge subject to the advice and consent of the senate.[35]

When a judge's term expires, the judge must reapply with the judicial nominating commission to be considered as a candidate for reappointment.[36] When a judicial office becomes vacant, a similar procedure is used to fill the vacancy.[37] The interim appointee carries out the remainder of the unexpired term.[38]

B. Appellate Division Justices

The Appellate Division is a part of the Supreme Court. The justices of the Supreme Court are elected for fourteen-year terms by the voters in their respective judicial districts.[39] The justices of the Appellate Division are designated by the governor.[40] A presiding justice for each of the four judicial departments is also appointed by the governor.[41]

---

[30] N.Y. CONST. art. VI, § 2(a).
[31] N.Y. JUDICIARY LAW § 63.
[32] N.Y. CONST. art. VI, § 2(c)–(d)(1); N.Y. JUDICIARY LAW §§ 63(1). Four members of the judicial nominating commission are appointed by the governor; four are appointed by the chief judge; and one is appointed each by the speaker of the assembly, the temporary president of the senate, the minority leader of the senate, and the minority leader of the assembly. N.Y. CONST. art. VI, § 2(d)(1); N.Y. JUDICIARY LAW § 62(1). The governor and the chief judge each are required to appoint two lawyers and two non-lawyers, and no more than two of their appointees may be enrolled in the same political party. N.Y. CONST. §2(d)(1).
[33] N.Y. JUDICIARY LAW § 63(1).
[34] N.Y. JUDICIARY LAW § 63(2)(a)–(b).
[35] N.Y. CONST. art. VI, § 2(e).
[36] N.Y. JUDICIARY LAW § 63(1).
[37] N.Y. JUDICIARY LAW § 68(2).
[38] N.Y. JUDICIARY LAW §§ 62(3), 68(2).
[39] N.Y. CONST. art. VI, § 6(c).
[40] N.Y. CONST. art. VI, § 4(c).
[41] *Id.*

The presiding justices are appointed for the remainder of their Supreme Court terms, whereas the other Appellate Division justices are appointed for five-year terms, or the unexpired portions of their terms of office if less than five years remain.[42] Upon expiration of a judicial office or when a vacancy occurs, the governor makes a new appointment.[43]

Typically, governors have established screening committees by executive order to screen all of their prospective appointees, including those to the Appellate Division. The governor selects appointees to the Appellate Division from among the elected Supreme Court justices approved by the governor's Department Judicial Screening Committees.[44]

The Department Judicial Screening Committees review the qualifications of Appellate Division candidates and determine which candidates are sufficiently qualified to proceed in the application process.[45] The departmental screening committees give primary consideration to the candidates' intellect, judgment, temperament, character, and experience.[46]

Fifty-five justices currently serve on the Appellate Division.[47]

C. Appellate Term Justices

According to the state constitution, an Appellate Term may consist of a minimum of three and a maximum of five Supreme Court justices.[48] The justices are assigned by the chief administrator of the courts subject to the approval of the presiding justice of the applicable Appellate Division.[49]

One Appellate Term has been established in the First Department, and two have been created in the Second Department. Each Appellate Term is served by five Supreme Court justices.[50]

D. Supreme Court Justices

Currently, there are elected 346 Supreme Court justices.[51] Supreme Court justices are elected to office by a judicial district convention, which is a method distinct from the primary

---

[42] N.Y. CONST. art. VI, § 4(c); N.Y. JUDICIARY LAW § 71.
[43] N.Y. CONST. art. VI, § 4(d).
[44] N.Y. Exec. Order No. 10 (Apr. 25, 1995), 9 NYCRR § 5.10 (2004) (Establishing Judicial Screening Committees to Ensure That Judicial Officer Appointments Are of the Highest Quality). The Department Judicial Screening Committees consist of thirteen members. Five departmental screening committee members are appointed by the governor; two are selected by the chief judge of the Court of Appeals; two members are chosen by the attorney general; one member is picked by the presiding justice of the Appellate Division for that department; one is chosen jointly by the leaders of one major political party in each house of the legislature; one member is selected jointly by the leaders of the other major political party in each house of the legislature; and the final member is chosen by the president of the New York State Bar Association. *Id.*
[45] *Id.*
[46] *Id.*
[47] BNA's DIRECTORY, *supra* note 25.
[48] N.Y. CONST. art. VI, § 8(a).
[49] N.Y. JUDICIARY LAW § 212(2)(a).
[50] BNA's DIRECTORY, *supra* note 25.

process that has been established for other courts in the state. The convention process begins with a primary election, in which voters elect delegates from each assembly district to a judicial district convention.[52] There are multiple assembly districts within each of the twelve judicial districts. The number of delegates that a political party within an assembly district may elect is determined by party rules.[53] The number of elected delegates from a political party, however, must be substantially proportional to the number of votes cast for the office of governor on the party line in the immediately preceding election.[54]

Next, at the convention the elected delegates nominate the Supreme Court candidates that will appear on the general ballot within each judicial district.[55] Finally, the nominated Supreme Court candidates run against each other in general elections. Supreme Court justices are elected for fourteen-year terms by voters in the judicial districts in which they are to serve. [56]

To be retained upon expiration of judicial office, justices must be re-elected by voters. When a vacancy occurs, otherwise than by expiration of term, the vacancy is filled for a full term at the next general election held more than three months after the vacancy occurs.[57] Until such vacancy is filled by a general election, the governor may appoint an interim Supreme Court justice with the advice and consent of the senate.[58] The governor's interim appointee is selected among the candidates approved by the governor's Department Judicial Screening Committee.[59]

(i) Acting Justices of the Supreme Court

The state constitution provides for the temporary assignment of justices or judges of other courts as acting Supreme Court justices to handle increases in caseloads.[60] The chief administrator of the courts may temporarily assign a justice of the Supreme Court to the Supreme Court in any judicial district or to the Court of Claims.[61] A justice of the Supreme Court in the city of New York may be temporarily assigned to the Family Court in New York City or to the Surrogate's Court in any county within the New York City.[62] In addition, the chief administrator may appoint judges from lower courts (such as the Court of Claims, County Court, Surrogate's Court, or Family Court) to serve as acting Supreme Court justices for the Supreme Court.[63]

---

[51] *Id.*
[52] N.Y. ELECTION LAW § 6-124.
[53] *Id.*
[54] *Id.*
[55] N.Y. ELECTION LAW § 6-106.
[56] N.Y. CONST. art. VI, § 6(c).
[57] N.Y. CONST. art. VI, § 21(a).
[58] *Id.*
[59] N.Y. Exec. Order No. 10 (Apr. 25, 1995), 9 NYCRR § 5.10 (2004).
[60] N.Y. CONST. art. VI, § 26.
[61] N.Y. CONST., art. VI § 26(a), (i); N.Y. JUDICIARY LAW § 212(2)(c).
[62] N.Y. CONST., art. VI § 26(a).
[63] N.Y. CONST., art. VI § 26(a)–(g).

E. Court of Claims

In the Court of Claims, there are twenty-two judges plus fifty sitting as acting Supreme Court justices in felony trials.[64] Judges are appointed by the governor for nine-year terms with the advice and consent of the senate.[65] A presiding justice of the Court of Claims is also appointed by the governor. The governor's appointees must be selected among the candidates approved by the State Judicial Screening Committee.[66]

Upon expiration of judicial office, a judge must resubmit its candidacy to the State Judicial Screening Committee to be considered for reappointment. If a vacancy occurs, otherwise than by expiration of term, the governor may fill the vacancy for the unexpired term subject to the confirmation of the senate.[67] Again, the governor's appointee must be selected among the candidates approved by the State Judicial Screening Committee.[68]

F. County Court Judges

County Court judges are selected in partisan elections. Unlike Supreme Court judges, however, candidates for County Court run in primary elections within each county.[69] At general elections, County Court judges are then elected for ten-year terms by voters in the counties they are to serve.[70]

Upon expiration of judicial office, County Court judges must be re-elected by voters to be retained. When a vacancy occurs, otherwise than by expiration of term, the vacancy is filled for a full term at the next general election held more than three months after the vacancy occurs.[71] Until such vacancy is filled by a general election, the governor may appoint an interim County Court judge with the advice and consent of the senate.[72] The governor's interim appointee must be selected among the candidates approved by the governor's County Judicial Screening Committee.[73]

---

[64] BNA's DIRECTORY, *supra* note 25.
[65] N.Y. CONST. art. VI, § 9.
[66] N.Y. Exec. Order No. 10 (Apr. 25, 1995), 9 NYCRR § 5.10 (2004). The State Judicial Screening Committee functions much like the Department Judicial Screening Committee. It consists of thirteen members: the counsel to the governor, the chairperson of each of the Department Judicial Screening Committees, and two of the other members from each of the Department Judicial Screening Committees. *Id.*
[67] N.Y. CONST. art. VI, § 21(c).
[68] N.Y. Exec. Order No. 10 (Apr. 25, 1995), 9 NYCRR § 5.10 (2004).
[69] Fund for Modern Courts, *Judicial Selection in the Courts of New York*, *at* http://www.moderncourts.org/js-ny.htm.
[70] N.Y. CONST. art. VI, § 10(b).
[71] N.Y. CONST. art. VI, § 21(a).
[72] *Id.*
[73] N.Y. Exec. Order No. 10 (Apr. 25, 1995), 9 NYCRR § 5.10 (2004). A County Judicial Screening Committee exists in each county of the state. Its functions are similar to those of the Department Judicial Screening Committees. Each county screening committee consists of the members of the governor's Department Judicial Screening Committee plus one additional person, who is selected by the chief executive officer of the county. *Id.*

Currently, there are 128 County Court judges.[74] In rural upstate counties in particular, these judges serve double or treble duty—fifty-six County Court judges also hold the office of Family Court judge or surrogate, or both.[75]

G. Surrogates

Currently, there are thirty surrogates that serve the Surrogate's Court.[76] Surrogates are also elected by voters in the counties they are to serve in partisan elections. Candidates for Surrogate's Court are first nominated within each county at primary elections.[77] In New York City, surrogates are elected by voters for fourteen-year terms, whereas surrogates elected in all other counties serve terms of only ten years.[78]

Upon expiration of judicial office, surrogates must be re-elected by voters to be retained. When a vacancy occurs, otherwise than by expiration of term, the vacancy is filled for a full term at the next general election held more than three months after the vacancy occurs.[79] Until such vacancy is filled by a general election, the governor may appoint an interim surrogate with the advice and consent of the senate.[80] The governor's interim appointee must be selected among the candidates approved by the County Judicial Screening Committee.[81]

H. Family Court Judges

There are currently 126 Family Court judges in the New York court system.[82] Family Court judges in counties outside of New York City run in partisan elections. Like County Court judges, Family Court candidates run in primary elections in each county outside of New York City.[83] Family Court judges are elected for a term of ten years by voters in the county they are to serve.[84]

Upon expiration of judicial office, Family Court judges must be re-elected by voters to be retained. When a vacancy occurs, otherwise than by expiration of term, the vacancy is filled for a full term at the next general election held more than three months after the vacancy occurs.[85] Until such vacancy is filled by a general election, the governor may appoint an interim Family Court judge with the advice and consent of the senate.[86] The governor's interim appointee is selected among the candidates approved by the County Judicial Screening Committee.[87]

---

[74] BNA's DIRECTORY, *supra* note 25.
[75] *Id.*
[76] *Id.*
[77] Fund for Modern Courts, *supra* note 69.
[78] N.Y. CONST. art. VI, § 12(c).
[79] N.Y. CONST. art. VI, § 21(a).
[80] *Id.*
[81] N.Y. Exec. Order No. 10 (Apr. 25, 1995), 9 NYCRR § 5.10 (2004).
[82] BNA's DIRECTORY, *supra* note 25.
[83] Fund for Modern Courts, *supra* note 69.
[84] N.Y. CONST. art. VI, § 13(a).
[85] N.Y. CONST. art. VI, § 21(a).
[86] *Id.*
[87] N.Y. Exec. Order No. 10 (Apr. 25, 1995), 9 NYCRR § 5.10 (2004).

The judicial selection procedure for Family Court judges in New York City differs. Family Court judges in New York City are appointed by the mayor for ten-year terms.[88] Mayors typically establish committees by executive order to screen their prospective appointees. According to a mayoral executive order, the mayor must choose among three candidates nominated by the Mayor's Advisory Committee on the Judiciary to fill each judicial office for Family Court in New York City.[89]

Upon expiration of judicial office, the mayor's advisory committee evaluates the qualifications of the incumbent judge for reappointment and presents its recommendation to the mayor.[90] If the mayor finds that the incumbent is not qualified for reappointment following receipt of the advisory committee's recommendation or if the incumbent judge is not deemed qualified by the advisory committee itself, the committee nominates three new candidates to the mayor.[91]

When a vacancy occurs, otherwise than by expiration of term, the mayor may fill such vacancy by appointment for the unexpired term.[92] The interim appointee must be selected from among the candidates nominated by the mayor's advisory committee.[93]

I. Judges of the Civil Court of the City of New York

There are 120 Civil Court judges in New York City.[94] They compete in partisan elections and are elected by voters for ten-year terms.[95]

Upon expiration of judicial office, Civil Court judges must be re-elected by voters to be retained. When a vacancy occurs, otherwise than by expiration of term, the vacancy is filled for a full term at the next general election held more than three months after the vacancy occurs.[96] Until such vacancy is filled by a general election, the mayor may appoint an interim Civil Court judge.[97] The appointed interim judge must be a nominee of the Mayor's Advisory Committee on the Judiciary.[98]

Judges in the housing part of the Civil Court are appointed for five-year terms by the state's chief administrative judge from among a list of candidates selected by the advisory

---

[88] N.Y. CONST. art. VI, § 13(a).
[89] City of New York Exec. Order No. 8 (Mar. 4, 2002). The Mayor's Advisory Committee on the Judiciary is composed of nineteen members, all of whom are appointed by the mayor. The mayor selects nine members at the mayor's own discretion; the chief judge of the Court of Appeals nominates four members for appointment; the presiding justices of the Appellate Division in the First and Second Departments each nominates two members for appointment; and two law school deans in New York City each nominate one more member. *Id.*
[90] *Id.*
[91] *Id.*
[92] N.Y. CONST. art. VI § 21(c).
[93] City of New York Exec. Order No. 8 (Mar. 4, 2002).
[94] BNA's DIRECTORY, *supra* note 25.
[95] N.Y. CONST. art. VI § 15(a).
[96] N.Y. CONST. art. VI, § 21(c).
[97] *Id.*
[98] City of New York Exec. Order No. 8 (Mar. 4, 2002); *see supra* note 89.

council for the housing part.[99] Considerations include a candidate's training, interest, experience, judicial temperament and knowledge of federal, state, and local housing laws and programs by the advisory council for the housing part.[100]

J. Judges of the Criminal Court of the City of New York

There are 107 Criminal Court judges in the City of New York.[101] Judges are appointed for ten-year terms by the mayor.[102] For each appointed judgeship, the mayor must choose among the three candidates nominated by the Mayor's Advisory Committee on the Judiciary.[103]

Upon expiration of judicial office, Criminal Court judges must be reconsidered and nominated by the mayor's advisory committee in order to be reappointed.[104] When a vacancy occurs, otherwise than by expiration of the term, the mayor shall fill such vacancy by appointment for the unexpired term.[105] Again, the appointed interim judge must be a nominee of the mayor's advisory committee.[106]

K. District Court Judges

Fifty-five judges currently serve on District Courts in Nassau and Suffolk Counties.[107] District Court judges run in partisan elections. They are first nominated at primary elections in the districts they are to serve. They are elected by voters for six-year terms.[108]

Upon expiration of judicial office, District Court judges must be re-elected by voters to be retained. When a vacancy occurs, other than by expiration of term, the vacancy is filled for a full term at the next general election held more than three months after the vacancy occurs.[109] Until such vacancy is filled by a general election, the board of supervisors or an elected county executive officer, subject to the confirmation of the board of supervisors, may appoint an interim District Court judge.[110]

L. City Court Judges

There are a total of 158 City Court judges in the sixty-one cities that have established City Courts.[111] The terms, method of selection, and method of filling vacancies vary and are

[99] N.Y. NEW YORK CITY CIV. CT. LAW § 110(9)(f); Office of Court Administration, New York State Unified Court System, *NYC Housing Court*, *at* http://www.nycourts.gov/courts/nyc/housing/judges.shtml.
[100] *Id.*
[101] BNA's DIRECTORY, *supra* note 25.
[102] N.Y. CONST. art. VI, § 15(a).
[103] City of New York Exec. Order No. 8 (Mar. 4, 2002); *see supra* note 89.
[104] *Id.*
[105] N.Y. CONST. art. VI § 21(c).
[106] City of New York Exec. Order No. 8 (Mar. 4, 2002).
[107] BNA's DIRECTORY, *supra* note 25.
[108] N.Y. CONST. art. VI, § 16(h).
[109] N.Y. CONST. art. VI, § 21(d).
[110] *Id.*
[111] BNA's DIRECTORY, *supra* note 25.

prescribed by the legislature.[112] Accordingly, City Court judges may be appointed if so prescribed.[113]

M. Town and Village Court Justices

The Town and Village Courts are currently served by 2,164 justices.[114] The terms, method of selection, and method of filling vacancies vary and are prescribed by the legislature.[115] Accordingly, Village Court justices may be appointed if so prescribed.[116] Justices of Town Courts, however, must run in partisan elections and are elected by voters for four-year terms in the town they are to serve.[117] Upon expiration of judicial office, Town Court justices must be re-elected by voters.

Unlike other judges in the New York court system, Town and Village Court justices are not required to be lawyers.[118] Non-lawyers must complete certain training and education, however.[119]

[112] N.Y. CONST. art. VI, § 17(d).
[113] *Id.*
[114] BNA's DIRECTORY, *supra* note 25.
[115] N.Y. CONST. art. VI, § 17(d).
[116] *Id.*
[117] N.Y. CONST. art. VI, § 17(d), N.Y. TOWN §24; N.Y. VILLAGE §3-302(3).
[118] N.Y. CONST. art. VI, § 20(b)(4), (c).
[119] N.Y. CONST. art. VI, § 20(c).

New York State Judicial Districts: Selected Issues and Statistics

Appendix G-2

1ST JUDICIAL DISTRICT

The 1st Judicial District is comprised of New York County, a borough of New York City. The District has a total of 1,010,007 registered voters. The Democratic Party is the dominant party in the District with 66% of registered voters. Of the minority parties, Republican membership is 12%, and membership in the Independence, Green, Working, Right to Life and Conservative Parties total 4% of the registered voting population.

With a Democratic Party majority in the 1st District, the two major parties generally cross endorse judicial candidates. Conservative and Liberal Parties tend to endorse the same candidate as well, making her a 'shoo-in' to win the election. For example, the 2002 election featured ten Supreme Court judgeships in the District and all ten candidates were cross endorsed by the Republican and Democratic parties. Editorial, *Ballot Box Is Already Stuffed,* Daily News (Nov. 3, 2002). It is widely believed that a Republican candidate in the 1st District could not win a seat on the Supreme Court due to the large Democratic majority. Josh Benson, *Republican Leader Has Inspiration: Run Real Judges*, New York Observer (Oct. 27, 2003).

There are reports that the selection of judges in the 1st District is steeped in political patronage. For instance, judges seeking election to the Supreme Court are reported to appoint politically connected evaluators and conservators to secure party support for their nomination. Wayne Barrett, *A Public Advocate Candidate Has a Patronage Problem, Mother Dearest & the Courthouse Cabal,* Village Voice (August 29—Sept, 4, 2001). A Manhattan Supreme Court Justice described her seven-year effort to win a seat on the court as involving politics with a capital "P", recounting the "endless rounds of political dinners and functions, and spending significant amounts of money on them." Daniel Wise, *Judges Agree That Politics Is Crucial on Road to Bench,* New York Law Journal (April 11, 2003).

Although the Democratic Party in New York County has established an independent screening panel to evaluate candidates for judicial office, the panel's findings are not always respected. In 2003, for example, an incumbent judicial candidate won re-election despite not being found qualified by the Party's screening panel. Colin Miner, *Unusual Fight Erupts Over Judge Selection*, New York Sun (May 1, 2003).

Lack of voter participation is also an issue in the 1st District. New York City in general has witnessed a dramatic decline in voter participation. J. P. Avlon, *The Quiet Crisis*, New York Sun (Oct. 28, 2003). New York County has followed the trend. For instance, according to statistics published by the Board of Elections in the City of New York, only 2,348 of 31,064 eligible voters cast a ballot in the 2003 primary for the 9th Civil Court District in New York County.

JUDICIAL ELECTIVE SEATS BY COURT*

District Wide Elective Seats

- Supreme Court – 38 Justices
- Surrogate's Court – 2
- Civil Court of the City of New York – 44

GEOGRAPHIC AREA
New York City

METROPOLITAN AREA(S)**
Manhattan

1st Judicial District	Republican Enrollment***	Democratic Enrollment	Total Voter Registration	Total Minor Party Registration	% Republican	% Democrat	Total Population****
New York County	120,618	671,016	1,010,007	38,772	12	66	1,537,195

2ND JUDICIAL DISTRICT

The 2nd Judicial District is comprised of two counties, Kings (Brooklyn) and Richmond (Staten Island), both of which are boroughs of New York City. The District has 1,524,303 registered voters and 66% are registered as Democrats. Of the minority parties, Republican membership is 14% of the registered voters, and membership in the Independence, Green, Working, Right to Life and Conservative Parties totals 4%.

Recently, several Supreme Court Justices in the 2nd District have come under strong criticism from the public and the press. Scandals involving a Supreme Court Justice's guilty plea to bribery charges, a Justice's removal from the bench for misuse of escrow funds, and charges brought against a Justice for accepting money and gifts from parties in divorce cases have been widely reported. Leslie Eaton, *Behind A Troubled Bench, An Arcane Way Of Picking Judges,* New York Times (June 30, 2003). Judicial selection in the District has also come under public scrutiny. In November 2003, the Brooklyn Democratic Party Chairman and Executive Director were indicted on attempted grand larceny charges. The indictment stemmed from the complaints of two Democratic judicial candidates who alleged that the Party threatened to withdraw its support unless they hired selected individuals to work on their campaigns. Andy Newman and Kevin Flynn, *2 Brooklyn Democrats Indicted in Judicial Corruption Case,* New York Times (Nov. 18, 2003).

Improper campaign conduct is a concern in the 2nd District. For instance, a New York City Civil Court Judge in Richmond County was censured in 2001 for making inflammatory and prejudicial remarks at an arraignment in a highly publicized case. The respondent Judge was a candidate for nomination to the Supreme Court at the time, which contributed to the appearance that he was using the judicial proceeding as a political forum. *Matter of Michael J. Brennan*, 2002 Annual Report of the New York State Commission on Judicial Conduct.

Various concerns over campaign finance and political party influence have emerged in the 2nd District. It is widely believed that political bosses demand large sums of money from judicial candidates in exchange for party backing of their campaigns. Jack Newfield and Colin Miner, *An Aide to Brooklyn Pol Is Cooperating in Probe*, New York Sun (June 19, 2004); *Bronx Judges Paid Consultant While Running Unchallenged*, New York Sun (July 21, 2003). In 2000, a Brooklyn Civil Court Judge allegedly refused to pay a demanded $140,000 to a prominent lawyer to run her re-election campaign. In her campaign literature, the Judge stated that she had been forced to engage in a heated primary because she "refused to be coerced or extorted by certain so-called political leaders." Peter Noel, *Civil Court's Maxine Archer Says Her Robe Is Not for Sale, $140,000 for a Judgeship?*, The Village Voice (Aug. 23-29, 2000). Although the practice of securing judicial elections in the 2nd District by paying large sums of money to political parties has been widely reported, it is a practice that is thought to exist throughout New York State. Douglas Montero, *Place an Order in the Court Anywhere in N.Y.,* New York Post (June 20, 2003).

The Brooklyn Democratic Party Chairman and the Party's screening panel have been at the center of the controversy over judicial candidate selection. Because of the overwhelming percentage of Democrats in the District, the Democratic slate has historically been elected to the bench. The Democratic Chairman is viewed by the public as having enormous influence over the names that are placed on that slate. Graham Rayman, *Politics And Brooklyn Bench*, Newsday, A3 (May 12, 2003); Tom Robbins, *For Judges, Its One Stop Shopping,* The Village

Voice (May 8, 2003); *Dem Delegates Tap 4 Judges Norman Beats Back Nomination of Hispanic Jurist*, Daily News (Sept. 20, 2002). With a large degree of perceived political involvement, the public has questioned judicial independence in the District as a whole. Joel Siegel and Michael Blood, *Norman's the King of the Courthouse,* Daily News (March 24, 2002).

Nominating conventions for candidates for Justice of the Supreme Court in the 2nd District are seen as a mechanism for party leaders to select Supreme Court justices. Nominating conventions are believed to rubber stamp party leader nominees and due to an overwhelming Democratic voter majority, a Democratic nomination ensures election. Clifford J. Levy, *Picking Judges: Party Machines, Rubber Stamps,* New York Times (July 20, 2003). There is a perception that the delegates of judicial nominating conventions are not independent from party leadership and consequently Supreme Court nominations are subject to factors other than qualifications for the office. Daniel Wise, *Probe Will Follow Funds Raised in Electing Judges: Brooklyn D.A. Seeks to Change Party Convention System,* New York Law Journal (April 30, 2003).

Because of the party dominance in the candidate selection process, there is a perception in the 2nd District that judges are expected to pay political patronage in order to secure party backing and ensure their re-election. Juan Gonzalez, *Running? He'll Be The Judge of That*, Daily News, (Feb. 27, 2002); Daniel Wise, *Bitter Contests in Brooklyn Dominates Civil Court Races*, New York Law Journal (Sept. 9, 2002). Media reports allege that Supreme Court Justices give lucrative guardianship appointments to politically connected individuals on judicial screening panels in order to secure party nomination and re-election. Kevin Flynn and Andy Newman, *Cozying Up to Judges, and Reaping Opportunity,* New York Times (Nov. 11, 2003).

JUDICIAL ELECTIVE SEATS BY COURT*

District-wide Elective Seats

- Supreme Court – 48

County-wide Elective Seats

- Kings County
  - Surrogate's Court – 1
  - Civil Court if the City of New York – 32
- Richmond County
  - Surrogate's Court – 1
  - Civil Court of the City of New York – 4

GEOGRAPHIC AREA

New York City

METROPOLITAN AREA(S)**

Brooklyn, Staten Island

2nd Judicial District	Republican Enrollment***	Democratic Enrollment	Total Voter Registration	Total Minor Party Registration	% Republican	% Democrat	Total Population****
Kings	128,887	891,154	1,271,743	45,850	10	70	2,465,326
Richmond	77,147	114,638	252,560	13,940	31	45	443,728
TOTAL	206,034	1,005,792	1,524,303	59,790	14	66	2,909,054

3rd JUDICIAL DISTRICT

The 3rd Judicial District is comprised of seven counties covering the Capital Region of New York State. The District has a total of 584,499 registered voters. The Democratic Party enjoys the largest amount of registered voters in the region with 36%. The Republican Party has 30% of registered voters, and the Independence, Green, Working, Right to Life and Conservative Parties combined account for 7%.

Inappropriate judicial campaign conduct and political activity have been concerns in the 3rd District. A Supreme Court Justice in the District made national news when he challenged the constitutionality of a five-count charge of judicial misconduct against him. Among other charges, the Justice was accused of paying a large fee to Democratic Party delegates to ensure that he would run unopposed. Michele Morgan Bolton, *Jurist Denied at Supreme Court; Albany Thomas Spargo Loses Petition in Free-speech Case*, The Times Union (June 8, 3004); John Caher, *Conduct Commission Probes New Charges Against Spargo,* New York Law Journal (Jan. 8, 2004); Robert J. McCarthy, *A New Look for Judicial Campaigns?,* The Buffalo News (March 10, 2003). Recently, the same Supreme Court Justice was accused of soliciting funds from attorneys appearing in his court to pay for a legal defense to the misconduct charges. John Caher, *Conduct Commission Probes New Charges Against Spargo,* New York Law Journal (Jan. 8, 2004).

In 2001, two justices in the 3rd District were admonished for engaging in prohibited campaign conduct and political activity. An Ulster County, Esopus Town Court Justice was admonished for misrepresenting her credentials in campaign literature and for indicating a pro-prosecution bias by advertising herself as a law and order candidate. *Matter of Elizabeth A. Shanle,* 2002 Annual Report of the New York State Commission on Judicial Conduct. A Part-time Justice of the Kinderhook Town Court and Valatie Village Court in Colombia County was admonished for engaging in prohibited political activity, including making unwarranted criticism of a local prosecutor's handling of a case. *Matter of Edward J. Williams*, 2002 Annual Report of the New York State Commission on Judicial Conduct.

There has been an expressed need in the 3rd District for monitoring and objective arbitration of judicial electoral disputes. For instance, in the 2003 campaign for Rensselaer County Judge, newspapers and local television became a forum for judicial candidates to battle over alleged ethical code violations. A candidate commented that while the New York State Commission on Judicial Conduct is the proper body to interpret the judicial ethical codes, by the time a full-scale investigation and ruling is rendered the election is long over. John Caher, *Rensselaer Race Shows Problems of Enforcing Code of Judicial Conduct*, New York Law Journal (October 20, 2003).

Reporters covering judicial races in the District have stressed the importance of making judicial campaign finance information easily accessible. It is felt that a hurdle to public understanding of judicial elections is a lack of clarity regarding campaign financing. Suggestions have been made for the creation of a searchable on-line campaign finance record database. *Commission to Promote Public Confidence in Judicial Elections: Public Hearing, Albany New York* (September 30, 2003) (statement of Rex Smith, at page 29; lines 3-5, 17-20).

Political party influence dominates judicial races in the 3rd District. A public perception exists that for eighty years the Democratic Party has had absolute control over judgeships in the City of Albany. John Caher, *Judge Candidate Defies Democratic Machine in Albany*, New York Law Journal (Sept. 24, 2002). District-wide, judicial candidate nominations are thought to be governed by political horse trading among county political leaders. Jim Franco, *Scramble for State Supreme Court*, Daily Freeman (March 29, 2004)**.** Judicial nominating conventions are perceived as prohibiting the people from having a direct voice in judicial elections because a candidate has no chance of winning without party support. James V. Franco, *Selection of Judges Challenged,* The Record (June 13, 2004). In some races, political parties cross endorse candidates, raising a concern that voters are left without a choice among candidates. Jim Franco, *Scramble for State Supreme Court*, Daily Freeman (March 29, 2004); *Cross-Support for Two Judicial Races More Likely*, Times Union (Sept. 21, 2001).

Lack of voter participation in judicial elections is also a concern in the District as pronounced voter apathy surrounds judicial elections. James V. Franco, *Selection of Judges Challenged,* The Record (June 13, 2004).

JUDICIAL ELECTIVE SEATS BY COURT*

District Wide Elective Seats

- Supreme Court – 15 Justices

County, Surrogate and Family Court Seats

- Albany
  - County Court – 2
  - Surrogate's Court – 1
  - Family Court – 3
  - City Court - 9
  - Town and Village Courts - 14
- Columbia[1]
  - County Court – 1
  - City Court - 2
  - Town and Village Courts - 22
- Greene
  - County Court – 2 (see note 1)
  - Town and Village Courts – 19
- Rensselaer
  - County Court – 1
  - Surrogate's Court – 1
  - Family Court – 2
  - City Court - 3
  - Town and Village Courts 17
- Schoharie
  - County Court – 1 (see note 1)
  - Town and Village Courts - 19
- Sullivan[2]
  - County Court - 2
  - Family Court – 1
  - Town and Village Courts – 20
- Ulster
  - County Court – 1
  - Surrogate's Court – 1
  - Family Court – 3
  - City Court - 2
  - Town and Village Courts - 22

GEOGRAPHIC AREA

Capital Region

METROPOLITAN AREA(S)**

Albany, Troy, Kingston

3rd Judicial District	Republican Enrollment***	Democratic Enrollment	Total Voter Registration	Total Minor Party Registration	% Republican	% Democrat	Total Population****
Albany	51,798	103,337	215,990	12,203	24	48	294,565
Columbia	14,677	11,371	42,593	4,015	34	27	63,094
Greene	13,934	6,892	31,359	2,341	44	22	48,195
Rensselaer	30,135	28,250	104,434	11,338	29	27	152,538
Schoharie	7,769	5,142	18,542	1,229	42	28	31,582
Sullivan	16,344	20,864	53,618	3,439	30	39	73,966
Ulster	35,441	35,314	117,963	8,754	30	30	177,749
TOTAL	170,098	211,170	584,499	43,319	29	36	841,689

[1] County Judge acts as Surrogate and Family Court Judge
[2] County Judge acts as Surrogate

4TH JUDICIAL DISTRICT

The 4th Judicial District is comprised of twelve counties spanning from Saratoga County to Clinton County in the Northern reaches of New York State. The District has a total of 559,576 registered voters. Republicans make up 44% of the registered voters and Democrats make up 29%. Membership in the Independence, Green, Working, Right to Life, and Conservative Parties totals 6%.

The Republican Party is the dominant political entity in the District. In several counties, registered Republicans outnumber Democrats by more than two to one. For instance, in Saratoga County, the county with the largest population, 67,709 registered Republicans compare to 32,075 registered Democrats. In only one county, Schenectady, do Democrats outnumber Republicans, and even there, the margin is only 3.5%.

Lack of diversity on the bench is a concern in the 4th Judicial District. Of the fourteen positions on the Supreme Court, not one woman sits on the bench in the District. The lack of women coincides with a perception that women do not receive a fair share of marital assets in divorce cases and female victims of domestic violence have a harder time establishing credibility in court than their abusers. John Milgrim, *Upstate Lags Behind in Equality on the Bench,* The Press-Republican (Aug. 1, 2002).

JUDICIAL ELECTIVE SEATS BY COURT*

District Wide Elective Seats

- Supreme Court – 13 Justices

County, Surrogate and Family Court Seats

- Clinton[3]
  - County Court - 2
  - Family Court – 1
  - City Court – 1
  - Town and Village Courts - 17
- Essex[4]
  - County Court – 1
  - Town and Village Courts - 19
- Franklin
  - County Court - 1 (see note 2)
  - Town and Village Courts - 22
- Fulton[5]
  - County Court- 2
  - Family Court – 1
  - City Court - 4
  - Town and Village Courts - 11
- Hamilton
  - County Court - 1 (see note 2)
  - Town and Village Courts – 10
- St. Lawrence
  - County Court - 1
  - Surrogate's Court - 1
  - Family Court – 1
  - City Court – 2
  - Town and Village Courts - 36
- Saratoga
  - County Court - 1
  - Surrogate's Court – 1
  - Family Court – 3
  - City Courts - 6
  - Town and Village Courts – 22
- Schenectady
  - County Court - 1
  - Surrogate's Court - 1
  - Family Court – 2
  - City Court - 3
  - Town and Village Courts – 5
  -

[3] One County Court Judge acts as Surrogate, the other as a Family Court Judge
[4] County Court Judge acts as Surrogate and Family Court Judge
[5] County Court Judge acts as Surrogate

- Montgomery
  - County Court - 1
  - Surrogate's Court - 1
  - Family Court – 1
  - City Court - 2
  - Town and Village Courts - 11
- Warren
  - County Court – 1 (see note 3)
  - Family Court – 1
  - Town and Village Courts – 11
- Washington
  - County Court – 2 (see note 3)
  - Town and Village Courts - 23

GEOGRAPHIC AREA
Northern New York State

METROPOLITAN AREA(S)**
Plattsburgh, Schenectady, Saratoga Springs

4th Judicial District	Republican Enrollment***	Democratic Enrollment	Total Voter Registration	Total Minor Party Registration	% Republican	% Democrat	Total Population****
Clinton	16,653	15,692	44,796	3,119	37	35	79,894
Essex	14,577	6,636	27,709	1,750	53	24	38,851
Franklin	11,577	10,302	28,544	1,939	41	36	51,134
Fulton	18,253	7,401	31,752	1,703	57	23	55,073
Hamilton	3,579	1,057	5,396	216	66	20	5,379
Mongtomery	12,641	11,868	32,478	2,235	39	37	49,708
St. Lawrence	26,296	24,156	66,927	4,123	39	36	111,931
Saratoga	67,709	32,075	140,997	8,345	48	23	200,635
Schenectady	33,305	35,827	99,376	7,342	33	36	146,555
Warren	23,778	10,062	44,799	2,765	53	22	63,303
Washington	17,964	8,688	36,802	2,471	49	24	61,042
TOTAL	246,332	163,764	559,576	36,008	44	29	863,505

5TH JUDICIAL DISTRICT

The 5th Judicial District is comprised of six counties covering the central corridor of New York State. The District has 559,810 registered voters. Republican Party membership makes up 48% of the registered voters, making it the dominant political party. Democratic Party membership totals 36%, and membership in the Independence, Green, Working, Right to Life and Conservative Parties totals 8%.

Concerns over judicial campaign conduct have emerged in the 5th District. For instance, in 2000, an Oswego County Court Judge was admonished for engaging in improper political activity in the course of his judicial campaign. During his campaign for County Court, the Judge made an "unseemly" and "mean-spirited attack" on his opponent (the incumbent) for dismissing charges in specific cases that were described in sensational terms. The respondent Judge's comments conveyed the impression that he would treat defendants more harshly than the incumbent because he was, "tired of seeing career criminals get a 'slap' on the wrist." *Matter of Walter W. Hafner, Jr.*, 2001 Annual Report of the New York State Commission on Judicial Conduct.

Judicial Campaign financing has sparked public concern in the 5th District. With chief contributions to judicial candidates coming from lawyers and firms, the public questions judicial independence when campaign contributors come before the bench. *Politics Rule Judgeships Upstate, Too*, New York Times (Nov. 17, 2003).

With an overwhelming District-wide majority of Republicans on the Supreme Court, there is a perception that judgeships are doled out as rewards for political service. Leslie Eaton, *Party Politics Hold Sway in Choice of Judges Upstate, Too*, New York Times (Nov. 17, 2003); Jim O'Hara, *If a Judge Asks a Question in Court, How do You Answer it?*, Syracuse Post Standard (July 25, 2003). As a minority, Democrats tend to have a difficult time winning positions on the Supreme Court. Jim O'Hara, *GOP Ahead In Supreme Court Race*, Syracuse Post-Standard, (Nov. 6, 2002). Cross-endorsements for the Supreme Court are rare in the District due to a failed cross-endorsement deal in the 1989 campaign. Since the soured deal, there has been little interest in cross-endorsement deals. Tim O'Hara, *One State Supreme Court Incumbent to Run, One to Walk*, Syracuse Post-Standard, (April 18, 2003).

JUDICIAL ELECTIVE SEATS BY COURT*

District Wide Elective Seats

- Supreme Court – 17 Justices

County, Surrogate and Family Court Seats

- Herkimer[6]
  - County Court - 1
  - Family Court – 1
  - City Court - 2
  - Town and Village Courts - 27
- Jefferson
  - County Court – 1
  - Surrogate's Court - 1
  - Family Court – 1
  - City Court - 2
  - Town and Village Courts - 32
- Lewis[7]
  - County Court – 1
  - Town and Village Courts - 18
  -
- Oneida
  - County Court - 2
  - Surrogate's Court - 1
  - Family Court – 3
  - City Court - 6
  - Town and Village Courts - 34
- Onondaga
  - County Court - 3
  - Surrogate's Court - 1
  - Family Court – 5
  - City Court - 10
  - Town and Village Courts - 28
- Oswego
  - County Court - 2
  - Surrogate's Court - 1
  - Family Court – 1
  - City Court - 4
  - Town and Village Courts - 25

GEOGRAPHIC AREA

Central New York State

METROPOLITAN AREA(S)**

Syracuse, Oswego, Utica, Watertown

5th Judicial District	Republican Enrollment***	Democratic Enrollment	Total Voter Registration	Total Minor Party Registration	% Republican	% Democrat	Total Population****
Herkimer	22,641	11,991	44,168	2,741	51	27	64,427
Jefferson	29,046	18,652	64,954	4,364	45	29	111,738
Lewis	9,696	4,615	17,590	917	55	26	26,944
Oneida	56,520	48,658	138,551	8,363	41	35	235,469
Onondaga	105,371	94,850	294,547	19,731	36	32	458,336
Oswego	43,299	21,033	88,451	6,528	49	24	122,377
TOTAL	266,573	199,799	559,810	42,644	48	36	1,019,291

[6] County Judge acts as Surrogate
[7] County Judge acts as Surrogate and Family Court Judge

6th JUDICIAL DISTRICT

The 6th Judicial District is comprised of ten counties covering the Southern tier of New York, bordering Pennsylvania. The District has a total of 469,585 registered voters. Membership in the Republican Party is 42% and Democratic Party membership comprises 32% of the total registered voters. The Independence, Green, Working, Right to Life, and Conservative Parties account for 7%.

Various campaign conduct concerns have arisen in the 6th District. For instance, in 1999, a Madison County Supreme Court Justice was admonished for making inappropriate public comments on a pending case after an appellate court reversed and remanded the matter to him, in part because he was concerned that he would "look bad" at a time he was running for judicial office. *Matter of William F. O'Brien*, 2000 Annual Report of the New York State Commission on Judicial Conduct. In the 2003 election for Enfield Town Judge, flyers were sent to residents claiming that the incumbent judge was under investigation for misconduct when in fact she was not. Jarrett McLaughlin, *State Denies Enfield Judge Probe*, Ithaca Journal (Nov. 19, 2003).

As the dominant party, Republicans hold the bulk of the elected offices District-wide, including judgeships. The only exception is Tompkins County, where the Democrats have a 12% majority over the Republicans. Brad Heath, *Light Turnout Expected Tuesday*, Press & Sun-Bulletin (Nov. 4, 2001).

Lack of voter participation in judicial elections is a concern in the 6th District, especially in 'off-year' with no presidential or gubernatorial race to drive voters to the polls. Brad Heath, *Light Turnout Expected Tuesday*, Press & Sun-Bulletin (Nov. 4, 2001).

JUDICIAL ELECTIVE SEATS BY COURT*

District Wide Elective Seats

- Supreme Court (district wide) – 10 Justices

County Elective Seats

- Broome
  - County Court - 2
  - Surrogate's Court - 1
  - Family Court – 3
  - City Court - 4
  - Town and Village Courts - 19
- Chemung[8]
  - County Court - 2
  - Family Court – 1
  - City Court - 2
  - Town and Village Courts - 13
- Chenango[9]
  - County Court – 1
  - City Court - 2
  - Town and Village Courts – 28
- Cortland
  - County Court – 2 (see note 2)
  - City Court - 2
  - Town and Village Courts - 17
- Delaware
  - County Court - 1 (see note 2)
  - Town and Village Courts - 24
- Madison
  - County Court - 2 (see note 2)
  - City Court - 1
  - Town and Village Courts - 20
- Otsego
  - County Court - 2 (see note 2)
  - City Court - 2
  - Town and Village Courts - 29
- Schuyler
  - County Court – 1 (see note 2)
  - Town and Village Courts - 11
- Tioga
  - County Court - 1 (see note 2)
  - Town and Village Courts - 13
- Tompkins
  - County Court – 2 (see note 2)
  - City Court - 2
  - Town and Village Courts - 12

GEOGRAPHIC AREA

Southern Tier

METROPOLITAN AREA(S)**

Binghamton, Elmira, Cortland, Ithaca

6th Judicial District	Republican Enrollment***	Democratic Enrollment	Total Voter Registration	Total Minor Party Registration	% Republican	% Democrat	Total Population****
Broome	53,233	45,684	129,402	7,451	40	35	200,536
Chemung	25,073	17,682	56,788	3,756	44	31	91,070
Chenango	15,161	7,932	31,616	2,298	48	25	51,401
Cortland	12,389	9,337	31,060	2,168	40	30	48,599
Delaware	15,354	8,234	31,223	2,029	49	26	48,055
Madison	20,122	11,742	45,021	3,421	45	26	69,441
Otsego	15,524	10,577	35,831	2,381	43	30	61,676
Schuyler	5,584	3,643	12,909	977	43	28	19,224
Tioga	17,249	9,214	35,006	2,239	49	26	51,784
Tompkins	17,739	24,938	60,729	4,108	29	41	96,501
TOTAL	197,428	148,983	469,585	30,828	42	32	738,287

[8] County Judge acts as Surrogate
[9] County Judge acts as Surrogate and Family Court Judge

7TH JUDICIAL DISTRICT

The 7th Judicial District is comprised of eight counties covering the Finger Lakes region of Western New York. The District has a total of 741,449 registered voters. Republican membership is 40% of registered voters, making it the dominant party in the District. Membership in the Democratic Party totals 32% of registered voters, and membership in the Independence, Green, Working, Right to Life and Conservative Parties combined accounts for 6%.

Slanderous campaign advertising is an increasing concern in the 7th District. Gary Craig, *Monroe Voters Oust Judge Bristol*, Democrat and Chronicle (Nov. 8, 2000). The 2000 election for Monroe County Court Judge marked a significant increase in the amount of slurring advertising. An example of such advertising was television ads highlighting allegations of sexual misconduct of the incumbent candidate. Gary Craig, *Bar Receives No Election Ad Complaints*, Democrat and Chronicle (Nov. 5, 2000). Concern over the tone of judicial campaigns in the 7th District has increased recently, and after two federal court decisions challenging restrictions on judicial campaign conduct and political activity, concern about the risk to judicial independence has also risen. John Caher, *Former State Bar President Warns of Risks to Judicial Independence in Recent Cases,* New York Law Journal (June 9, 2003).

Although local bar associations conduct independent screening of judicial candidates, local political leaders have snubbed the process. The Monroe County Republican County Chairman reportedly vowed to prohibit Republican judicial candidates from participating in the Monroe County Bar Association's screening process, referring to the Committee as a 'panel of goofballs.' Joseph Spector, *Ex-judge Disputes Bar Rating,* Democrat and Chronicle (April 29, 2004).

JUDICIAL ELECTIVE SEATS BY COURT*

District Wide Elective Seats

- Supreme Court – 18 Justices

County, Surrogate and Family Court Seats

- Cayuga[10]
  - County Court - 1
  - Surrogate's Court - 1
  - City Court - 2
  - Town and Village Courts - 28
- Livingston[11]
  - County Court- 2
  - Town and Village Courts - 23
- Monroe
  - County Court - 6
  - Surrogate's Court – 1
  - Family Court – 6
  - City Court - 9
  - Town and Village Courts - 22
  -
- Ontario
  - County Court – 2 (see note 1)
  - Surrogate's Court – 1
  - City Court - 5
  - Town and Village Courts - 18
- Seneca
  - County Court - 1 (see note 2)
  - Town and Village Courts - 12
- Steuben
  - County Court - 2 (see note 1)
  - Surrogate's Court – 1
  - City Court - 4
  - Town and Village Courts - 39
- Wayne
  - County Court – 3 (see note 2)
  - Town and Village Courts - 22
- Yates
  - County Court – 1 (see note 2)
  - Town and Village Courts - 12

GEOGRAPHIC AREA

Western New York, Finger Lakes Region

METROPOLITAN AREA(S)**

Rochester, Auburn

7th Judicial District	Republican Enrollment***	Democratic Enrollment	Total Voter Registration	Total Minor Party Registration	% Republican	% Democrat	Total Population****
Cayuga	20,549	17,013	51,539	4,207	40	33	81,963
Livingston	18,568	10,660	40,176	2,873	46	27	64,328
Monroe	150,453	152,856	428,615	24,713	35	36	735,343
Ontario	29,506	19,763	69,124	4,680	43	29	100,224
Seneca	8,897	6,486	20,581	1,482	43	32	33,342
Steuban	32,009	14,766	58,592	3,555	55	25	98,726
Wayne	25,599	14,080	57,691	4,490	44	24	93,765
Yates	8,100	3,676	15,131	984	54	24	24,621
TOTAL	293,681	239,300	741,449	46,984	40	32	1,232,312

[10] County Judge acts as Family Court Judge
[11] County Judge acts as Surrogate and Family Court Judge

8TH JUDICIAL DISTRICT

The 8th Judicial District is comprised of eight counties covering the western-most section of New York State. The Democratic Party accounts for 44% of the District's 1,066,291 registered voters, making it the dominant party and Republican membership is 33%. However, the Republican Party is dominant in several counties, including Allegany, Cattaraugus, Genesee, Orleans, and Wyoming County. Membership in the Independence, Green, Working, Right to Life, and Conservative Parties totals 7% of the District's registered voters.

Campaign conduct has been a concern in the 8th District. For instance, a Niagara County Lockport City Court Judge was removed for making improper statements during his campaign that conveyed the appearance of pro-prosecutorial bias, blamed the incumbent for an increase in crime, and used misleading arrest statistics. In the same year, a part-time Byron Town Court Justice in Genesee County was censured for making statements endorsing another candidate for judicial office. *Matter of William Watson*, and *Matter of Robert A. Crnkovich*, 2003 Annual Report of the New York State Commission on Judicial Conduct.

Judicial elections in the 8th District are notable for the large amounts of money that are spent on the campaigns, some of the most expensive in the state. Candidates spend twice the state average on their campaigns. Robert McCarthy and Michael Beebe, *Courting Big Money,* The Buffalo News (July 14, 2002); Editorial, *Politicizing Justice*, The Buffalo News (July 18, 2003). Lawyers and firms finance a large part of judicial campaigns in the District. Attorneys attend political fundraisers that cost up to $500 a ticket. While such contributions may not affect the judge on the bench, they reportedly raise a public concern of improper influence in judicial decisions. Michael Beebe and Robert J. McCarthy, *For Lawyers and Big Firms, Big Ticket Pressure*, The Buffalo News (July 14, 2003).

Campaign finance disclosure has been an issue in the 8th District. While computerized databases of campaign contributions to Supreme Court candidates serve as an integral part of examining how judges are elected, Robert J. McCarthy, *Party Leaders Back Reform in Electing State Judges,* The Buffalo News (Sept. 24, 2004), contributions to candidates for local level courts are still filed on paper and difficult for the public to access. *Commission to Promote Public Confidence in Judicial Elections: Public Hearings, Buffalo New York,* September 23, 2003, (statement of Steven Bell, at page 93-94; lines 5-6).

The media has repeatedly raised concerns over money flowing from judicial candidates to political parties in various forms. For instance, judicial candidates awaiting political party endorsements are strongly encouraged to attend party functions costing as much as $5,000 per ticket. Robert McCarthy and Michael Beebe, *Paying to Run*, The Buffalo News (July 16, 2002); Robert McCarthy and Michael Beebe, *Courting Big Money*, The Buffalo News (July 14, 2002). And both the Democratic and Republican Party leadership have required judicial candidates to pay as much as $7,500 for judicial nominating convention expenses. Robert McCarthy and Michael Beebe, *Courting Big Money,* The Buffalo News (July 14, 2002); Editorial, *Politicizing Justice*, The Buffalo News (July 18, 2003).

Cross-endorsements are common in the 8th District. Eleven times since 1994, in the Supreme Court alone, the Republican and Democratic parties have cross-endorsed candidates. Despite winning endorsement by both major parties, many of these candidates continued to raise campaign funds. Robert McCarthy and Michael Beebe, *Courting Big Money*, The Buffalo News

(July 14, 2002); Robert J. McCarthy, *Judicial Selection Is Under Scrutiny*, The Buffalo News (Sept. 14, 2003).

JUDICIAL ELECTIVE SEATS BY COURT*

District Wide Elective Seats

- Supreme Court – 26 Justices

County, Surrogate and Family Court Seats

- Allegany[12]
  - County Court - 2
  - Town and Village Courts - 35
- Cattaraugus
  - County Court - 2 (see note 1)
  - City Court - 4
  - Town and Village Courts - 36
- Chautauqua
  - County Court - 1
  - Surrogate's Court - 1
  - Family Court – 1
  - City Court - 4
  - Town and Village Courts - 31
- Erie
  - County Court - 5
  - Surrogate's Court - 1
  - Family Court – 6
  - City Court – 17
  - Town and Village Courts - 36
- Genesee[13]
  - County Court – 1
  - Family Court – 1
  - City Court - 2
  - Town and Village Courts - 16
- Niagara
  - County Court – 2 (see note 2)
  - Family Court – 2
  - City Court - 5
  - Town and Village Courts - 13
- Orleans
  - County Court - 1 (see note 1)
  - Town and Village Courts - 12
- Wyoming
  - County Court – 2 (see note 1)
  - Town and Village Courts - 21

GEOGRAPHIC AREA

Western New York

METROPOLITAN AREA(S)**

Buffalo, Niagara Falls

8th Judicial District	Republican Enrollment***	Democratic Enrollment	Total Voter Registration	Total Minor Party Registration	% Republican	% Democrat	Total Population****
Allegany	15,174	7,185	28,327	1,632	54	25	49,927
Cattaraugus	22,034	19,246	54,780	3,855	40	35	83,955
Chautauqua	33,711	33,819	95,328	6,973	35	35	139,750
Erie	183,479	319,548	643,266	41,550	29	50	950,265
Genesee	17,120	10,600	38,383	2,947	45	28	60,370
Niagara	53,911	64,537	153,927	10,214	35	42	219,846
Orleans	12,392	6,387	25,758	1,631	48	25	44,171
Wyoming	12,624	7,008	26,522	1,752	48	26	43,424
TOTAL	350,445	468,330	1,066,291	70,554	33	44	1,591,708

[12] County Judge acts as Surrogate and Family Court Judge
[13] Count Judge acts as Surrogate

9TH JUDICIAL DISTRICT

The 9th Judicial District is comprised of five counties covering the Mid-Hudson Valley Region. The District has a total of 1,168,510 registered voters. Democratic membership constitutes 38%, making it the dominant party. Republican membership is 32% of the registered voters, and membership in the Independence, Green, Working, Right to Life and Conservative Parties totals 6%.

Judicial campaign conduct has been a concern in the 9th District where judicial races have become increasingly competitive. For example, a Westchester County Court Judge was admonished for sacrificing the appearance of impartiality in a 1999 re-election campaign by taking a position on a controversial issue of law that might come before the court. *Matter of John R. LaCava*, 2000 Annual Report of the New York State Commission on Judicial Conduct. The 2000 race for the Supreme Court was awash with controversy and described as a departure from the 'usually sedate affairs' that characterize judicial elections. Jorge Fitz-Gibbon, *Politics Liven Up Normally Civil Judicial Campaign,* Westchester Journal News (Oct. 2, 2000).

Campaign finance concerns have arisen in the 9th District. For instance, in the 2000 Westchester Surrogate Court race, candidates raised over $550,000, including donations from law firms that would be appearing before them. Several attorneys who had received appointments from the Westchester Surrogate Court Judge donated money to his re-election campaign. Daniel Wise, *Candidates For Westchester Surrogate Raise $554,000*, New York Law Journal (Nov. 3, 2000); *Donors Filled War Chests In Hard-Fought Election For Westchester Surrogate,* New York Law Journal (Nov. 3, 2000).

The media reports a perception that political party leaders control the selection of Supreme Court candidates in the 9th District. The party chairs are believed to select candidates long before the nominating convention convenes and that delegates 'rubber stamp' the selected candidate. Editorial, *Remove Politics From the System That Nominates State Justices,* The Journal News (Sept. 26, 1999).

JUDICIAL ELECTIVE SEATS BY COURT*

District Wide Elective Seats

- Supreme Court – 24 Justices

County, Surrogate and Family Court Seats

- Dutchess
  - County Court - 2
  - Surrogate's Court - 1
  - Family Court – 3
  - City Court - 4
  - Town and Village Courts - 27
- Orange
  - County Court – 3
  - Surrogate's Court – 1
  - Family Court – 3
  - City Court - 6
  - Town and Village Courts – 34
- Putnam[14]
  - County Court – 2
  - Town and Village Courts - 9
- Rockland
  - County Court - 3
  - Surrogate's Court – 1
  - Family Court – 2
  - Town and Village Courts - 20
- Westchester
  - County Court - 8
  - Surrogate's Court – 1
  - Family Court – 6
  - City Court - 21
  - Town and Village Courts - 37

GEOGRAPHIC AREA

Mid-Hudson Valley

METROPOLITAN AREA(S)**

Poughkeepsie, Newburgh, White Plains, Yonkers

9th Judicial District	Republican Enrollment***	Democratic Enrollment	Total Voter Registration	Total Minor Party Registration	% Republican	% Democrat	Total Population****
Dutchess	56,521	48,308	162,969	11,734	35	30	280,150
Orange	79,411	65,483	202,482	13,105	39	32	341,367
Putnam	22,963	16,843	62,398	5,801	37	27	95,745
Rockland	44,215	78,516	174,297	10,095	25	45	286,753
Westchester	162,742	236,289	566,364	32,878	29	42	923,459
TOTAL	365,852	445,439	1,168,510	73,613	32	38	1,927,474

[14] County Judge acts as Surrogate and Family Court Judge

10TH JUDICIAL DISTRICT

The 10th Judicial District is comprised of Nassau and Suffolk County, covering Long Island. The District has a total of 1,771,088 registered voters. Republican membership constitutes 40% of registered voters, making it the dominant party, and the Democratic Party has 32%. The Independence, Green, Working, Right to Life, and Conservative Parties make up 5% of registered voters.

Improper judicial campaign conduct and political activity have been concerns in the 10th District. For example, in February 2003, a Nassau County Supreme Court Justice was censured for making intimidating statements to an attorney suggesting the use of judicial power as retaliation and for engaging in prohibited political activity. Jill Miller, *Political Contributions and Activities Lead to Censure*, The Daily Record (March 28, 2003); *Matter of Ira J. Raab,* 2004 Annual Report of the New York State Commission on Judicial Conduct. Another judicial candidate, for the Suffolk County District Court, was admonished for engaging in improper political activity in the course of his 2000 campaign. The improper activity included conveying the mistaken impression that he was an incumbent judge of that court, publishing campaign literature that appeared to commit him on controversial issues that come before the court, and making a prohibited contribution to a political party. *Matter of John N. Mullin*, 2001 Annual Report of the New York State Commission on Judicial Conduct.

The Republican Party had historically controlled the bench in the 10th District, but in the past three years, more Democrats have been elected to the bench. As a result, races have become much more competitive and costly. The competition has also led to well-financed, aggressive campaigning to establish political party dominance in the District's judicial positions. Robin Topping, *Nassau Judicial Races Heat Up*, Newsday (Oct. 20, 2002).

Financing of judicial campaigns also has been a concern in the 10th District. Recently, party leadership in the 10th District required judicial incumbents contribute $50,000 to the Party to finance campaigns. According to some sources, the demand fosters the impression that political connections and fundraising ability are more important than judicial talent. *Party Favors; Asking Nominees, Including Judges, to Give Huge Sums to the GOP Raises Troubling Issues*, Newsday (Aug. 1, 2003).

JUDICIAL ELECTIVE SEATS BY COURT*

District Wide Elective Seats

- Supreme Court – 45

District, County, Surrogate and Family Court Seats

- Nassau
  - District Court - 25
  - County Court - 14
  - Surrogate's Court – 1
  - Family Court – 8
  - Town and Village Courts - 57
- Suffolk
  - District Court - 23
  - County Court - 11
  - Surrogate's Court – 1
  - Family Court – 9
  - Town and Village Courts - 30

GEOGRAPHIC AREA

Long Island

METROPOLITAN AREA(S)**

Hempstead, Plainview, Islip, Brookhaven, Huntington

10th Judicial District	Republican Enrollment***	Democratic Enrollment	Total Voter Registration	Total Minor Party Registration	% Republican	% Democrat	Total Population****
Nassau	369,193	304,826	896,901	35,617	41	34	1,334,544
Suffolk	336,099	254,496	874,187	57,981	38	29	1,419,369
TOTAL	705,292	559,322	1,771,088	93,598	40	32	2,753,913

11TH JUDICIAL DISTRICT

The 11th Judicial District is comprised of Queens County, a borough of New York City. Democratic membership constitutes 63% of the District's 1,038,926 registered voters and Republican membership is at 15%. The Independence, Green, Working, Right to Life, and Conservative Party membership totals 4% of the registered voters.

The Democratic Party is the dominant political party in 11th District. A perception exists that the Chair of the Queens Democratic Party has great influence over who becomes a judicial candidates. Editorial, *School for Scandal*, Daily News (Dec. 15, 2002); *Queens Under King Manton's Thumb*, Daily News (July 7, 2003); Editorial, *King Manton Feasts on Queens Dead*, Daily News (July 28, 2003). The local Democratic clubs have considerable influence over the nomination process in District, and a nomination is seen as tantamount to election. Likewise, there is little opposition within the Party itself, evidenced by the 2002 race for one county court and two district court seats that were all uncontested primaries. Daniel Wise, *Bitter Contest in Brooklyn Dominates Civil Court Races, Uncontested Countywide Races in Bronx, Queens, Manhattan,* New York Law Journal (Sept. 9, 2002); Editorial, *King Manton Feasts on Queens Dead*, Daily News (July 28, 2003).

There is a perception in the District that the political party domination of the nominating system for Supreme Court leads to candidates chosen for their political activity rather than qualifications to serve. In return for party support, judges are expected to engage in party patronage with respect to court positions and appointments. Douglas Feiden, *Trial and Error in Queens Courts; Some Judges Make a Travesty of Justice*, Daily News (July 7, 2003). The party power was reflected in a recent New York Times analysis that showed 40% of the money raised by the Queens County Democratic Party is from courthouse donors. It has lead to a perception that judicial selection in the District is a stronghold of political patronage. Clifford J. Levy, *Where Parties Select Judges, Donor List Is a Court Roll Call,* New York Times (August 18, 2003).

JUDICIAL ELECTIVE SEATS BY COURT*

District Wide Elective Seats

- Supreme Court – 37
- Surrogate's Court – 1
- Civil Court of the City of New York - 15

GEOGRAPHIC AREA

New York City

METROPOLITAN AREA(S)**

Queens

11th Judicial District	Republican Enrollment***	Democratic Enrollment	Total Voter Registration	Total Minor Party Registration	% Republican	% Democrat	Total Population****
Queens	156,263	652,347	1,038,926	40,096	15	63	2,229,379

12TH JUDICIAL DISTRICT

The 12th Judicial District is comprised of Bronx County, a borough of New York City. The District has 663,867 total registered voters, 74% of which are registered with the Democratic Party. The Republican Party has 8% of the registered voting population, and the Independence, Green, Working, Right to Life and Conservative Party membership constitutes 4%.

The Democratic Party dominates judicial elections in the Bronx, and a Democratic Party endorsement virtually guarantees election. In many cases, the other political parties do not even run candidates, but simply cross-endorse the Democratic candidates. For example, in the 2002 election, all four Democratic judicial candidates were cross-endorsed by the Republican and Liberal Parties. Editorial, *NY's Unnatural Selection*, Daily News (Oct. 2, 2002). The party dominance focuses power in the hands of local political leaders, and there is a perception that in return for the party support, judges give an inordinate amount of fiduciary appointments to politically connected individuals. Leslie Eaton, *In the Hands of a Troubled System,* New York Times (March 29, 2004).

The political party control of judicial elections has also raised a concern that candidates are chosen less on their abilities as jurists and more for their party activity. For instance, in 2000, the Bronx County Democrats supported a successful judicial candidate for the Civil Court despite the candidate having been found not approved by the City Bar Association. Ten weeks into his term, the judge was forced to step down and surrender his license to practice law in response to bribery charges. The charges involved a bribery-kickback scheme involving government contracts that took place before the Judge's election to the Bronx Civil Court. Editorial, *Bench Stench Spreads to Bronx,* Daily News (March 17, 2002); Bob Kappstatter, *No Comment From Pol on Bribe Probe,* Daily News (March 14, 2002).

JUDICIAL ELECTIVE SEATS BY COURT*

District Wide Elective Seats

- Supreme Court – 23 Justices
- Surrogate's Court – 1
- Civil Court of the City of New York - 13

GEOGRAPHIC AREA

New York City

METROPOLITAN AREA(S)**

Bronx

12th Judicial District	Republican Enrollment***	Democratic Enrollment	Total Voter Registration	Total Minor Party Registration	% Republican	% Democrat	Total Population****
Bronx	53,545	490,259	663,867	25,020	8	74	1,332,650

* Information on state and county-wide judicial seats was compiled from Miscellaneous Reports, New York, volume 193, 2nd Series (2003); information on town and village court seats was compiled from the New York State Unified Court System website found at http://www.courts.state.ny.us/townvillindex.html.

** Information gathered from Empire State Development found at http://www.nylovesbiz.com/Regions_and_Counties/default.asp

*** Voter enrollment figures as per November 2002 Election data found at http://www.elections.state.ny.us.

**** Population figures as per 2000 U.S. Census Bureau found at http://quickfacts.census.gov/qfd/states/36000.html.

WORKING PAPER ON JUDICIAL CAMPAIGN FINANCE EXPENDITURES

Appendix G-3

Running for judge in certain judicial districts in New York State can be an expensive undertaking. Campaign expenditures can reach nearly $500,000 in one race. From 1999 to 2001, the highest amount of money raised by a candidate for Supreme Court was $223,182 and the 10th highest amount was $154,313.[1]

Candidates for judicial seats are prohibited by law from personally soliciting or accepting campaign funds and they may instead establish committees to raise money for them.[2] The judicial candidate's committee may expend money on behalf of the candidate through media advertisements, brochures, mailings and candidate forums and other means not prohibited by law.[3] Money raised and spent by, or on behalf of,[4] a judicial candidate is disclosed in regular reporting statements filed with New York State Board of Elections, or local county boards of elections, depending on the judicial seat sought.

This report examines the role of money in judicial elections in New York State, especially the public perception of that role. Research for this report consisted of examining official election returns, sampling financial disclosure statements filed principally with the New York State Board of Elections, and also with local boards, and surveying studies and media reports about judicial campaign finance, covering approximately the past five years.

The financial disclosure reports for each listed Supreme Court race available online were examined to identify whether the record supported the concerns reported by the media. In general, it was found that the media fairly and accurately reported the facts relating to judicial campaign expenditures. With respect to the remaining judicial races, information about which was less accessible, it was presumed that the public would perceive the media reports as factually accurate and drew conclusions based on those public perceptions.

Discussed below are two particular judicial campaign finance issues whose solutions may be achieved through modification of court administrative rules. These issues involve (1) candidates who channel donations from lawyers to political parties or their chosen candidates and (2) candidates who are forced to have party operatives as "consultants" or are billed for party consulting services they never receive.

---

[1] Michael Beebe & Robert J. McCarthy, Courting Big Money, Buffalo News, July 14, 2002; Daniel Wise, Candidates for Westchester Surrogate Raise $554,000, N.Y.L.J., Nov. 3, 2000. In one Fall 2003 Erie County Surrogate race, one candidate spent approximately $306,885 and another candidate spent $95,215 (based on New York State Board of Elections filings).

[2] 22 NYCRR § 100.5(A)(5).

[3] Id.

[4] Money raised or spent by an authorized committee as raised or spent by the judicial candidate. See 22 NYCRR § 100.5(A)(4)(b); N.Y. Advisory Comm. on Judicial Ethics, Op. 92-97 (Jan. 28, 1993) ("The judge, therefore, may not be separated from any contributions made on the judge's behalf by the campaign committee, whether or not the judge is aware of them, as these contributions are improper.").

I. Channeling of Donations From Lawyers, or the Candidates Themselves, to Political Parties or Their Chosen Candidates

A. Background

Section 17-162 of the New York Election Law explicitly prohibits judicial candidates from directly or indirectly making political contributions:

> §17-162. Judicial candidates not to contribute
>
> > No candidate for a judicial office shall, directly or indirectly, make any contribution of money or other thing of value, nor shall any contribution be solicited of him; but a candidate for a judicial office may make such legal expenditures, other than contributions, authorized by this chapter.
>
> (L.1976, c.233, §1; amended L.1978, c.373, §109).

The current Chief Administrator's Rules Governing Judicial Conduct prohibit a judge or non-judge candidate for judicial office from "making a contribution to a political organization or candidate," other than in support of one's own candidacy for judicial office.[5] The New York Court of Appeals recently upheld the constitutionality of the rule limiting political contributions from judicial candidates to political parties and ancillary political activities (such as participating in other candidates' campaigns beyond appearing on a party's slate of candidates), citing two compelling State interests served by the rule:

> The State has an overriding interest in the integrity and impartiality of the judiciary. There is hardly * * * a higher governmental interest than a State's interest in the quality of its judiciary. Charged with administering the law, Judges may not actually or appear to make the dispensation of justice turn on political concerns. The State's interest is not limited solely to preventing actual corruption through contributor-candidate arrangements. Of equal import is the prevention of the appearance of corruption stemming from public awareness of the opportunities for abuse.[6]

The second compelling interest recognized by the Court was in restricting judges from making contributions to political organizations that support other candidates or general party objectives:

> The contribution limitation is intended to ensure that political parties cannot extract contributions from persons seeking nomination for judicial office in exchange for a party endorsement. It achieves this necessary objective by

[5] 22 NYCRR §100.5(A)(1)(h).
[6] In re Raab, 100 N.Y.2d 305, 313-14, 763 N.Y.S.2d 213, 217 (2003) (citing Matter of Nicholson v. State Comm'n on Judicial Conduct, 50 N.Y.2d 597, 607-08, 431 N.Y.S.2d 340, 409 N.E.2d 818 (1980)).

> preventing candidates from making contributions in an effort to buy—and parties attempting to sell—judicial nominations. It also diminishes the likelihood that a contribution, innocently made and received, will be perceived by the public as having had such an effect. Needless to say, the State's interest in ensuring that judgeships are not—and do not appear to be—for sale is beyond compelling. The public would justifiably lose confidence in the court system were it otherwise and, without public confidence, the judicial branch could not function.[7]

As an exception to the general prohibition against political contributions and ancillary political activities, a judge or non-judge who is a candidate for public election to judicial office may purchase two tickets to politically sponsored dinners and other functions during a window period[8] before and after the election day for the office sought.[9] This seemingly innocuous exception, however, recently has been identified as a loophole that has, at times, swallowed up, and defeated the purposes of the limitation on political activities and the contribution limit rules, allowing judicial campaigns to serve as channels for money to flow to political parties and their favored candidates.

B. The Importance of Party Endorsement

Political party endorsement for a judicial candidate in New York has been long recognized as important, if not, determinative of election in some areas of the state.[10] Because of this there is a potential risk, as recognized in In re Raab, that candidates might make contributions to a political party in what may be perceived to be "an effort to buy—and parties attempting to sell—judicial nominations."[11]

---

[7] Id., 100 N.Y.2d at 315-16. 22 NYCRR § 100.5 (a)(l)(i) prohibits a judge or non-judge candidate from "purchasing tickets for politically sponsored dinners or other functions, including any such function for a non-political purpose" outside the window period. The compelling interests supporting this rule are the same as those that serve the general prohibition against political activities, including contributions noted above.

[8] The window period is defined as a period beginning nine months before a primary election, judicial nomination convention, party caucus or other party meeting for nominating candidates for the elective judicial office for which a judge or non-judge is an announced candidate, or for which a committee or other organization has publicly solicited or supported the judge's or non-judge's candidacy, and ending, if the judge or non-judge is a candidate in the general election for that office, six months after the general election, or if he or she is not a candidate in the general election, sic months after the date of the primary election, convention, caucus or meeting.
22 NYCRR § 100.0(Q).

[9] 22 NYCRR §100.5(A)(2)(v).

[10] Fund for Modern Courts, Inc., Judicial Elections in New York, Voter Participation and Campaign Financing of State Supreme Court Elections 1978, 1979 and 1980 (1982) (M.L. Henry, Jr., Executive Director); Fund for Modern Courts, Inc., Judicial Elections in New York, Voter Participation and Campaign Financing of State Supreme Court Elections, 1981, 1982 and 1983 (1984) (M.L. Henry, Jr., Executive Director); Becoming a Judge: Report on the Failings of Judicial Elections in New York State (1998), reprinted in Government Ethics Reform for the 1990s (ed., Bruce A. Green, 1991); see also Clifford J. Levy, Picking Judges: Part Machines, Rubber Stamps, N.Y. Times, July 20, 2003, at A1, A34 (describing the party leader's role in nominations and endorsements for judicial positions as "[a] power that effectively allows party leaders to anoint judges because in an overwhelming Democratic borough, the Democratic nomination is tantamount to election").

[11] Raab, 100 N.Y.2d at 315-16.

Contributions in the Supreme Court elections in the 2nd, 5th and 8th Judicial Districts were sampled. The following was found:

- One candidate for reelection to the Supreme Court in the 8th Judicial District in 2000 raised over $38,000 and spent over $11,500, or 30%, of that on political fundraisers of other candidates and the political parties. He bought tickets to almost 70 fundraising events. In addition, he spent another $14,525 for "pro rata share judicial convention" expenses. In total, he expended over $26,000 or nearly 70% of the money he raised on political parties and fundraisers for other candidates.

- One candidate in the 5th Judicial District for Supreme Court in 2000 gave several dozen contributions to political clubs and other political campaigns totaling thousands of dollars.

- In 2002, a candidate for Supreme Court in the 2nd Judicial District gave over 60 contributions to other campaign organizations and to political clubs totaling over $11,000, including a $1,000 contribution to the Kings County Democratic Committee for a political reception. After deducting the over $15,000 paid to the Brooklyn Marriott for a post-election function in December 2002, 45% of this candidate's expenditures went to political clubs and other campaigns.

- In 2002, five candidates for Supreme Court in the 2nd Judicial District each made a $1000 contribution to the Kings County Democratic Committee in October or November 2002.[12]

- On March 24, 2002, the New York Daily News reported: "The judges' committees contributed almost $22,000 to Norman's Assembly reelection account, the Brooklyn Democratic Party he controls or his local political organization, the Thurgood Marshall Democratic Club, between 1998 and last year, the records show."[13] The article also noted: "The fact that a judge's committee makes contributions doesn't mean he or she will be compromised on the bench. But the exchange of cash points to what some see as an appearance problem for judges who ascend to office through the thicket of party-dominated elections."[14]

On behalf of the Commission, a law clerk to the Commission reviewed the available financial disclosure reports available online, which were filed with the State Board of Elections in order to verify the New York Daily News article's findings. That review not only confirmed the findings, but also provided updated information showing what appears to be a pattern of

[12] A review of the judicial campaign disclosure forms reveals that, in general, the candidates report their purchase of tickets to county committee fundraisers on Schedule F with all other campaign expenditures. However, the New York State Board of Elections' Handbook of Instructions for Campaign Financial Disclosure specifically provides: "For candidates, purchasing tickets to a state or county committee's fundraiser is a transfer-out on Schedule H."
[13] Joel Siegel & Michael R. Blood, Norman's the King of the Courthouse, Daily News (New York), Mar. 24, 2002, at 22.
[14] Id.

giving by some judicial candidates to political organizations for years prior to their ultimate election.[15]

C. Public Perception

In addition to the sample of contributions in the above elections, there have been numerous reports in the media of other elections from which the public could conclude that judicial campaigns often serve as fundraisers channeling donations from lawyers (or the candidates themselves) into the coffers of party organizations or its chosen candidates:

- An 8th Judicial District candidate for the Supreme Court in 1997 raised $54,000 and spent $23,080, or 43% of that, "on candidates the GOP deemed important."[16]

- In 1998, a Democratic candidate for Supreme Court in the 8th Judicial District raised $33,575 for his campaign and gave $27,535, or 72% of the amount raised, to the two parties and other campaigns, "the highest percentage for any State Supreme Court candidate."[17]

- In 2001, the Erie County Surrogate ran for reelection and raised $134,000 and spent $2,700 on political tickets for candidates ranging from Governor George Pataki to County Comptroller, including a ticket for a function for the Democratic Party leader and made total payments of $5,000 to the Democratic Party for gathering signatures on petitions, $5,000 to the Republican Party, $1,500 to the Conservative Party and $1,000 to the Liberal Party.[18]

- Of Supreme Court candidates in the 8th Judicial District (including those listed above) who made political expenditures on behalf of political parties or other candidates from 1994 to 2001, the highest amount of money spent for those purposes was $27,535 and the 10th highest amount was $10,278.[19]

- The sums raised for political parties through judges and courthouse staff are not insignificant. "In Queens, for instance, roughly $200,000, or nearly 40 percent, of the $525,000 raised by the Queens Democratic Party last year came from courthouse donors, according to an extensive analysis of the party's finances . . . ."[20]

---

[15] See Memorandum from C. Kim Le, Law Clerk to the Commission (Sept. 26, 2003) (attached hereto as Appendix I).
[16] Michael Beebe & Robert J. McCarthy, Courting Big Money, Buffalo News, July 14, 2002.
[17] Id.
[18] Michael Beebe & Robert J. McCarthy, Appeal for Reform, Buffalo News, July 16, 2002.
[19] Michael Beebe & Robert J. McCarthy, Courting Big Money, Buffalo News, July 14, 2002.
[20] Clifford J. Levy, Where Parties Select Judges, Donor List Is a Court Roll Call, N.Y. Times, Aug. 18, 2003, at A3.

D. The Advisory Opinions

The "two-ticket" exception to the prohibition against political contributions by judicial candidates (§ 100.5 (A)(2)(v)) has been viewed as "a recognition of the perceived necessity for candidates for judicial office to attend political dinners and functions in the course of the electoral season."[21] Prior to the adoption of the current rule, the problem with formulating a standard for candidate's political dinner attendance was always drawing the line: how many tickets and at what prices? The prior rule permitted a candidate to purchase "a ticket." Notwithstanding this language, the New York State Advisory Committee on Judicial Ethics, in a 1992 opinion, opined that the practice should be limited to purchasing a "number of tickets reasonably necessary for the candidate, or his or her family or a small number of friends." The opinion stated that the "purchase of a large block of tickets would look too much like an impermissible political contribution, and would create an appearance of impropriety."[22]

Following the opinion, the Commission on Judicial Conduct had issued a letter of caution where a candidate purchased more than one ticket. The Committee then modified its earlier opinion "to limit the purchase of tickets to political affairs to two tickets only, one for the candidate and one for another person to accompany the candidate."[23] The Committee reiterated that the "purchase of a large block of tickets would look too much like an impermissible political contribution and would create an appearance of impropriety." In addition, the Committee stated that where tickets are offered at multiple prices, the judge must purchase those with the lowest price.

Subsequently, the Chief Administrator's Rules Governing Judicial Conduct were amended to provide for "two tickets." In a 1998 opinion, the Committee stated that, under the particular circumstances, the payment of $3,000 for a ticket to a political fund-raising dinner for another candidate, noting the disparity between the ticket price and any conceivable costs, "can only be regarded as an impermissible political contribution to a candidate for two elective political offices . . . . ."[24] The Committee reiterated that the two-ticket exception "is not intended to erase the prohibition against 'making a contribution to a political organization or candidate . . . .'"[25]

E. Analysis

Based on a review of the races sampled and the media reports studied, there is substantial reason to believe that judicial campaigns in New York State may serve, and are often perceived, as conduits, passing donations from lawyers, or the candidates themselves, into the coffers of political parties or their selected candidates. The two-ticket exception can be a vehicle through which this occurs, because it does allow for contributions by judicial candidates and their

[21] N.Y. Advisory Comm. on Judicial Ethics, Op. 98-107 (Sept. 10, 1998).
[22] N.Y. Advisory Comm. on Judicial Ethics, Op. 92-20 (Jan. 30, 1992).
[23] N.Y. Advisory Comm. on Judicial Ethics, Op. 92-97 (Jan. 28, 1993).
[24] N.Y. Advisory Comm. on Judicial Ethics, Op. 98-107 (Sept. 10, 1998).
[25] See also N.Y. Advisory Comm. on Judicial Ethics, Op. 01-27 (Mar. 8, 2001) (stating that a judge may purchase two tickets to a political fundraiser-dinner, but is prohibited from publicly speaking or accepting any awards at the event.)

campaigns to other candidates, through the purchase of fundraiser tickets, that would otherwise be impermissible.

It is recognized, however, that attendance at political events, including fundraising events, of political party committees, other political committees and candidates, is a legitimate campaign activity for judicial candidates. It is at such functions that judicial candidates are able to meet and discuss their candidacies and qualifications with public officials, political leaders, party committee members and political activists who can be influential supporters and important resources for the judicial campaign. To deprive judicial candidates of these opportunities would significantly impair the legitimate efforts of judicial candidates to garner support for their candidacies and may even run afoul of their constitutional rights as political candidates.

Solutions to the problems raised by the attendance of judicial candidates at political fundraisers should not create additional difficulties for those candidates who seek judicial office without the blessing of party leaders. Rather, the solution must focus on the problem, i.e., the potential use of fundraisers as a conduit of judicial campaign funds to political parties.

Although the current two-ticket limitation does address this problem, its effect can be defeated easily by the purchase of tickets to multiple fundraisers benefiting either the same or related political organizations.[26] In addition, the present rule does not prohibit judicial candidates in those parts of the state where the nomination of a political party is tantamount to election from raising funds solely for the purpose of attending such events, particularly where, as with candidacies for the Supreme Court, there is no risk of a contested primary.

The wide diversity around the state in the judicial offices sought and in the political organizations involved in the nominations for those offices makes it difficult to craft a uniform rule, which would limit the possibility that the attendance of judicial candidates at political fundraisers would become financial conduits, without prohibiting attendance at such events altogether.[27] Many judicial offices are sought within only one political subdivision, where party committee members and political activists can be met successfully at a relatively small number of events; other offices require candidates to seek support in judicial districts encompassing several counties, cities and towns, and, perhaps, many differing political interest groups within the parties, all of which have events at which candidates' appearances are expected. In addition, the wide disparity in expenditures for various judicial offices makes it extraordinarily difficult to establish a uniform dollar limit on expenditures for attendance at political fundraisers.

In light of this reality, any limitations that are imposed must be sufficiently flexible to allow for legitimate attendance by political candidates at political fundraisers without being so

[26] See Written Testimony of Professor Roy A. Schotland, Oct. 8, 2003, at 5 ("E.g., your judicial candidates are limited, when it comes to purchasing tickets to political events, to purchasing no more than two. But is there no limit on how many events a candidate may purchase tickets for? If not, isn't that simply unrealistic?").

[27] Fifteen, or nearly 40 percent, of the 39 states who have some form of judicial election, have either banned judicial candidates from purchasing tickets to political dinners or have set a dollar amount limit on total tickets which may be purchased. A chart and summary of the rules governing the purchase of tickets to political dinners in the 39 states which have judicial elections has been prepared by Eileen Gallagher, Esq., a staff attorney at the American Bar Association is annexed hereto as Appendix II.

malleable as to allow such expenditures to become conduits for illegitimate contributions of judicial campaign dollars to other political organizations.

II. Forcing Candidates to Hire Party "Consultants" and Billing by the Party for Consulting Services Never Received

The accuracy of the reports that some candidates have been directed by party leaders to hire certain political consultants or to pay consultants and other vendors who have done no work for the candidate could not be independently verified. However, this issue is reportedly under investigation by the Kings County District Attorney's Office.[28]

At the heart of this issue are the statements of the candidates themselves who have claimed pressure by political leaders to hire specific consultants or vendors, or been billed for services they never received. For example, numerous candidates for judicial office in Erie County, including Family Court and Erie County Court, reported that a party chairman had pressured them to hire favored political consultants "in return for his all-powerful blessing."[29] One 1998 judicial candidate in Erie County recounted an instance in which he received a $20,000 invoice from a consultant, who worked closely with the party chairman, for services that he never rendered on his campaign.[30] It can only be assumed that the public accepts the accuracy of these statements, which would tend to fuel the perception that "justice is for sale."

[28] See Kevin Flynn & Clifford J. Levy, Brooklyn Party Leader's Assets Soar, and Inquiry Takes Note, N.Y. Times, Sept. 14, 2003, at 36.
[29] Michael Beebe & Robert J. McCarthy, Putting Politics First, Buffalo News, July 15, 2002; see Michael Beebe & Robert J. McCarthy, Appeal for Reform, Buffalo News, July 16, 2002.
[30] Michael Beebe & Robert J. McCarthy, Putting Politics First, Buffalo News, July 15, 2002.

Appendix I to Working Paper on Judicial Campaign Finance Expenditures

Political Contributions from Second District Judicial Campaign Committees

Were Supreme Court justices in the Second Judicial District raising and distributing money to political organizations, namely Democratic, through their campaign committees prior to their ultimate election? Joel Siegel and Michael R. Blood's article, "Norman's the King of the Courthouse," in the *Daily News (New York)*, dated March 24, 2002 (hereinafter the "DN Article"), emphatically answers yes. To confirm their findings and provide updated information, I have reviewed the available financial disclosure reports (the "Reports") filed in the Financial Disclosure Information System ("FDIS") on the New York State Board of Elections' Web site.[31]

The attached Appendix shows the list of filers for the office of Supreme Court Justice for the Second Judicial District, as kept in the FDIS by the NYSBOE. My research revealed that a majority of the judicial campaign committees listed on FDIS have made contributions to Democratic organizations, including to those other than the Committee to Reelect Assemblyman Clarence Norman, Jr. and the Brooklyn Democrats. Some of these political organizations are the Kings County Democratic County Committee (of which Norman is the Chairman of the Executive Committee), Central Brooklyn Independent Democrats, and Independent Neighborhood Democrats, to name a few. (I can provide you with such further detailed information if needed).

In this Memorandum, I have compiled information on specific contributions made to the Committee to Reelect Clarence Norman, the Brooklyn Democrats, and the Kings County Democratic County Committee. When found, I also included limited background information on the judicial candidates.

I. Findings in the DN Article[32]

II.

Overall, the Reports confirm the DN Article's factual information regarding contributions made to the Committee to Reelect Clarence Norman and the Brooklyn Democratic Party.[33] The asterisks (*) in this Section designate additional or new political contributions not listed in the DN Article.

[31] The FDIS claims to contain filings for each filing period commencing July 15, 1999. I found, however, that some information prior to July 15, 1999 was available and some information after July 15, 1999 was not. No information for 1998 or for the years prior is available electronically. Another limitation is that qualifying candidates may file In Lieu of Statements, certifying that their campaign committees spent less than $1,000 at the close of the reporting period rather than itemizing expenditures on a schedule.

[32] There are no filings available online for Victor Barron, Lawrence Knipel, Anthony Cutrona, William Garry, or Gustin Reichbach. For Leonard Scholnick and Richard Huttner, there is no itemized information available because their filings consisted entirely of In Lieu of Statements.

[33] Some of the dates listed in the DN Article vary with that in the Reports, but only by a few days. The contributions made in 1998, as reported in the DN Article, cannot be confirmed by the information available on the FDIS.

A. Joseph F. Bruno. Previously elected to the Civil Court of the City of New York, January 1991, and assigned to Criminal Court of Kings County, 1991–1996.[34] Elected as Supreme Court Justice for the Second Judicial District in 2001.

1/16/99	$150	Committee to Reelect Clarence Norman
6/3/99	$500	Committee to Reelect Clarence Norman
8/14/99	$100	Committee to Reelect Clarence Norman
6/5/01	$500	Committee to Reelect Clarence Norman
8/8/01	$100	Committee to Reelect Clarence Norman
2/8/01	$150	Committee to Reelect Clarence Norman*
1/22/02	$150	Committee to Reelect Clarence Norman*
10/25/00	$1000	Kings County Democratic County Committee*
3/10/01	$300	Kings County Democratic County Committee*
9/26/01	$500	Kings County Democratic County Committee*
10/29/01	$1000	Kings County Democratic County Committee*
3/11/02	$600	Kings County Democratic County Committee*
4/11/99	$300	The Brooklyn Democrats
10/20/99	$500	The Brooklyn Democrats
9/28/00	$125	The Brooklyn Democrats
3/24/00	$1250	The Brooklyn Democrats*
3/24/00	$300	The Brooklyn Democrats*

B. Cheryl E. Chambers. Previously elected to the Civil Court of the City of New York, January 1995.[35] Elected as Supreme Court Justice for the Second Judicial District in 1998.

1/23/99	$300	Committee to Reelect Clarence Norman

C. Lewis L. Douglass. Previously served as Judge of New York Criminal Court, 1978–1982, and New York Court of Claims, 1982–1999.[36] Elected as Supreme Court Justice for the Second Judicial District in 1999.

5/20/99	$500	Committee to Reelect Clarence Norman
7/15/99	$250	Committee to Reelect Clarence Norman
10/19/99	$125	The Brooklyn Democrats
10/19/99	$500	The Brooklyn Democrats
10/25/99	$500	The Brooklyn Democrats

D. Robert Gigante. Elected as Supreme Court Justice for the Second Judicial District in 1999.

11/1/99	$1000	The Brooklyn Democrats
2/28/00	$600	The Brooklyn Democrats*

E. Ira B. Harkavy. Previously elected to the Civil Court of the City of New York, 1982–1992.[37] Elected as Supreme Court Justice for the Second Judicial District in 2000.

[34] www4.law.com/ny/judges_profiles/supreme/kings/bios_index.shtml.
[35] THE AMERICAN BENCH—JUDGES OF THE NATION (Diana R. Irvine ed., 14th ed. 2003–2004) [hereinafter THE AMERICAN BENCH].
[36] West Legal Directory of Judges, *available at* http://www.westlaw.com.

The DN Article listed a $100 contribution to the Committee to Reelect Clarence Norman on 8/5/99, which was not listed on the Reports.

5/20/99	$150	Committee to Reelect Clarence Norman
5/6/00	$150	Committee to Reelect Clarence Norman
3/26/01	$600	Kings County Democratic County Committee*
3/21/99	$600	The Brooklyn Democrats
10/4/00	$250	The Brooklyn Democrats
3/3/00	$300	The Brooklyn Democrats*

F. Richard Rivera. Elected as Supreme Court Justice for the Second Judicial District in 2000.

6/1/00	$500	Committee to Reelect Clarence Norman
10/31/00	$1000	Kings County Democratic County Committee*
4/6/00	$150	The Brooklyn Democrats*
4/6/00	$300	The Brooklyn Democrats*

G. Gerard H. Rosenberg. Previously elected to the Civil Court of the City of New York.[38] Elected as Supreme Court Justice for the Second Judicial District in 1998.

1/19/99	$300	Committee to Reelect Clarence Norman
4/9/99	$130	Committee to Reelect Clarence Norman
2/5/99	$300	The Brooklyn Democrats
3/17/99	$200	The Brooklyn Democrats

H. Martin Schneier. Previously elected to Civil Court of New York City, 1979, and reelected, 1989; presiding Justice in Kings County Supreme Court Matrimonial Part, 1986–95.[39] Elected as Supreme Court Justice for the Second Judicial District in 1999.

The DN Article listed contributions of $100 and $65 on 7/30/99 and 4/6/00, respectively, to the Committee to Reelect Clarence Norman, which was not listed on the Reports.

10/8/99	$125	The Brooklyn Democrats
10/26/99	$500	The Brooklyn Democrats
10/29/99	$500	The Brooklyn Democrats
2/18/00	$600	The Brooklyn Democrats

[37] *Id.*
[38] THE AMERICAN BENCH, *supra* note 35.
[39] Law.com, *Kings County Supreme Court Judicial Profiles*, *at* http://www4.law.com/ny/judges_profiles/supreme/kings/bios_index.shtml.

II. Justices Elected in 2002 Not Examined by the DN Article

I reviewed the election results for the years 1999, 2000, 2001, and 2002. Accordingly, I examined the available Reports filed by each of the elected Supreme Court justices not covered by the DN Article.

This Section deals with the Supreme Court justices elected in 2002.

A. Laura L. Jacobson. Previously elected to Civil Court of New York City.[40]

1/11/00	$150	Committee to Reelect Clarence Norman
5/29/02	$575	Committee to Reelect Clarence Norman
8/12/02	$100	Committee to Reelect Clarence Norman
1/23/03	$150	Committee to Reelect Clarence Norman
4/22/99	$300	Kings County Democratic County Committee
4/1/02	$600	Kings County Democratic County Committee[41]
10/16/02	$1000	Kings County Democratic County Committee
10/16/02	$250	Kings County Democratic County Committee

B. Randolph Jackson. Previously appointed Housing Court Judge, New York City Civil Court, 1981, and re-appointed, 1986; appointed Civil Court Judge, 1987, and re-appointed, 1988; appointed Supreme Court Justice for the Second Judicial District in 1988; elected as Supreme Court Justice for the Second Judicial District in 2002.[42]

10/23/02	$1000	Kings County Democratic County Committee

C. Mark Partnow.

1/23/03	$150	Committee to Reelect Clarence Norman
10/9/02	$125	Kings County Democratic County Committee
10/15/02	$1000	Kings County Democratic County Committee

D. Leon Ruchelsman. Previously served as Judge of New York Court of Claims and Civil Court of New York City.[43]

11/5/02	$1000	Kings County Democratic County Committee
11/6/02	$250	Kings County Democratic County Committee

E. James G. Starkey. Designated Acting Supreme Court Justice in Kings County, 1976–1982; served as Judge for Criminal Court in City of New York, 1973–1982.[44]

1/24/02	$300	Committee to Reelect Clarence Norman[45]

[40] THE AMERICAN BENCH, *supra* note 35.
[41] This expense was listed under the "Explanation" column as "memo: 2 tickets to dinner—$600," rather than under the "Amount" column on the schedule.
[42] Law.com, *Kings County Supreme Court Judicial Profiles*, *at* http://www4.law.com/ny/judges_profiles/supreme/kings/bios_index.shtml.
[43] THE AMERICAN BENCH, *supra* note 35.
[44] West Legal Directory of Judges, *available at* http://www.westlaw.com.
[45] This expense was listed under the "Explanation" column as "memo 300," rather than under the "Amount" column on the schedule.

5/15/02	$75	Committee to Reelect Clarence Norman[46]
5/15/02	$150	Committee to Reelect Clarence Norman[47]
8/12/02	$100	Committee to Reelect Clarence Norman
1/21/03	$300	Committee to Reelect Clarence Norman
4/7/03	$400	The Brooklyn Democrats
4/7/03	$600	The Brooklyn Democrats
10/6/02	$250	Kings County Democratic County Committee
10/10/02	$1000	Kings County Democratic County Committee
2/22/02	$400	Kings County Democratic County Committee[48]
2/22/02	$600	Kings County Democratic County Committee[49]
9/25/02	$250	Kings County Democratic County Committee[50]

F. James P. Sullivan. Previously elected to Civil Court of New York City.[51]

No itemized contributions to the Committee to Reelect Clarence Norman, the Kings County Democratic County Committee, and/or the Brooklyn Democrats are listed.

III. Justices Elected in 2001 Not Examined by the DN Article

This Section deals with the Supreme Court justices elected in 2001.

A. Thomas P. Aliotta. Previously elected to Civil Court of New York City.[52]

10/24/01	$1000	Kings County Democratic County Committee

B. Bert A. Bunyan. Previously elected to Civil Court of New York City, 1995.[53]

1/24/02	$100	Committee to Reelect Clarence Norman
10/15/01	$250	Kings County Democratic County Committee
10/30/01	$1000	Kings County Democratic County Committee
4/18/02	$300	Kings County Democratic County Committee

C. Patricia M. DiMango. Previously appointed to New York Criminal Court, 1995.[54]

1/22/02	$300	Committee to Reelect Clarence Norman
10/17/01	$250	Kings County Democratic County Committee
10/24/01	$150	Kings County Democratic County Committee

[46] This expense was listed under the "Explanation" column as "memo $75," rather than under the "Amount" column on the schedule.
[47] This expense was listed under the "Explanation" column as "memo $150," rather than under the "Amount" column on the schedule.
[48] This expense was listed under the "Explanation" column as "memo $400," rather than under the "Amount" column on the schedule.
[49] This expense was listed under the "Explanation" column as "memo $600," rather than under the "Amount" column on the schedule.
[50] This expense was listed under the "Explanation" column as "memo $250," rather than under the "Amount" column on the schedule.
[51] THE AMERICAN BENCH, *supra* note 35.
[52] *Id.*
[53] *Id.*
[54] *Id.*

D. Allen Hurkin-Torres.

1/23/02	$300	Committee to Reelect Clarence Norman
10/27/01	$50	Kings County Democratic County Committee
10/27/01	$1000	Kings County Democratic County Committee
10/27/01	$250	Kings County Democratic County Committee

E. Howard A. Ruditzky. Previously elected to Civil Court of New York City and appointed to New York Criminal Court.[55]

10/30/01	$500	Kings County Democratic County Committee

IV. Justices Elected in 2000 Not Examined by the DN Article

This Section deals with the Supreme Court justices elected in 2000.

A. Michael J. Brennan. Previously elected to Civil Court of New York City and appointed to New York Criminal Court.[56]

10/26/00	$250	Kings County Democratic County Committee
10/20/00	$1000	Kings County Democratic County Committee
9/28/00	$100	Kings County Democratic County Committee

B. Diana A. Johnson. Previously elected to Civil Court of New York City.[57]

No itemized contributions to the Committee to Reelect Clarence Norman, the Kings County Democratic County Committee, and/or the Brooklyn Democrats are listed.

V. Examination of Some of the Present Candidates Nominated by the Brooklyn Democratic Party

The Democratic Judicial Nominating Convention chose eight Supreme Court justice nominees for the November ballot: Bruce M. Balter, Bernadette F. Bayne, Raymond Guzman, Arthur M. Schack, Martin M. Solomon and three incumbents seeking reelection, Theodore T. Jones, Herbert Kramer, and Michael L. Pesce.[58] Each of these nominees were found "qualified" by the Democratic Judicial Screening Panel for the Second Judicial District, a panel consisting of delegates selected by the Brooklyn Democratic Party and Norman himself.[59] Listed below is the available relevant contribution information from the campaign committees of these nominees.

A. Bruce M. Balter. Judge of Civil Court of New York City.

5/22/02	$1175	Committee to Reelect Clarence Norman
8/14/02	$500	Committee to Reelect Clarence Norman
5/27/03	$80	Committee to Reelect Clarence Norman

[55] *Id.*
[56] *Id.*
[57] *Id.*
[58] Nancie L. Katz, *A Norman Conquest as Dems OK Slate of 8*, DAILY NEWS (N.Y.), Sept. 17, 2003, at 24.
[59] *Screening Panels for Decoration Only*, DAILY NEWS (N.Y.), Sept. 5, 2003, at 50.

5/30/02	$125	Kings County Democratic County Committee
5/1/03	$300	The Brooklyn Democrats

B. Arthur M. Schack. Judge of Civil Court of New York City.

5/20/03	$360	Committee to Reelect Clarence Norman
4/30/03	$600	The Brooklyn Democrats

C. Martin Solomon. Judge of Civil Court of New York City.

3/4/03	$600	The Brooklyn Democrats

D. Herbert Kramer. Supreme Court Justice for the Second Judicial District up for reelection.

7/10/03	$600	The Brooklyn Democrats

E. Michael L. Pesce. Supreme Court Justice for the Second Judicial District up for reelection.

9/3/03	$500	Kings County Democratic Committee
5/7/03	$300	The Brooklyn Democrats

VI. Examination of Candidates Screened by the Democratic Judicial Screening Panel

I also looked at the available Reports of other candidates who were found "qualified" by the Democratic Judicial Screening Panel.[60] Of the 27 candidates found qualified, 13 Reports are available on the FDIS (including the 5 from the Section above). All but one of these Reports show contributions of or exceeding $600 to the Committee to Reelect Clarence Norman, the Kings County Democratic County Committee, and/or the Brooklyn Democrats. Below is a sample of what I found.

A. Rachel Adams. Judge of Civil Court of New York City.

5/10/02	$1000	Committee to Reelect Clarence Norman
4/4/02	$600	Kings County Democratic County Committee
4/30/03	$600	The Brooklyn Democrats

B. Karen Rothenberg. Supervising Judge of Civil Court of New York City.

5/14/02	$1000	Committee to Reelect Clarence Norman
5/14/02	$175	Committee to Reelect Clarence Norman
5/17/02	$300	Committee to Reelect Clarence Norman
8/6/02	$100	Committee to Reelect Clarence Norman
3/20/02	$600	Kings County Democratic County Committee
3/20/02	$400	Kings County Democratic County Committee

[60] *See* City Council Candidates 2003, *Candidates for the State Supreme Court Found "Qualified" by the Democratic Judicial Screening Panel for the Second Judicial District*, GOTHAM GAZETTE, *available at* http://www.gothamgazette.com/searchlight/bklyn.judge.nominations.2003.shtml (Sept. 23, 2003).

C. Alice F. Rubin. Judge of Civil Court of New York City.

5/8/02	$1000	Committee to Reelect Clarence Norman
8/3/02	$100	Committee to Reelect Clarence Norman
3/15/02	$600	Kings County Democratic County Committee

D. Margarita Lopez Torres. Judge of Civil Court of New York City; currently assigned to New York Criminal Court.

4/18/02	$600	Kings County Democratic County Committee

VI. Other Findings on Candidates Listed on FDIS

Lastly, I examined the remaining 17 filers listed on FDIS. With the exception of one (namely Loren Baily-Schiffman), none of these Reports specifically contained itemized contributions to the Committee to Reelect Clarence Norman, the Kings County Democratic County Committee, and/or the Brooklyn Democrats. (Please note that many of these filings consisted of In of Lieu Statements).

Appendix II to Report on Judicial Campaign Finance Expenditures

The following chart provides the rules governing the purchase of tickets to political dinners in the 39 states that currently conduct judicial elections. The information included on the chart and the summary following the chart was gathered and prepared by Eileen Gallagher, Esq., a staff attorney at the American Bar Association, on behalf of the Commission.

ABA MODEL CODE	All Judges and Candidates Except as authorized in Sections 5B(2), 5C(1) and 5C(5),a judge or a candidate for election or appointment to judicial office shall not: Act as a leader or hold an office in a political organization; Publicly endorse or publicly oppose another candidate for public office; Make speeches on behalf of a political organization; Attend political gatherings; or Solicit funds for, pay an assessment to or make a contribution to a political organization or candidate, or purchase tickets for political party dinners or other functions. Canon 5A(1)(a)-(e)	Judges or Candidates Subject to Public Election A judge or a candidate subject to public election may, except as prohibited by law: At any time Purchase tickets for and attend political gatherings; Identify himself or herself as a member of a political party; and contribute to a political organization; Canon 5C(1)(a)(i)-(iii)	Restrictions on Campaign Contributions Canon 5C(2)
ALABAMA Partisan Elections	Political Conduct in General A judge or a candidate for election to a judicial office shall endeavor at all times to refrain from political activities inappropriate to the judicial office that he or she holds or seeks. It is desirable that a judge or a candidate for election to judicial office endeavor not to be involved in the internal workings of political organizations, engage in campaign activities in connection with a political candidate other than a candidate for a judicial office and not be involved in political fund solicitations other than for himself or herself. However, so long as judges are subject to nomination and election as candidates of a political party, it is realized that a judge or a candidate for election to a judicial office cannot divorce himself or herself completely from political organizations and campaign activities which, indirectly or directly, may be involved in his or her election or re-election. Nevertheless, should a should a judge or a candidate for judicial position be directly or indirectly involved with the internal workings or campaign activities of a political organization, it is imperative that he or she at all times conduct himself or herself in a manner as to prevent any political considerations, entanglements, or influences from ever becoming involved in or from ever appearing to be involved in any judicial decision or in the judicial process.		Contributions to a judge's or candidate's campaign shall be neither solicited nor accepted more than one year prior to the election in which the candidate participates as a candidate for judicial office or more than 120 days after that election. Canon 7B(4)(b)

	Canon 7A(1)		
ALASKA Appointment with Retention Election	All Judges and Candidates Except as authorized in Sections 5B(2) and 5C, a judge or a candidate for appointment to judicial office shall not; Act as a leader of or hold office in a political organization. Publicly endorse or publicly oppose a candidate for any public office. However, when false information concerning a judicial candidate is made public, a judge or candidate having knowledge of contrary facts may make the facts public. Make speeches on behalf of a political organization. Attend political gatherings. Solicit funds for any political organization or candidate for public office, pay an assessment or make a contribution to a political organization or candidate for public office, purchase tickets for a political organization's dinners or other functions. Canon 5A(1)(a)-(e)		…the judge's election committees…may solicit and accept reasonable campaign contributions…A candidate's committee may solicit contributions and public support for the candidate's campaign preceding the election and for 90 days thereafter. Canon 5C(3)
ARIZONA Appointment with Retention Election	Political Conduct in General A judge or a candidate for election to judicial office shall not: Act as a leader or hold any office in a political organization; Make speeches for a political organization or candidate or publicly endorse a candidate for public office; Solicit funds for or pay an assessment to a political organization or candidate, or make contributions to a political party or organization or to a non-judicial candidate in excess of a combined total of Two Hundred Fifty Dollars per year; or Actively take part in any political campaign other than his or her won election, reelection or retention in office. Canon 5A(1)(a)-(d)	A judge may purchase tickets for political dinners or other similar functions but attendance at any such functions shall be restricted so as not to constitute a public endorsement of a candidate or cause otherwise prohibited by these canons. Canon 5A(3)	A candidate, including an incumbent judge, for a judicial office, whether by a contested election or seeking the retention of the office according to the law, shall comply with the Arizona statutes relating to the financial aspects of the candidacy. Canon 5B(2)
ARKANSAS Non Partisan Election	All Judges and Candidates Except as authorized in Sections 5B(2), 5C(1) and 5C(3), a judge or a candidate for election or appointment to judicial office shall not: Act as a leader or hold an office in a political organization or a political party; Publicly endorse or publicly oppose another candidate for public office;	Judges and Candidates Subject to Public Election A judge or a candidate subject to public election may, except as prohibited by law: At any time Purchase tickets for and attend gatherings of a political organization or a political	…Such committees may solicit and accept reasonable campaign contributions…A candidate's committee may solicit contributions and public support for the candidate's campaign no earlier than 180 days before an election and no later than 45 days after the last contested election in which the candidate participates during the year…

	Make speeches on behalf of a political organization or a political party; Directly or indirectly seek or use endorsements from a political party; Solicit funds for, pay an assessment to or make a contribution to a political party or candidate; or Publicly identify his or her current political party affiliation or lend one's name to a political party.	party; Contribute to a political organization; Privately identify himself or herself as affiliated with a political party. Canon 5C(1)(a)(i)-(iii)	Canon 5C(2)
CALIFORNIA Appointment with Retention Election (court of appeals and supreme court) Non partisan elections (superior court)	Political Organizations Judges and candidates for judicial office shall not Act as leaders or hold any office in a political organization; Make speeches for a political organization or candidate for nonjudicial office or publicly endorse or publicly oppose a candidate for nonjudicial office; or Personally solicit funds for a political organization or nonjudicial candidate; or make contributions to a political party organization or to a nonjudicial candidate in excess of five hundred dollars in any calendar year per political party or political organization or candidate, or in excess of an aggregate of one thousand dollars in any calendar year for all political parties or political organizations or nonjudicial candidates. Canon 5A(1)-(3)	Subject to the monetary limitation herein to political contributions, a judge may purchase tickets for political dinners or other similar functions. Any admission price to such a political dinner or function in excess of the actual cost of the meal shall be considered a political contribution. From the Commentary to Canon 5A(1)-(3)	In judicial elections, judges are neither required to shield themselves from campaign contributions nor are they prohibited from soliciting contributions from anyone including attorneys. Nevertheless, there are necessary limits on judges facing election if the appearance of impropriety is to be avoided. From the Commentary to Canon 5A(1)-(3)
COLORADO Appointment with Retention Election	Political Conduct in General A judge shall not: Act as a leader or hold any office in a political organization; Make speeches for a political organization or candidate or publicly endorse a candidate for public office; Solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political partisan gatherings, or purchase tickets for political party dinners or other similar functions; Canon 5A(1)(a)-(c)		
CONNECTICUT Appointment with no Re-Election	Political Conduct in General A judge should not: Act as a leader or hold any office in a political organization; Make speeches for a political organization or candidate or		

	publicly endorse a candidate for public office; Solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners or other functions. Canon 7(a)(1)-(3)		
DELAWARE Appointment with no Re-Election	A judge should not: Act as a leader or hold any office in a political organization; Make speeches for a political organization or candidate or publicly endorse or oppose a candidate for public office; Directly or indirectly solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other functions. Canon 7A(1)-(3)		
DISTRICT OF COLUMBIA Appointment by the President, confirmation by Senate	All Judges and Candidates Except as authorized in Section 5B(2), a judge or a candidate for election or appointment to judicial office shall not: Act as a leader or hold an office in a political organization; Publicly endorse or publicly oppose another candidate for public office; Make speeches on behalf of a political organization; Attend political gatherings; or Solicit funds for, pay an assessment to or make a contribution to a political organization or candidate, or purchase tickets for political party dinners or other functions. Canon 5A(1)(a)-(e)	A non-judge candidate for appointment to judicial office may, in addition, unless otherwise prohibited by law: Continue to pay ordinary assessments and ordinary contributions to a political organization or candidate and purchase tickets for political party dinners or other functions. Canon 5B(2)(b)(iii)	
FLORIDA Appointment with Retention Election (appellate level) Election (trial level)	All Judges and Candidates Except as authorized in Sections 7B(2), 7C(2) and 7C(3), a judge or a candidate for election or appointment to judicial office shall not: Act as a leader or hold any office in a political organization; Publicly endorse or publicly oppose another candidate for public office; Make speeches on behalf of a political organization;	A judicial candidate involved in an election, or re-election, or a merit retention candidate who has certified that he or she has active opposition, may attend a political party function to speak in behalf of his or her candidacy or on a matter that relates to the law, the improvement of the legal system, or the administration of justice. The function must not be a fund raiser, and the	A candidate, including an incumbent judge, for a judicial office that is filled by public election between competing candidates shall not personally solicit campaign funds, or solicit attorneys for publicly stated support, but may establish committees if responsible persons to secure and manage the expenditure of funds for the candidate's campaign and to obtain public statements of support for

	Attend political party functions; or Solicit funds for, pay an assessment to or make a contribution to a political organization or candidate, purchase tickets for political party dinners or other functions. Canon 7A(1)(a)-(e)	invitation to speak must also include the other candidates, if any, for that office. The candidate should refrain from commenting on the candidate's affiliation with any political party or other candidate, and should avoid expressing a position on any political issue. A judicial candidate attending a political party function must avoid conduct that suggests or appears to suggest support of or opposition to a political party, a political issue, or another candidate. Conduct limited to that described above does not constitute participation in a partisan political party activity. Canon 7C(3)	his or her candidacy. Such committees are not prohibited from soliciting campaign contributions and public support from any person or corporation authorized by law… Canon 7C(1)
GEORGIA Non Partisan Election	Political Conduct in General A judge or a candidate for public election to judicial office shall not: Act as a leader or hold office in a political organization; Make speeches for a political organization or candidate of publicly endorse a candidate for public office; Solicit funds for or pay an assessment or make a contribution to a political organization, or purchase tickets for political party dinners, or other functions, except as authorized in Subsection A(2). Canon 7A(1)(a)-(c)	Judges holding office filled by public election between competing candidates, or candidates for such office, may attend political gatherings and speak to such gatherings on their own behalf when they are candidates for election or re-election. Canon 7A(2)	Reasonable campaign contributions Canon 7B(2)
HAWAII Appointment with no re-election	All Judges and Candidates A judge shall not: Act as a leader or hold an office in a political organization; Publicly endorse or publicly oppose a candidate for public office; Make speeches on behalf of a political organization; Attend political gatherings; or Solicit funds for, pay an assessment to or make a contribution to a political organization or candidate, purchase tickets for political party dinners or other functions. Canon 5A(1)(a)-(e)		

IDAHO Non partisan election	All Judges and Candidates Except as authorized in Sections 5B(2) and 5C(1), a judge or a candidate for election or appointment to judicial office shall not: Act as a leader or hold an office in a political organization; Publicly endorse or publicly oppose another candidate for public office; Make speeches on behalf of a political organization; Publicly endorse or seek the endorsement of a political organization; or Solicit funds for, pay an assessment to or make a contribution to a political organization or candidate. Canon 5A(1)(a)-(e)		…Such committees may solicit and accept reasonable campaign contributions…A candidate's committees may solicit contributions and public support for the candidate's campaign no earlier than [one year] before election and no later than [90] days after the last election in which the candidate participates during the election year… Canon 5C(2)
ILLINOIS Partisan election	All Judges and Candidates Except as authorized in subsections B(1)(b) and B(3), a judge or a candidate for election to judicial office shall not: Act as a leader or hold an office in a political organization; Publicly endorse or publicly oppose another candidate for public office; Make speeches on behalf of a political organization; Solicit funds for, or pay an assessment to a political organization or candidate. Canon 7A(1)(a)-(d)	A judge or candidate may, except as prohibited by law: At any time Purchase tickets for and attend political gatherings; Identify himself or herself as a member of a political party; Contribute to a political organization. Canon 7B(1)(a)(i)-(iii)	…Such committees may solicit and accept reasonable campaign contributions…a candidate's committees may solicit contributions and public support for the candidate's campaign no earlier than one year before an election and no later than 90 days after the last election in which the candidate participates during the election year. Canon 7B(2)
INDIANA Appointment with retention election	Except as authorized in Sections 5B(2), 5C(1) and 5C(3) and 5D, a judge or a candidate for election or appointment to judicial office or retention in judicial office shall not: Act as a leader or hold an office in a political organization; Publicly endorse or publicly oppose another candidate for public office; Make speeches on behalf of a political organization; Attend a gathering of a political organization; Solicit funds for, pay an assessment, slating fee or other mandatory political payment to, or make a contribution to, a political organization or candidate, or purchase tickets for political party dinners or other functions; Canon 5A(1)(a)-(e)	A non-judge candidate for appointment to political office may not: Pay assessments, make contributions to a political organization or candidate, or purchase tickets for political party dinners or other functions. Canon 5B(2)(b)(iii) A judge or a candidate subject to public election, except as prohibited by law, may at any time: Attend a gathering of a political organization and purchase a ticket for the gathering for the judge and the judge's guest	…Such committees may solicit and accept reasonable campaign contributions…a candidate's committees may solicit contributions and public support for the candidate's campaign no earlier than one year before an election and no later than 90 days after the last election in which the candidate participates during the election year. Canon 5C(2)

		Canon 5C(1)(a)	
IOWA Appointment with retention election	A judge should not: Act as a leader or hold any office in a political organization Make speeches for a political organization or candidate or publicly endorse a candidate for public office Solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other functions. Canon 7		
KANSAS Appointment with retention election	All Judges and Candidates Except as authorized in Sections 5B(2), 5C(1), 5C(3) and 5C(4), a judge or a candidate for election or appointment to judicial office shall not: Act as a leader or hold an office in a political organization; Publicly endorse or publicly oppose another candidate for public office; Make speeches on behalf of a political organization; Attend political gatherings; or Solicit funds for, pay an assessment to or make a contribution to a political organization or candidate, or ourchase tickets for political party dinners or other functions. Canon 5A(1)(a)-(e)	A judge or candidate subject to public election may, except as prohibited by law: At any time Purchase tickets for and attend political gatherings; Identify himself or herself as a member of a political party; and contribute to a political organization Canon 5C(1)(a)(i)-(iii)	…Such committees may solicit and accept reasonable campaign contributions…a candidate's committees may solicit contributions and public support for the candidate's campaign no earlier than one year before an election and no later than 90 days after the last election in which the candidate participates during the election year. Canon 5C(2)
KENTUCKY Non partisan election	Political Conduct in General A judge or a candidate for election to judicial office shall not: Act as a leader or hold any office in a political organization; Make speeches for or against a political organization or candidate or publicly endorse or oppose a candidate for public office; Solicit funds for or pay an assessment or make a contribution to a political organization or candidate, except as authorized in subsection A(2) Canon 5A(1)(a)-(c)	A judge or a candidate for election to judicial office may purchase tickets to political gatherings for the judge or candidate and one guest, may attend political gatherings and may speak to such gatherings on the judge's or candidate's own behalf. A judge or candidate shall not identify himself or herself as a member or a political party in any form of advertising, or when speaking to a gathering. If not initiated by the judge or candidate for such office, and only in answer to a direct question, the judge or candidate may identify himself or herself as a member or a particular political party.	A candidate's committees may solicit funds for the campaign no earlier than 180 days before a primary election. A candidate's committees may not solicit funds after a general election. Canon 5B(2)

		Canon 5A(2)	
LOUISIANA Partisan election	Political Conduct in General A judge or judicial candidate shall not: Act as a leader or hold any office in a political organization; Publicly endorse or publicly oppose another candidate for public office; Make speeches on behalf of a political organization or a candidate for public office; Except to the extent permitted by these Canons, solicit funds for, pay an assessment to, or make a contribution to a political organization or candidate or purchase tickets for political party dinners or other campaign functions. Canon 7A(1)(a)-(d)	A Judge or a Judicial Candidate May: At any time Attend political gatherings; Identify himself or herself as a member of a political party Canon 7C(1)(a)-(b)	A candidate's committee may solicit contributions for the candidate's campaign no earlier than two years before the primary election. Contributions may be solicited after the last election in which the candidate participated only for the purpose of extinguishing the campaign debt resulting from that election. After the campaign debt is extinguished, post-election campaign contributions may not be solicited or accepted. Canon 7D(3)
MAINE Appointment with no re-election	Political Conduct of Incumbent Judges A judge shall not: Act as a leader or hold an office in a political organization; Publicly endorse or publicly oppose a candidate for public office; Make speeches on behalf of a political organization; Attend political gatherings; Solicit funds for, pay an assessment to, or make a contribution to a political organization or candidate, or purchase tickets for political party dinners or other functions Canon 5A(1)(a)-(e)		Political Conduct of Candidates for Election as Judge of Probate …Such committees may solicit and accept reasonable campaign contributions…a candidate's committees may solicit contributions and public support for the candidate's campaign no earlier than one year before an election and no later than 90 days after the last election in which the candidate participates during the election year. Canon 5C(3)
MARYLAND Appointment with retention election *I believe MD recently revised its code	A judge who is a candidate for election, re-election, or retention to judicial office may engage in partisan political activity allowed by law with respect to such candidacy, except that the judge Should not act as a leader or hold any office in a political organization; Should not make speeches for a political organization or candidate or publicly endorse a candidate for non-judicial office Canon 5B(1)-(2)		
MASSACHUSETTS Appointment with no re-	Political Conduct in General A judge shall not:		

election	Act as a leader of, or hold any office in, a political organization; Make speeches for a political organization or candidate or publicly endorse a candidate for public office; Solicit funds for, or pay an assessment or make contribution to, a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, for functions conducted to raise money for holders of political office or for candidates for election to any political office, or for any other type of political function Canon 5A(1)(a)-(c)		
MICHIGAN Non partisan election		A Judge or candidate for judicial office may: Attend political gatherings; Speak to such gatherings on the judge's own behalf or on behalf of other judicial candidates; Contribute to a political party Canon 7A(2)(a)-(c)	Such committees are prohibited from soliciting campaign contributions from lawyers in excess of $100 per lawyer, but may solicit public support from lawyers. A candidate's committee may solicit funds for the campaign no earlier than 180 days before a primary election or nominating convention and may not solicit or accept funds after the date of the general election. Canon 7B(2)(c)
MINNESOTA Non partisan election	Except as authorized in Section 5B(1), a judge or a candidate for election to judicial office shall not : Act as a leader or hold any office in a political organization; identify themselves as members of a political organization, except as necessary to vote in an election. Publicly endorse or, except for the judge or candidate's opponent, publicly oppose another candidate for public office; Make speeches on behalf of a political organization; Attend political gatherings; or seek, accept or use endorsements from a political organization; or Solicit funds for or pay an assessment to or make a contribution to a political organization or candidate, or purchase tickets for political party dinner or other functions. Canon 5A(1)(a)-(e)		
MISSISSIPPI Non partisan election	Except as authorized in Section 5B(2), 5C(1) and 5C(2), a judge or a candidate for election to judicial office shall not:	Judges holding an office filled by public election between competing candidates, or candidates for such office, may, only	…Such committees may solicit and accept reasonable campaign contributions…A candidate's committees

	Solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other political functions. Canon 5A(1)(c)	insofar as permitted by law, attend political gatherings, speak to such gatherings in their own behalf while candidates for election or re-election… Canon 5C(1)	shall not solicit or accept contributions and public support for the candidate's campaign earlier than 60 days before the qualifying deadline or later than 120 days after the last election in which the candidate participate during the election year… Canon 5C(2)
MISSOURI Appointment with retention election	No judge appointed to or retained in office in the manner prescribed in section 25(a)-(g) of article V of the state constitution shall directly or indirectly make any contribution to or hold any office in a political party or organization or take part in any political campaign. Canon 5A(1)	Where it is necessary that a judge be nominated and elected as a candidate of a political party, an incumbent judge or candidate for election to judicial office may attend or speak on the judge or candidate's own behalf at political gatherings and may make contributions to the campaign funds of the party of choice… Canon 5A(2)	
MONTANA Non partisan elections	*I have been unable to locate a copy of the state's judicial code of conduct		
NEBRASKA Appointment with retention election	Except as authorized in section 5B(2) and 5C(1), a judge or a candidate for retention in or appointment to judicial office shall not: Act as a leader or hold an office or membership in a political organization; Publicly endorse or publicly oppose another candidate for public office; Make speeches on behalf of a political organization; Attend political gatherings; or Solicit funds for, pay an assessment to, or make a contribution to a political organization or candidate, or purchase tickets for political party dinners or other functions. Canon 5A(1)(a)-(e)	A judge or a candidate subject to retention election may, except as prohibited by law, when the judge's candidacy has drawn active opposition: Purchase tickets for and attend political gatherings; Contribute to a political organization; Speak to gatherings on his or her own behalf; Canon 5C(1)(a)-(c)	…Such committees may solicit and accept reasonable campaign contributions…A candidate's committees may solicit contributions and public support for the candidate's campaign no earlier than six months before an election and no later than 30 days after the last election in which the candidate participates during the election year. Canon 5C(2)
NEVADA Non partisan election	All judges and candidates Except as authorized in Sections 5B(2) and 5C(1) a judge or a candidate for election or appointment to judicial office shall not: Act as a leader or hold an office in a political organization;	Judges and Candidates Subject to Public Election A judge or a candidate subject to public election may, except as prohibited by law: At any time:	A candidate and a candidate's committees may solicit contributions and public support for the candidate's campaign no earlier than 240 days before the primary election, and no later than 90 days after the last election in which the candidate participates during the election

	Publicly endorse or publicly oppose another candidate for public office; Make speeches on behalf of a political organization; or Solicit funds for a political organization or candidate. Canon 5A(1)(a)-(d)	Purchase tickets for and attend political gatherings; Upon request, identify himself or herself as a member of a political party; and Contribute to a political organization. Canon 5C(1)(a)(i)-(iii)	year. Canon 5C(2)
NEW HAMPSHIRE Appointment with no re-election	Political Conduct in General A judge shall not: Act as a leader or hold any office in a political organization; Make speeches for a political organization or candidate or publicly endorse a candidate for public office; Solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other functions. Canon 5A(1)(a)-(c)		
NEW JERSEY Appointment with no re-election	A judge shall not: Act as a leader or hold any office in a political organization; Make speeches for a political organization or candidate or publicly endorse a candidate for public office; Attend political functions that are likely to be considered as being political in nature; Solicit funds or pay an assessment or make a contribution to a political organization or candidate, or purchase tickets for political party dinners or other functions; Canon 7A(1)-(4)		
NEW MEXICO Appointment with retention election	Incumbent Judges A judge may engage in political activity on behalf of the legal system, the administration of justice, measures to improve the law and as expressly authorized by this code. 21-700A(1)	A judge may, unless and except as prohibited by law: Purchase tickets for and attend political gatherings 21-700A(2)	
NEW YORK	Incumbent judges and other judges running for public election to judicial office. Prohibited political activity shall include: Attending political gatherings; Purchasing tickets for politically sponsored dinners or other functions, including any such function for a non-political purpose. 100.5A(g)&(i)	During the Window Period…a judge or a non-judge who is a candidate for public election to judicial office, except as prohibited by law, may: Purchase two tickets to, and attend, politically sponsored dinners and other functions even where the cost of the ticket to such dinner or other function	…Such committees may solicit and accept reasonable campaign contributions…Such committees may solicit and accept such contributions and support only during the Window Period. 100.5A(5)

		exceeds the proportionate cost of the dinner or function. 100.5A(2)(v)	
NORTH CAROLINA Non partisan election	A judge may engage in political activity consistent with his status a public official. Canon 7	Permissible political conduct. A judge or a candidate may: Attend, preside over, and speak at any political party gathering, meeting or other convocation, including a fund-raising function for himself, another individual or group of individuals seeking election to office and the judge or candidate may be listed or noted within any publicity relating to such an event… Identify himself as a member of a political party and make financial contributions to a political party or organization… Engage in any other constitutionally protected political activity. Canon 7B(1)&(3)&(6)	
NORTH DAKOTA Non partisan election	All Judges and Candidates Except as authorized in Sections 5B(2) and 5C(1), a judge or candidate for election or appointment to judicial office shall not: Act as a leader or hold an office in a political organization or be a delegate to a political convention; Publicly endorse or publicly oppose another candidate for public office; Make speeches on behalf of a political organization; Seek or accept an endorsement or letter of support from a political party; Solicit funds for, pay an assessment to or make a contribution to a political organization or candidate; or Purchase tickets for and attend political gatherings. Canon 5A(1)(a)-(f)		…Such committees may solicit and accept reasonable campaign contributions…a candidate's committees may solicit contributions and public support for the candidate's campaign no earlier than one year before an election and no later than 90 days after the last election in which the candidate participates during the election year. Canon 5C(2)
OHIO Non partisan election	A judge or judicial candidate shall not do any of the following: Act as a leader or hold any office in a political organization;	A judge or judicial candidate may attend political gatherings and speak to political gatherings. Canon 7B(3)	See attached appendix

	Make speeches on behalf of a political organization or another candidate at a political meeting or publicly endorse or oppose a candidate for another public office… Canon 7B(2)(a)&(b)		
OKLAHOMA Appointment with retention election	All Judges and Candidates Except as authorized herein a judge or a candidate for election or appointment to judicial office should not: Act as a leader of or hold an office in a political organization; Publicly endorse or publicly oppose another candidate for public office; Make speeches on behalf of a political organization or candidate or publicly endorse a candidate for public office; or Solicit funds for, or pay assessment to or make a contribution to a political organization or candidate, purchase tickets for political party dinners or other functions. Canon 5A(1)(a)-(d)		…Such committees may solicit and accept reasonable campaign contributions…a candidate's committees may solicit and/or accept contributions and public support for the candidate's campaign no earlier than 90 days before an election filing period and no later than 30 days after the last election in which the candidate participates during the election year. Canon 5C(2)
OREGON Non partisan election	No applicable provisions		
PENNSYLVANIA Partisan election	A judge or a candidate for election to judicial office should not: Act as a leader or hold any office in a political organization; Make speeches for a political organization or candidate or publicly endorse a candidate for public office, except as authorized in subsection A(2); Solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other functions, except as authorized in subsection A(2) Canon 7A(1)(a)-(c)	A judge holding an office filled by public election between competing candidates, or a candidate for such office, may, only insofar as permitted by law, attend political gatherings, speak to such gatherings on his own behalf when he is a candidate for election or reelection, or speak on behalf of any judicial candidate for the same office, identify himself as a member of a political party, and contribute to a political party or organization. Canon 7A(2)	A candidate's committees may solicit funds for his campaign no earlier than thirty (30) days prior to the first day for filing nominating petitions or the last day for filing a declaration of intention to seek reelection on a retention basis, and all fundraising activities in connection with such judicial campaign shall terminate no later than the last calendar day of the year in which the judicial election is held. Canon 7B(2)
RHODE ISLAND Appointment with no re-election	All Judges and Candidates Except as authorized in Canons 5B(2) a judge or a candidate for election or appointment to judicial office shall not: Act as a leader or hold an office in a political		

	organization; Publicly endorse or publicly oppose another candidate for public office; Make speeches on behalf of a political organization; Attend political gatherings; or Solicit funds for, pay assessment to or make a contribution to a political organization or candidate, or purchase tickets for political party dinners or other functions. Canon 5A(1)(a)-(e)		
SOUTH CAROLINA Appointment with no re-election	All Judges and Candidates Except as authorized in Sections 5B(2), 5C(1) and 5C(3), a judge or a candidate for election or appointment to judicial office shall not: Act as a leader or hold an office in a political organization; Publicly endorse or publicly oppose another candidate for public office; Make speeches on behalf of a political organization; Attend political gatherings; or Solicit funds for, pay an assessment to or make a contribution to a political organization or candidate, or purchase tickets for political party dinners or other functions. Canon 5A(1)(a)-(e)	A judge or a candidate subject to public election may, except as prohibited by law: At any time Purchase tickets for and attend political gatherings; Identify himself or herself as a member of a political party; and Contribute to a political organization Canon 5C(1)(a)(i)-(iii)	…Such committees may solicit and accept reasonable campaign contributions…a candidate's committees may solicit contributions and public support for the candidate's campaign no earlier than one year before an election and no later than 90 days after the last election in which the candidate participates during the election year. Canon 5C(2)
SOUTH DAKOTA Appointment with retention election	All judges and candidates Except as authorized in Sections 5B(2), 5C(1) and 5C(3), a judge or a candidate for election or appointment to judicial office shall not: Act as a leader or hold an office in a political organization; Publicly endorse or publicly oppose another candidate for public office; Make speeches on behalf of a political organization; Attend political gatherings; or Solicit funds for, pay assessment to or makea contribution to a political organization or candidiate, or purchase tickets for political party dinners or other functions Canon 5A(1)(a)-(e)	A judge or a candidate subject to public election may, except as provided by law: At any time Purchase tickets for and attend political gatherings; Identify himself or herself as a member of a political party for voting purposes only; and Contribute to a political organization (or candidate) Canon 5C(1)(a)(i)-(iii)	…Such committees may solicit and accept reasonable campaign contributions…a candidate's committees may solicit contributions and public support for the candidate's campaign no earlier than 90 days before a primary election and no later than 90 days after the last election in which the candidate participates during the election year.
TENNESSEE	Except as provided by 5B(2), 5C and 5D, a judge or a candidate for election or appointment to judicial office	A judge or a candidate subject to election may, except as prohibited by law:	A candidate's committees may solicit and accept contributions for the

Appointment with retention election	shall not: Act as a leader or hold an office in a political organization; Publicly endorse or publicly oppose another candidate for public office; Make speeches on behalf of a political organization; Solicit funds for or pay an assessment to a political organization or a political candidate; or make a contribution to a political candidate. Canon 5A(1)(a)-(e)	At any time Purchase tickets for an attend political gatherings, subject to the limitations in (a)(iii); Identify himself or herself as a member of a political party; and Contribute to a political organization or a political candidate in an amount up to the limitations provided in Tenn. Code ann. Section 2-10-31 et seq. Canon 5C(1)(a)(i)-(iii)	candidate's campaign no earlier than 180 days before an election and no later than 90 days after the last election in which the candidate participates during the election year. Canon 5C(2)(a) Commentary references statutory campaign contribution limits
TEXAS Partisan election		A judge or judicial candidate may attend political events and express his or her views on political matters in accord with this Canon and Canon 3B(10). Canon 5(3)	
UTAH Appointment with retention election	A candidate for selection by a judicial nominating commission shall not engage in political activities that would jeopardize the confidence of the public or of governmental officials in the political impartiality of the judicial branch of government. Canon 5A A judge or a candidate for a judicial office who has been confirmed by the Senate shall not: Act as a leader or hold any office in a political organization; Make speeches for a political organization or candidate or publicly endorse a candidate for public office; Solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings or purchase tickets for political party dinners or other functions, except as authorized in Canon 5C Canon 5B(1)-(3)		
VERMONT Appointment with no re-election	A judge shall not: Act as a leader or hold an office in a political organization or take part in any political campaign; Publicly endorse or publicly oppose a candidate for public office; Make speeches on behalf of a political organization; Participate in political caucuses or meetings; Pay an assessment or make a contribution to a political		A candidate for election or reelection as judge of probate or assistant judge Such committees may solicit and accept campaign contributions not to exceed $150.00 from any single source…a candidate's committees may solicit contributions and public support for the

	party, organization, or candidate, or purchase tickets for political party dinners or other functions; Solicit funds for a political party, organization, or candidate; Canon 5A(1)(a)-(f)		candidate's campaign no earlier than 90 days before a primary election and no later than 90 days after the last election in which the candidate participates during the election year. Canon 5C(3)
VIRGINIA Appointment with no re-election	A judge shall not: Act as a leader or hold any office in a political organization; Make speeches for a political organization or candidate or publicly endorse or oppose a candidate for public office; or Solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other political functions.		
WASHINGTON Non partisan election	Judges or candidates for election to judicial office shall not: Act as leaders or hold any office in a political organization; Make speeches for a political organization or nonjudicial candidate or publicly endorse a nonjudicial candidate for public office; Solicit funds for or pay an assessment or make a contribution to a political organization or nonjudicial candidate; Attend political functions sponsored by political organizations or purchase tickets for political party dinners or other functions, except as authorized by Canon 7A(2); Identify themselves as members of a political party, except as necessary to vote in an election; Contribute to a political party, a political organization or nonjudicial candidate. Canon 7A(1)(a)-(f)	During judicial campaigns, judges or candidates for election to judicial office may attend political gatherings, including functions sponsored by political organizations, and speak to such gatherings on their own behalf or that of another judicial candidate. Canon 7A(2)	Candidates' committees may solicit contributions no earlier than 120 days from the date when filing for that office is first permitted and no later than 60 days after the final election in which the candidate participated. Canon 7B(2)
WEST VIRGINIA Partisan election	All judges and candidates Except as authorized in Sections 5B(2), 5C(1), and 5C(3), a judge or a candidate for election or appointment to judicial office shall not: Act as a leader or hold an office in a political organization; Publicly endorse or publicly oppose another candidate for	Judges and candidates subject to public election A judge or a candidate subject to public election may, except as prohibited by law: At any time Purchase tickets for and attend political	Reasonable campaign contributions Canon 5C(2)

	public office; Make speeches on behalf of a political organization; Publicly display any campaign paraphernalia in any area where judicial activities are conducted or knowingly permit any such display; Solicit funds for a political organization or candidate. Canon 5A(1)(a)-(e)	gatherings; Identify himself or herself as a member of a political party; and Contribute to a political organization Canon 5C(1)(a)(i)-(iii)	
WISCONSIN Non partisan election	Party membership Except for activities concerning his or her own election, a judge shall not be a member of any political party or participate in its affairs, caucuses, promotions, platforms, endorsements, conventions or activities. A judge shall not make or solicit financial or other contributions in support of its causes or publicly endorse or speak on behalf of its candidates or platforms. SCR 60.06(2)		
WYOMING Appointment with retention election	All judges and candidates Except as authorized in Sections 5B(2) and 5C(1), a judge or candidate shall not Act as a leader or hold office in a political organization; Publicly endorse or publicly oppose another candidate for public office; Make speeches on behalf of a political organization; Attend political gatherings; or Solicit funds for, pay an assessment to, or make a contribution to a political organization or candidate, or purchase tickets for political party dinners or other functions. Canon 5A(1)(a)-(e)	A judge or a candidate subject to public election may At any time Purchase tickets for and attend political gatherings Canon 5C(1)(a)(i)	Such committees may solicit and accept reasonable campaign contributions…A candidate's committees may solicit contributions and public support for the candidate's campaign no earlier than one (1) year before an election and no later than thirty (30) days after the last election in which the candidate participates during the election year. Canon 5C(2)

Summary of Canon 5 Chart

STATES THAT BAN JUDGES OR JUDICIAL CANDIDATES FROM PURCHASING TICKETS FOR POLITICAL PARTY GATHERINGS/DINNERS

Alaska (merit selection)
Colorado (merit selection)
Connecticut (appointment)
Delaware (appointment)
Florida (merit selection and election)
Hawaii (appointment)

Iowa (merit selection) (but note it is "should not")
Maine (appointment)
Massachusetts (appointment)
Minnesota (non partisan election)
New Hampshire (appointment)
New Jersey (appointment)
North Dakota (non partisan election)
Oklahoma (merit selection) (but note that it is "should not")
Rhode Island (appointment)
Utah (merit selection)
Vermont (appointment)
Virginia (appointment)

STATES THAT ALLOW JUDGES OR JUDICIAL CANDIDATES TO PURCHASE TICKETS FOR POLITICAL PARTY GATHERINGS/DINNERS
Arizona (merit selection)
Arkansas (non partisan election)
California (merit selection and election) – but a dollar amount limit
DC (appointment)
Idaho (non partisan election)
Illinois (partisan election)
Indiana (merit selection)
Kansas (merit selection)
Kentucky (non partisan election)
Maryland (merit selection)
Nebraska (merit selection)
Nevada (non partisan election)
New Mexico (merit selection)
New York
North Carolina (non partisan election)
Oregon (non partisan election)
South Carolina (merit selection)
South Dakota (merit selection)
Tennessee (merit selection) – but a dollar amount limit
West Virginia (partisan election)
Wyoming (merit selection

STATES WITH VAGUE PROVISIONS

Alabama (partisan election)
Georgia (non partisan election) (ban on purchasing tickets but may attend political gatherings)
Louisiana (partisan election) (ban on purchasing tickets but may attend political gatherings)
Michigan (non partisan election) (may attend political gatherings)
Mississippi (non partisan election) (ban on purchasing tickets but may attend political gatherings)
Missouri (merit selection) (may attend political gatherings)
Ohio (non partisan election) (may attend political gatherings)
Pennsylvania (partisan election) ("should not" purchase tickets but may attend political gatherings)
Texas (partisan election) (may attend political gatherings)
Washington (non partisan election) (ban on purchasing tickets but may attend political gatherings)
Wisconsin (no partisan election) (no specific ban on purchasing but language restricting activities with political parties)

Judicial Elections in NY State; 1996-2003
Appendix G-4

2003

City Court Judge	23
Civil Court Judge	24
County Judge	8
County/Family/Surrogate Judge	6
District Court Judge	8
Family Court Judge, Upstate	12
Supreme Court Justice	35
Surrogate	3
Total Races	**119**

2002

City Court Judge	21
Civil Court Judge	18
County / Family / Surrogate Judge	6
County Judge	11
District Court Judge	11
Family Court Judge, Upstate	8
Supreme Court Justice	30
Surrogate	1
Total Races	**106**

2001

City Court Judge	24
Civil Court Judge	12
County Judge	3
County/ Family/ Surrogate Judge	6
District Court Judge	10
Family Court Judge, Upstate	6
Supreme Court Justice	30
Surrogate	6
Total Races	**97**

2000

City Court Judge	14
Civil Court Judge	12
County Judge	11
County/ Family/ Surrogate Judge	9
District Court Judge	5
Family Court Judge, Upstate	15
Supreme Court Justice	24
Surrogate	5
Total Races	**95**

1999

City Court Judge	16
Civil Court Judge	10
County Judge	6
County/ Family/ Surrogate	8
District Court Judge	5
Family Court Judge, Upstate	3
Supreme Court Justice	35
Surrogate	3
Total Races	**86**

1998

City Court Judge	11
Civil Court Judge (NYC)	5
County Judge	6
County/ Family/ Surrogate Judge	4
District Court Judge	7
Family Court Judge, Upstate	14
Supreme Court Justice	22
Surrogate	5
Total Races	**74**

1997

City Court Judge	5
Civil Court Judge	9
County Judge	9
County/Family/Surrogate Judge	4
District Court Judge	1
Family Court Judge, Upstate	1
Supreme Court Justice	20
Surrogate	1
Total Races	**50**

1996

City Court Judge	4
Civil Court Judge	10
County / Surrogate Judge	4
County Judge	4
Family Court Judge, Upstate	4
Supreme Court Justice	18
Surrogate	2
Total Races	**46**

Total Number of Races 1996-2003	**673**

Average Number of Races per Year 1996-2003

City Court Judge	15
Civil Court Judge	13
County Judge	7
County/ Family/ Surrogate	6
District Court Judge	6
Family Court Judge, Upstate	8
Supreme Court Justice	27
Surrogate	3
Total Races	**84**

# Races by District 1996-2003	Total	Ave/Year
1	61	8
2	67	8
3	37	5
4	44	6
5	51	6
6	35	4
7	54	7
8	66	8
9	70	9
10	121	15
11	40	5
12	35	4

Working Paper on Sources of Public Funding

Appendix G-5

I. Sources of Funding

A public funding program may have many different and several sources of funding. Although some states employ only one source of funding, many look to multiple sources to fund candidates. The obvious advantage here is that while it may be difficult to produce sufficient revenues from any individual source to provide meaningful support to candidates, multiple sources provide a broader base from which to pool monies. Several states look to multiple funding sources, including Arizona, Illinois, North Carolina, and Wisconsin. Idaho and Texas have bills pending that would provide public funds for judicial candidates from a number of sources.

Except where otherwise stated, the examples provided pertain to the financing of judicial candidates. The following sources of funding are not all inclusive.

A. New Revenue Sources

New revenue sources are those revenue sources created and employed for the express purpose of funding candidates. A number of possibilities exist.

Attorney Contributions

Attorneys can be asked to make contributions to provide revenue for public funding of candidates as part of their professional duty to support the justice system. Attorney contributions can be either voluntary or mandatory. North Carolina, a state that provides public funding for judicial elections, currently asks attorneys to make a $50 contribution on the invoice for their annual privilege license. Illinois, which also provides public funding for judicial elections, requires attorneys to contribute $25 annually.

As an example, the New York State Interest on Lawyer Account Fund (IOLA) was created by the legislature to provide additional financial support to civil legal service organizations that had been decimated by federal budget cuts. The IOLA program requires attorneys to deposit funds received from clients either in interest bearing accounts for the benefit of the clients or in interest bearing IOLA accounts, in accordance with the provisions of the statute.[1] The interest on IOLA accounts is pooled and provides funding for grants made by the Board of Trustees of the IOLA Fund to non-profit civil legal services providers across the state. While IOLA funds cannot be used, either directly or indirectly, to contribute to any political party or any candidate for public or party office, a similar program might be implemented expressly for the purpose of funding judicial elections.

[1] See Judiciary Law § 497.

Surcharge on Civil and Criminal Fines and Penalties

States can add a percentage or flat rate surcharge on civil and or criminal penalties and fines. Wisconsin imposes a surcharge on all fines and forfeitures to assist in financing the campaigns of judicial candidates. Arizona currently imposes an additional surcharge of 10% on all civil and criminal fines and penalties collected to provide public funding for candidates.[2] The Idaho Judicial Independence Act (HB 251) would impose a 3% surcharge on all civil penalties to assist in funding judicial candidates.

Registration Fees

Certain professions are required to pay registration fees. In Texas, the city of Austin requires lobbyists to pay a registration fee which is used to provide public funding for candidates. New York could explore other professionals upon whom to impose a minor licensing fee that, in the aggregate, could provide significant funds for public campaign finance.

Voluntary Contributions

In addition to more organized sources of funding, a public funding program might be supplemented by voluntary contributions from the public generally. North Carolina currently accepts voluntary contributions from corporations, business entities, labor unions, and professional associations to assist in funding their judicial candidates. Illinois also accepts contributions from individuals and other entities but caps such contributions at $1,000 per year. The Idaho Judicial Independence Act (HB 251) would accept funds of $500 per contributor from the public to support the Act. Proposed Texas House Bill 4 would accept contributions directly to the fund used to support candidates.

Fines Imposed for Violation of Public Funding Rules and Requirements

In addition to external sources of funding, a public funding program itself may produce a portion of the funds required to run it. A public funding program could impose fines on participating candidates who violate the rules and requirements of the program itself. The Idaho Judicial Independence Act (HB 251) would impose fines on candidates who violate the Act, using the money collected from such fines as one source of funds.

Unspent Seed Money Contributions

A public funding program could require that seed money which remains unspent after a candidate is certified to participate in the program be contributed to the public funding program. This requirement has been proposed by the Idaho Judicial Independence Act (HB 251), which would set a $10,000 aggregate ceiling on seed money contributions.

Unspent Funds Distributed to Participating Candidates

A public funding program could require that any monies not spent in the election for which they were distributed be returned to the public funding program for use by future candidates. This requirement has been proposed by the Idaho Judicial Independence Act (HB 251). Texas House Bill 4 would also require that unspent money distributed to candidates be returned to the fund after a candidate's withdrawal, a finding of ineligibility, or the general election.

[2] Arizona does not currently provide public funding for judicial candidates.

Other Potential "New Revenue" Sources

In addition to those discussed above, a number of other possibilities exist such as: tax rates or surcharges on millionaires; civil filing fees; punitive damage surcharges and proportional awards; transient lodging taxes; the elimination of certain tax credits, deductions and exemptions; corporate tax surcharges, new or increased sales tax on discretionary items, including "sin" taxes on alcohol, cigarettes, and gambling; sales taxes on advertising; sales taxes on mail order purchases and internet sales; vehicle license plate fees; fees or surcharges on bids for state contracts and on regulated industries; tax amnesty programs; public campaign finance bonds; refundable deposits on containers; new or enhanced state lottery revenues; "jock" taxes imposing additional income taxes on visiting athletes who play professionally in New York State but live elsewhere; the sale of surplus property owned by the State; the extension of temporary taxes; the creation of an endowment funded by contributions incentivized by 100% tax deductions on all for contributions to the endowment; and larger campaign contributions with a percentage of the increase to be donated to the public financing campaign.

B. Dedication or Reallocation of Existing State Revenues

Tax Check-offs

State income tax returns can include an option for taxpayers to allocate a portion of state funds to a public campaign finance fund. Alternatively, a reverse tax check-off could be used, requiring that a taxpayer who did not wish to have money go toward the public funding program would have to check the box. North Carolina employs a positive check-off inviting taxpayers to earmark $3 of their taxes to go toward the public funding of candidates. Illinois and Wisconsin also use a taxpayer check-off to assist in funding their judicial candidates.

Qualifying Contributions

In addition to those sources of funding provided to candidates by the state, a public funding program may in part look to the candidates themselves to produce a portion of the necessary money by requiring that all or a portion of the qualifying contributions raised by candidates be deposited into a general public campaign finance fund. As one proposed source of funding, the Idaho Judicial Independence Act (HB 251) would require candidates to collect qualifying contributions of $5 from at least 2000 registered voters in the state of Idaho during the qualifying period which are then deposited into a fund to be used toward public funding of judicial campaigns generally. Texas House Bill 4 would require that amounts collected by candidates in excess of the qualifying amount aggregate ceiling of $30,000 be surrendered to the fund.

Tax Revenues

Existing funds obtained from traditional methods of taxation may be dedicated or reallocated to be used as a source of public funding for candidates. Alternatively, existing taxes might be raised to provide public funds for judicial candidates.
In Wisconsin, general tax revenues from the State treasury are used in part to fund judicial candidates. In Texas, Texas House Bill 4 proposes that revenue from the Attorney Occupation Tax be transferred every two years by the comptroller to be used as a source of public funding for judicial elections.

In New York City, the New York City Campaign Finance Board ("NYCCFB") provides public funding for candidates from taxes.[3] One possibility is that NYCCFB request additional financing from the legislature to include the funding of judicial candidates under their purview. The Office of Court Administration or another existing organization could also be provided with the necessary tax revenues to fund judicial candidates. Alternatively, a new organization could be created for the express purpose of funding and oversight of judicial candidates.

Other Potential Funds to be Derived from Existing State Revenues

In addition to those discussed above, a number of other possibilities exist such as free candidate statements in government published voter guides and candidate media vouchers funded by a percentage usage fee on total broadcast licensee gross revenues from the State.

C. Tax Credits

Tax credits refer to the reduction of the amount a taxpayer owes in exchange for the taxpayer's contribution to a public funding program. Tax credits may be provided as various percentages of the contribution made.

Individual Tax Credits

Ohio state income tax payers who contribute to state candidates can receive a 100% refundable tax credit for contributions up to $50 per individual and $100 for joint filers. Virginia offers state income tax payers a tax credit equal to 50% of a political contribution made to candidates for state and local offices not to exceed $25 for single filers and $50 for joint filers.

Tax Credits for Business and Professional Entities

Tax credits may be given to different business and professional entities in exchange for contributions. While this does raise the issue of whether political contributions from businesses that may wish to seek influence should be encouraged, the contribution could be made directly to the fund thereby eliminating any implication of impropriety.

Tax Credits for Combinations of Contributions

Oregon, provides a combination tax credit where taxpayers receive a 100 percent tax credit in exchange for one voluntary contribution to a political campaign or candidate and a contribution of equal or greater value to the Public Campaign Finance Trust Fund.

D. Government Mandated Private In-Kind Contributions

Government mandated private in-kind contributions would provide public funding to candidates for election without cost to the taxpayers. Some of the cost would be born by private companies.

[3] NYCCFB does not currently fund judicial candidates.

Cable Television Time Set-Aside

Federal law permits local franchising authorities to require cable television companies to set aside channel capacity for speech originated and controlled by members of the public, educational institutions, or local governments. This option would provide candidates with free time on cable television "access channels" to present their views to the public.

Billboard Space Set-Aside

Require billboard companies to make available a certain number of billboards without charge to candidates, on a first-come, first-served basis, during the last month before an election. Two possible ways to avoid the First Amendment issues that this raises are:

a. Billboard companies could be offered a state tax credit in exchange for voluntarily providing the space.
b. Alternatively, states could propose a ban on all billboards and then offer to permit their continued use in exchange billboard companies providing free space to candidates.

WORKING PAPER ON PUBLIC FUNDING OF JUDICIAL ELECTIONS AMONG THE STATES

Appendix G-6

TABLE OF CONTENTS

North Carolina…….pg. 2

Illinois……..pg. 9

Wisconsin……pg. 13

Idaho……pg. 18

Texas……....pg. 23

Georgia……pg. 28

Michigan……..pg. 31

Ohio…….pg. 33

PUBLIC FUNDING OF JUDICIAL ELECTIONS: NORTH CAROLINA

I. NORTH CAROLINA JUDICIAL CAMPAIGN REFORM ACT

Type of Authority by which Public Funding was Implemented
Legislative Act signed by the governor- **N.C. Judicial Campaign Reform Act** (SB-1054)

Purposes of Public Funding for Judicial Elections
Most donations in judicial elections come from lawyers and litigants who appear in courts. The fund's purpose is to decrease importance of large campaign donations and thereby enhance fair courts and fair elections.

Provided by the State Board of Elections

Form of Public Funding
Full funding

Establishment of Specific Fund
N.C. Public Campaign Fund ("Fund")

Eligibility
Appellate-level candidates –N.C. Supreme Court (SC) and N.C. Court of Appeals (CA)

Distribution Amounts
A) Regular funds -
1) Primary- no regular public funds; limited to qualifying contributions (between 33K and 69K)
2) General Election- based on multiples of the filing fee for that office
- SC - 175x the filing the filing fee = $201,300 (rounded off to nearest 100)
- CA - 125x the filing fee = $137, 500

B) Rescue Funds*- 2x spending limit
1) Primary-
- SC - 2x $69,000 = $138, 000
- CA - 2x $66,000 = $132,000
2) General-
- SC - 2x $201,300 = $402,600
- CA - 2x $137,500= $275,000

*Additional funds are provided to participating candidates who are hit with expenditures by opposing non-participating candidates and/or by independents that exceed spending limits of participating candidates. *See infra* "Trigger Provision".

C) Maximum Distribution Amount in General Elections (including regular and rescue funds) -
1) Supreme Court - $603, 900
2) Court of Appeals -$412,500

Qualification Requirements

1) Candidates may not raise or spend more than $10,000 during a period that begins January 1 of the year prior to the election and ends the day candidates file a declaration of intent.
2) Candidates must file with the State Board of Elections a declaration of intent to participate in the program.
3) Qualifying contributions - Amounts and requirements are as follows:
a) Minimum amount of contributions - 30x filing fee
- SC - $34,500
- CA - $ 33,000
b) Maximum amount of contributions - 60x filing fee
- SC - $69,000
- CA - $66,000
c) Minimum amount of contributors - 350
d) Amount of each contribution - $10-$500; personal/family - $1000
e) Limit on source of contributions – N.C. registered voters only
f) Time frame - must be raised during qualifying period that begins Sept 1 of year prior to election and ends on primary day
4) Candidates must abide by primary spending limits.
5) Candidates must agree to abide by spending limits during the general election (i.e. candidates may only spend public funds and qualifying contributions).

Spending limits

A) Amounts -
1) Primary- same as maximum on qualifying contributions + 2x that amount in rescue funds if triggered*
- SC - $69,000 + additional $138,000 if rescue funds are triggered
- CA - $66,000 + additional $132,000 if rescue funds are triggered

*This does not include amounts leftover from pre-declaration-of-intent funds.

2) General - same as maximum funding + 2x that amount in rescue funds if triggered*
- SC - $201, 300 + additional $402,600 if rescue funds are triggered
- CA - $137,500 + additional $275,000 in rescue funds if triggered

*This does not include amounts leftover from qualifying contributions or pre-declaration-of-intent funds.

B) Permitted uses of distribution amounts – limited to campaign-related purposes outlined by State Board of Elections

Contribution Limits
A) Primary - limit on qualifying contributions - $500; personal/family - $1000 per family member
B) General - no contributions allowed

Trigger Provision - authorizes additional funds (rescue funds) -
A) Additional funds are triggered when expenditures by non-participating candidates or independents exceed participating candidates' spending limits in primary or general elections.
B) The maximum of additional funds awarded equals 2x the spending limit amount in primary or general elections.

Refund Requirement
A) Participating candidates who cease to be certified, cease to be candidates, or loose an election must return unspent amounts received from Fund.

Sources of Funding
1) Voluntary $50 contribution from attorneys on annual license renewal
2) Voluntary tax form check-off of $3*
3) Voluntary contributions from other sources- corporations, other business entities, labor unions, and professional associations

*The bill initially called for a reverse check-off which meant that a taxpayer would have to check the box if he did *not* want money to go towards the Fund. However, the reverse check-off scheme was narrowly defeated in the Legislator.

Administration and Enforcement of Judicial Campaign Reform Act
A) Administering Agency - State Board of Elections with the advice of an Advisory Committee (comprised of members appointed by the Governor and the Board)

B) Penalties for violating any portion of the Judicial Campaign Reform Act -
1) Up to $10,000 civil fine
2) Repayment of funds distributed

II. BACKGROUND INFORMATION Provided by Justice at Stake

North Carolina Courts	Election	Term	Size	Expected Elections
Supreme Court	partisan; statewide	8 years	7 justices	2004: 1
Court of Appeals	partisan; statewide	8 years	15 judges	2004: 3
Superior Court	nonpartisan; by district	8 years	90 judges, 46 districts	
District Court	nonpartisan; by district	4 years	99 courts	

Past Fundraising Amounts by Court of Appeals and Supreme Court Candidates

From January 1, 2001 through April 20, 2002 the total amount of contributions raised by Court of Appeals and Supreme Court candidates was $497,324 with 70% of the contributions coming from attorneys. This total amount was a 52% increase in the funds raised in the 1998 elections.

Provided by Democracy South

Related Public Opinion Surveys

A) The increasing role of money in judicial elections is of prime concern to voters.

1) 84% expressed concern that lawyers are some of the biggest campaign contributors to judicial candidates.

2) 78% believe that campaign contributions influence judges' decisions "a great deal" or "some".

3) 85% worry that the rapid escalation in the cost to run for a judicial seat (over $1 million) is a barrier to otherwise qualified candidates seeking election.

4) 47% believe that judicial elections do not reflect the will of the average person.

5) 58% believe that there are two systems of justice in North Carolina, one of the rich and powerful and one for everyone else.

6) Voters continue to want to elect their judges by a margin of more than 5 to 1 (81% support election; 15% support appointment).

B) Support for public funding bill -

1) The bill was favored by 71% of all voters; strong support for the bill was exhibited across party lines (71% of Democrats, 70% of Republicans and 79% of Independents).

Survey conducted April 29-May 2, 2002
N=600 likely voters. Margin of error +/- 4%
Data collection and analysis by American Viewpoint

People and Organizations Involved in Creating or Supporting Public Funding and Specific Activities Performed to Gain Support for Public Funding

A) Much of the public support for public funding was coordinated by N.C. Voters for Clean Elections (NCVCE), a large coalition whose work was anchored by the polling, media work and special events sponsored by the N.C. Center for Voter Education, and by the research, outreach, and constituency organizing of Democracy South.

1) Activities by 4 major groups in N.C. to gain support for tax check-off -

a) Paid Media- informing public of check-off and its endorsement by political figures

b) Tax Services- educating tax preparers of check-off

c) “Buckslips”- distributing, via tax offices, “buckslips” with check-off information

d) Forums- informing the public of judicial reform via events and programs attended by prominent guest speakers

e) Attorney/Judicial Outreach- sending targeted mailing; appearances at association conferences

f) Email Action Alerts

g) Free Media -
- PSA time on stations and radio talk shows
- Targeting editorial writers
- Letters-to-editors
- Gaining positive quotes from state's top elected officials

h) Grassroots organizing

B) Public funding bill was endorsed by former Supreme Court justices who prefer appointment but who recognize that elections are going to continue and, therefore, believe that the new law is an important step forward.

C) Senator John McCain endorsed the public funding bill stating, "We need to protect judicial elections from the threat of special interest influence if we are going to maintain the people's confidence and trust in the administration of justice."

D) A. P. Carlton of Raleigh, President of the American Bar Association, strongly supported the bill stating that the Judicial Campaign Reform Act "meets the standards recommended" by the ABA for preserving the integrity and impartiality of the courts.

E) Thousands of citizens all over the state participated in constituency meetings with legislators over the past two years, sent emails and letters, and signed petitions calling for "Voter-Owned" Campaign Reform -- elections controlled by voters rather than special interests and wealthy donors.

F) Over 1,000 attorneys and judges in North Carolina (Republicans and Democrats) sent support statements to NCVCE, calling on the General Assembly to enact a public financing program for candidates running for the NC Supreme Court and Court of Appeals. In addition, these attorney and judges contacted their legislators and expressed their support for the bill.

G) The list of endorsing attorneys included the current president of the North Carolina State Bar and all 12 of the last 12 presidents. The N.C. State Bar is the body that oversees the conduct of attorneys. (The N.C. Bar Association decided not to take a position on the bill making it necessary to target individual lawyers and judges in order to make their support for the bill more visible. Six of the seven Supreme Court justices opposed the bill making direct constituency organizing all the more important).

H) The list of endorsers also included top attorneys in corporations such as Wachovia Bank, Burlington Industries, Belk Stores, and Progress Energy, as well as the state's top civil-rights attorneys, and hundreds of civic leaders, led especially by former U.S. Senator Robert B. Morgan, who helped recruit many others to the cause.

Provided by Democracy NC

Challenges to the Implementation of Public Funding

A) Arguments by the opposition -

1) There was general opposition, mostly by Republicans, to the distribution of taxpayer dollars to any political campaign as a matter of principle.

a) Proponents counteracted this argument by stressing that all the elements of the public financing system were voluntary, including voluntary tax payer check-off and voluntary contributions by attorneys.

2) Members of the legal community in favor of an appointive system were concerned that public financing is a half-step or that public funding strengthened the elective system, thereby, making it even more difficult to achieve an appointive system.*

a) Proponents argued that the non-partisan election provision was actually a move in the direction of merit selection. By reducing the arms race between parties and making the elective process less political, voters would not be as supportive of the elective system and a constitutional amendment would, thus, become a more viable possibility.**

*Interestingly, many of the supporters of public financing within the legislator are in favor of an appointive system. However, based on past failed attempts by the legislator at switching to an appointive system, the supporters in the legislator recognized public funding as the best manner of reform available.

**The switch to an appointive system would require constitutional amendment, which requires substantial support by voters. As noted earlier, 81% of voters are in favor of the elective system.

B) The State Bar took a neutral stance, thereby, forcing proponents to independently gain support from the legal community.*

*Senior members of the Bar are in favor of an appointive system.

C) The Republicans, who had been victorious in many of the recent judicial elections, for the most part opposed the public funding bill, which included a provision for non-partisan elections.*

*The majority of Democrats were in favor of the bill as a whole. There was even a greater majority of Democrats in favor of the non-partisan provision.

Provided by Bob Hill of Democracy NC and Jesse Rutledge of Justice at Stake

Relevant Web Sites

http://www.democracy-nc.org

http://www.ncvotered.com

http://www.democracysouth.org

http://ncjudges.ncvotered.com

http://www.lwvmaconnc.org/

http://www.justiceatstake.org/

http://www.brennancenter.org/programs/pester/pages/

PUBLIC FUNDING OF JUDICIAL ELECTIONS: ILLINOIS

I. PROPOSED "SUPREME COURT CAMPAIGN REFORM ACT"

Type of Authority by which Public Funding would be Implemented
Legislative Act- **Supreme Court Campaign Reform Act** ("Act") (SB 1415-HB 2800)

Purposes of Public Funding for Judicial Elections
A) Campaigns have increasingly looked like partisan elections with large contributions from special interests and litigants who have cases pending before the court.

B) Replacing private funds with public money will help protect the integrity and image of the judiciary.

Provided by Illinois Campaign for Political Reform

Form of Public Funding
Full funding

Establishment of Specific Fund
A) The Illinois Supreme Court Democracy Trust Fund ("Fund"). The Fund exists in the State treasury.

B) Eligible candidates receive a "fair election" debit card with which to draw money from an account and use for campaign expenditures.

Eligibility
Supreme Court candidates

Distribution Amounts
A) Regular funds - $750,000 for primary and general elections
1) Allocation requirements - must use at least 20% of distribution amount in primary and may not use more than 80% of distribution amount in general election*

*Any portion of funds allocated to primary that remain unspent is forfeited.

B) Matching funds* - dollar for dollar match; up to $750,000

*Matching funds are additional funds provided to publicly funded candidates where expenditures of a non-participating opponent exceed the public funding distribution amount by 5%.

C) Unopposed candidate other than write-in candidates -
1) Primary - $50,000
2) General - $75,000

D) No other candidates on the ballot in the general election - $75,000
E) Total maximum funding - $1.5 million

Qualification Requirements

A) Primary Elections -
1) Applying to State Board of Elections
2) Filing a sworn statement to comply with all of the requirements of the Act
3) Raising a certain number* of $5 to $25 contributions (qualifying contributions) before the end of the public financing qualifying period**

*At least 0.15% of the number of ballots cast in the district in last gubernatorial elections from individual qualifying contributors.

**The qualifying period ends the day before the primary campaign period begins

B) General Elections -
1) Applying to State Board of Elections
2) Filing a sworn statement that the candidate has fulfilled all primary election requirements and will comply with all general election requirements
3) Candidate was an eligible candidate during the primary election period

Once candidates accept public funding in the primary, candidates must comply with all general election requirements of the Act. Private funds may no longer be accepted except in accordance with Act.

Spending Limits

A) Amounts -
1) During the primary and general elections - $750,000* or $1.5* million if matching funds are triggered

*Minus amount of excess contributions

2) During qualifying period - $30,000 + qualifying contributions

B) Time limit -
1) Seed money contributions may not be spent past the qualifying period.*

* Ends the day before the primary campaign period begins

2) The portion of funds allocated to the primary may not be spent during the general election period.

Contribution Limits
A) No private contributions other than seed money contributions and qualifying contributions

B) Qualifying Contributions -
1) Per contributor - $25
2) Aggregate contribution limit – none indicated

C) Seed Money Contributions -
1) Per contributor limit
- Individual or political committee - $100 per contributor
- Personal and immediate family - aggregate amount of $10,000
2) Aggregate contribution limit - $30,000

D) Amounts exceeding these limits – must be deposited into Fund

Other Requirements
A) Reporting all contributions and expenditures

B) Maintaining records of all contributions (qualifying and seed) between $5 and $100 that contain the contributor's name and address

C) Expenditures must be through use of the "fair election" debit card

Trigger Provision - authorizes additional (matching) funds -
A) Additional (matching) funds are triggered when expenditures by non-participating candidates exceed the public financing distribution amount by 5%.*

*There is no mention of expenditures by independents that exceed the distribution amount.

B) The maximum of matching funds awarded equals $750,000.

Sources of Funding
A) Tax payer check-off

B) Mandatory attorney contributions - $25 annually

C) Voluntary contributions by individuals and other entities - maximum of $1000 per year

Administration and Enforcement of Act
A) Administering Agency - State Board of Elections

B) Penalties for exceeding spending and contribution limits -
1) Civil - forfeiture of up to 10 times the amount by which the expenditures or contributions exceeded the applicable limitation
2) Criminal - Class 3 felony if done knowingly

Overall Cost of Public Funding for Supreme Court Candidates
$2.5 to $3 million; less than 75 cents per taxpayer per year

II. BACKGROUND INFORMATION

Illinois Courts	Election	Term	Size	Elections Expected
Supreme Court	by district; partisan for first term; nonpartisan for retention	10 years	7 justices; 5 districts	2004: 0
Appellate Court	partisan for first term; nonpartisan for retention	10 years	42 judges, 5 districts	
Circuit Court	partisan for first term; nonpartisan for retention	6 years	22 courts	

Provided by Justice at Stake

2002 Spending Reports by Supreme Court Candidates
$2.18 million

Public Opinion Surveys and Other Related Studies
A) More than 89% of voters believe that campaign contributions influence decisions of Illinois judges.

B) Nearly 67% feel that the cost of running for the Supreme Court has become too expensive.

C) 58.8% believe that the high cost of running often discourages those with potential to be good judges from running for the judiciary.

D) 75.4% favor limits on the size of campaign contributions to judicial candidates.

E) Although some feel that the merit method is the best way to address undue influence, many have concluded that the adoption of merit selection in Illinois is highly unlikely.

Provided by Illinois Campaign for Political Reform

Organizations in Support of Public Funding
Illinois Campaign for Political Reform, Chicago Council of Lawyers and the ABA

PUBLIC FUNDING OF JUDICIAL ELECTIONS: WISCONSIN

I. "IMPARTIAL JUSTICE" CAMPAIGN REFORM BILL

Type of Authority by which Public Funding would be Implemented
Legislative Act- **SB 115/HB** (Introduced in 2001 Legislative Session)

Purposes of Public Funding for Judicial Elections
A) Reduce the escalating costs of elections

B) Open the playing field for candidates so that anyone who is qualified can compete regardless of wealth.

C) Restore meaning to the principle of one person, one vote

D) Level the financial playing field between candidates

E) Sever the connection between the influence of special interest money and elections

F) Free candidates from the constant money chase

Provided by Wisconsin Citizen Action

Form of Public Funding
Full funding

Establishment of Specific Fund
Democracy Trust Fund ("Fund")

Eligibility
Supreme Court candidates

Distribution Amounts
A) Amounts -
- Primary Elections - $100,000
- General Elections - $300,000

B) Subject to biennial adjustments based on changes in cost of living and State's voting population

C) Additional amounts - disbursed in accordance with the trigger provision*

**See infra* "Trigger Provision".

Qualification Requirements to be Certified as an Eligible Candidate for Public Funding

A) Filing application and sworn statement that candidate has complied and will comply with all of the Act's requirements

B) Qualifying contributions from at least 500 Wisconsin residents in amounts of not less than $10 nor more than $100 before the end of qualifying period*

*Begins July 1 and ends day before primaries

Spending Limits

A) Amount - Aside from public financing benefits, candidates may not spend more than a total of $25,000 from seed money and qualifying contributions.*

*Excess amounts are deposited into Fund

B) Permitted uses of distribution amounts – Public funding benefits may only be used to further the election of the candidate. Benefits may not be used to repay loans.

Contribution Limits

A) No private contributions other than qualifying and seed money contributions including contributions from personal funds

B) Seed money contributions may not exceed $100 per person

C) Personal funds may not exceed $5000

Reporting and Recording Requirements

A) Candidates must furnish complete financial records including records of qualifying and seed contributions and disbursements.

B) Candidates must maintain records of all seed money and qualifying contributions and include in these records the names and addresses of contributors. Additionally, if a contributor's contribution exceeded $50, candidates must record the contributor's principal occupation and the name and address of the contributor's place of employment.

Trigger Provision - authorizes additional funds -

A) Additional funds are triggered by expenditures of non-participating candidates or independents that exceed a certain amount.

1) Expenditures by non-participating candidates – Participating candidates will receive additional public funding equivalent to the amount by which expenditures of non-participating candidates exceed the public funding distribution amount.

2) Expenditures by independents for communications – Participating candidates will receive additional public funding equivalent to the amount by which communication

expenditures of independents exceed $2000 and exceed 20% of the public funding distribution amount.
C) Maximum disbursement of additional funds equals 3 times the amount of the initial public funding distribution amount.

Sources of Funding
A) Check off of tax dollars on income-tax returns

B) General tax revenues from the State treasury

C) Surcharge added to fines and forfeitures

Administration and Enforcement
A) Administration -
- The state treasurer administers the Fund.
- The election board administers the act.

B) Penalties -
1) Civil - Candidates who violate spending or contribution limits may be required to forfeit up to 10 times the amount by the which expenditures or contributions exceed the applicable limit.
2) Criminal – Candidates who knowingly violate spending or contribution limits may be fined up to $25,000 or jailed up to 5 years or both.

Estimated Cost of Public Funding
$1 million per year

II. BACKGROUND INFORMATION

Wisconsin Courts	Nonpartisan Election	Term	Size	Expected Vacancies
Supreme Court	statewide	10 years	7 justices	2003: 1 2005: 1
Court of Appeals	by district	6 years	16 judges, 4 locations	
Circuit Court	by circuit	6 years	241 judges	

Provided by Justice at Stake

Totals Raised by Supreme Court Candidates
1997- $888,924
1999- $1.37 million

Various Studies and Surveys that Support Public Financing

A) Candidates depend on large individual contributions from a tiny number of wealthy couples and individuals. Just 34 couples or individuals (.0003% of the voting public in Supreme Court elections) provided 18.5% of individual donations. 4.1% of donors provided over half of donations (50.7%).

B) The levels and sources of funding have severely undermined public confidence and trust. An August, 2001 poll of 400 Wisconsin adults conducted by Chamberlain Research revealed that 76% of those surveyed support the Impartial Justice Bill. This includes 77% among Democrats, 76% among Republicans, and 82% among split-ticket voters.

C) Special interest contributions have created conflicts of interest, which have made it impossible for the Supreme Court to operate at times.

1) When a controversy arose over apparently illegal contributions by pro "school choice" forces aimed at assisting Justice Jon Wilcox, a majority of justices recused themselves from hearing the case.

2) In another instance, Judge Ann Walsh Bradley recused herself from a crucial decision on "school choice," evidently because of the source of some of her campaign funding.

3) There was an appeal by former Assembly Speaker Scott Jensen, current Assembly Majority Leader Steve Foti and a former Foti aide seeking to get charges of felony misconduct in office thrown out. Three justices did not participate in the decision because of their campaign ties to Jensen or the state Republican Party. A fourth with such campaign links - Justice Patrick Crooks - took part, but it is not known how he voted because the court sent the appeal back to the Court of Appeals without comment.

D) Candidates' self-contributions have increased 150 times since 1989. In the four elections from 1989 through 1994 candidates contributed $16,092 to their own campaigns. Since then, candidates have contributed $815,700 of their own money to their committees. The rapidly growing importance of candidates' personal wealth might inhibit qualified candidates who lack such financial resources from running.

E) Supreme Court candidates are disproportionately dependent on lawyers and lobbyists. Lawyers and lobbyists provided 29.5% of all contributions of $100 or more to Supreme Court campaigns. Lawyers and lobbyists provided 36.1% of all contributions of $100 or more to incumbent Supreme Court justices.

F) Traditionally, campaign donors to Supreme Court candidates were limited for the most part to lawyers. However, campaign finance reports filed by candidates in the 2003 race are peppered with donations from political interests that in the past were kept at arm's length - including partisan operatives, business interests, the state teachers union, banking and utility executives, real estate developers and construction companies.

Provided by Wisconsin Citizen Action, Wisconsin Democracy Campaign and WISPolitics.Com

Organizations and Individuals in Support of Public Funding

A) The public financing bill is supported by more than 60 state judges, the State Bar, three former Supreme Court justices, six Supreme Court candidates, numerous district attorneys and by campaign finance reformer U.S. Senator Russ Feingold.

B) Over 30 citizen organizations have endorsed the bill, including the League of Women Voters, the NAACP, AFL-CIO, and the Wisconsin Realtors.

C) 21 of the state's 35 dailies have editorialized in support of the bill.

D) The Impartial Justice Bill is sponsored by a bi-partisan group of legislators in both houses.

Provided by Justice at Stake

PUBLIC FUNDING OF JUDICIAL ELECTIONS: IDAHO

I. PROPOSED "IDAHO JUDICIAL INDEPENDENCE ACT"

Type of Authority by which Public Funding would be Implemented
Legislative Act- **Idaho Judicial Independence Act** ("Act") (HB 251)

Purposes of Public Funding for Judicial Elections
A) Public funding would enhance judicial integrity and independence and the election system.

B) Privately financed campaigns
1) violate the principle of "one person, one vote";
2) violate the right to equal participation in the electoral process;
3) diminish free speech rights of non-wealthy voters and candidates;
4) fuel public perception of corruption and undermines public confidence;
5) diminish judges' accountability to the people;
6) create danger of actual corruption by encouraging judges to rule in favor of donors;
7) drive up cost of elections making it harder for qualified candidates to campaign; and
8) burden candidates with the rigors of fundraising.

Form of Public Funding
Full funding

Establishment of Specific Fund
Idaho Judicial Independence Act Trust Fund ("Fund")

Eligibility
Supreme Court and Court of Appeals

Distribution Amounts
A) Each year prior to an election year, the commission* will determine the amount distributed to candidates based on the cost of past judicial elections. If such data is unavailable, the commission may use discretion to determine an appropriate amount.

*Commission on Judicial Election Practices

B) A year in which funds are insufficient to fund both Supreme Court and Court of Appeals candidates, Supreme Court candidates would have priority in that year and Court of Appeals candidates would wait until subsequent election years to receive funding.

Qualification Requirements to be Certified as an Eligible Candidate for Public Funding

A) Candidates must file a declaration of intent to seek certification as an Idaho Judicial Independence Act candidate. The declaration must be filed before the qualifying period ends.*

*Begins January first of election year and ends on tenth Friday preceding the primary election.

B) During the qualifying period, candidates must collect qualifying contributions of $5 each from at least 2000 registered voters in the state of Idaho.

1) Candidates may not collect contributions prior to filing a declaration of intent.

2) Candidates may not give anything of value in exchange for qualifying contributions.

C) *Qualifying contributions are deposited into the Fund*.

Spending Limits-

A) Amounts –

1) Prior to certification, candidates may only spend seed money contributions. Qualifying contributions are deposited into the Fund.

2) Subsequent to certification, candidates' expenditures may not exceed the distribution amount (determined by the commission).*

*Unspent seed money, subsequent to certification, is submitted to the Fund.

B) Permitted uses of distribution amounts - Candidates must use Fund distributions for campaign-related purposes as outlined by the commission.

Contribution Limits-

A) No private contributions other than seed money contributions and qualifying contributions may be accepted unless authorized by the commission. *See* below "D".

B) Qualifying contributions - No set limit is indicated.*

*The likely reason is that qualifying contributions are deposited into the Fund

C) Seed money contribution limits are as follows:

1) Per contributor limit - none indicated

2) Aggregate contribution limit - $10,000

D) Additional contribution limits - The commission may authorize additional contributions if it determines that revenues in the Fund will not meet the distribution amount. Such determination will be based on costs of prior elections.

1) Per contributor limit - $500

2) Aggregate contribution limit - an amount equal to the distribution amount (determined by the commission)

Trigger Provision - authorizes additional (matching) funds -
A) Additional (matching) funds are triggered by expenditures of non-participating candidates that exceed the public financing distribution amount.*

*There is no mention of expenditures by independents that exceed the distribution amount.

B) Maximum disbursement of additional funds equals 2 times the distribution amount.

Sources of Funding - *tax revenues are not a source of funding*
A) Qualifying contributions
B) Unspent seed money
C) Unspent distribution amounts
D) Voluntary donations directly to the Fund
E) Fines collected for violation of the Act
F) 3% surcharge on civil penalties

Administration and Enforcement of the Act
A) Administering Agency - Commission on Judicial Election Practices within the office of the Secretary of State

B) Penalties for violating any provision of the Act -
1) Civil-
a) Up to $30,000 fine per violation payable to Fund
b) Must return to Fund all distribution amounts plus interest
2) Criminal - violations were committed willfully or knowingly or false statements were made -
a) Felony
b) Must return all distribution amounts

C) Study report - Every four years, the commission must prepare a report that documents, evaluates, and makes recommendations relating to the administration, implementation, funding, and enforcement of the Act and the Fund. The report is submitted to the Idaho Judicial Council, the Supreme Court, and the Legislator.

Estimated Cost of Act- including cost of staff and commission
$1.5 million per year

II. BACKGROUND INFORMATION

Idaho Courts	Supreme Court	Court of Appeals	District Court	Magistrate Court
Number of Judges	5	3	39	83
Number of districts	1	1	7	7
Method of Selection	Nonpartisan election	Nonpartisan election	Nonpartisan election	** Appointment by magistrate commission, followed by retention election
Length of Term	6 yrs	6yrs.	4 yrs	18 months initially, with 4 year terms upon retention
Method of retention	Reelection	Reelection	Reelection	Retention election
Method of filling interim vacancies	*Gubernatorial appointment through Judicial Council	*Gubernatorial appointment through Judicial Council	*Gubernatorial appointment through Judicial Council	* Appointment by magistrate commission, followed by retention election
When interim judges stand for election	Hold office for remainder of unexpired term	Hold office for remainder of unexpired term	Hold office for remainder of unexpired term	Hold office for remainder of unexpired term
Selection of chief justice/judge	Peer vote	Chief justice	Peer vote	NA
Original Jurisdiction	Claims against the state and extraordinary writs	None	Civil and criminal cases	Misdemeanors, civil actions up to $10,000, small claims, traffic, & other small cases
Appeals	Interim orders, final judgments in district courts, administrative agencies direct appeals	Subject to administration by Supreme Court	Magistrate division, state agencies and boards, and small claims	None

Provided by Idahoans for Fair Elections

Total Amounts Raised for Supreme Court Elections
2002- $259,114
2000- $300, 391
1998- $198,635

Related Facts and Studies
A) Special interest groups spent a total of $267,090 on often-inaccurate personal attack advertisements in 2000 and 2002 in Supreme Court elections.

B) The cost of winning a Supreme Court seat increased 330% in a six-year period between 1994 and 2000.

C) The introduction of the Judicial Independence Act barely passed the House Judiciary and Rules Committee. The Committee voted 8-7 merely to introduce the measure and hold a public hearing on it.

Provided by Idahoans for Fair Elections and Idahonews.com

Organizations in Support of Public Funding
ABA and Idahoans for Fair Elections

PUBLIC FUNDING OF JUDICIAL ELECTIONS: TEXAS

I. PUBLIC FUNDING BILL

Type of Authority by which Public Funding would be Implemented
Legislative Act- **House Bill 4 (Introduced in 2001 Legislative Session)**

Purposes of Public Funding for Judicial Elections
Public funding would restore public confidence in the judicial system and assure impartial justice for every citizen affected by the courts.

Provided by Campaigns for People

Form of Public Funding
Full funding

Establishment of Specific Fund
Judicial Campaign Financing Fund ("Fund") - The Fund exists in the state treasury.

Eligibility
Supreme Court and Criminal Court of Appeals candidates

Distribution Amounts
A) Commission will determine the available amount based on the following factors:
1) Comptroller's certification as to the amount that will be available in the fund for the year of the election
2) Secretary of state's estimation, based on previous elections, of the number of candidates for office

B) Identical amounts are distributed to candidates for chief judge of Supreme Court and presiding judge of the Court of Criminal Appeals.

C) Identical amounts are distributed to justices of Supreme Court and judges of Court of Criminal Appeals.

D) Amounts for chief justice or presiding judge must be greater than amounts for justice and judge.

E) If amount in the fund is insufficient, the money is distributed in a pro rata basis.

Qualification Requirements
A) Petition requirement -
1) Petition must be signed by at least 1000 registered voters in Texas, 500 of who practice law in Texas.
2) No more than 20% of the signers may be residents of the same county.
3) A person may not sign a petition for more than one candidate for the same office.

4) At the time of signing, signers must each contribute between $5 and $100.
B) Qualifying contributions - $30,000 within a certain time period

Spending Limits-

A) Amount - not explicitly provided for*

*Presumably, the spending limit is equal to the public financing distribution amount plus qualifying contributions.

B) Permitted uses of distribution amounts - may only be used for campaign expenses

Contribution Limits-

A) No private contributions other than qualifying contributions

B) Petition signer contributions -
1) Per signer - $100
2) Aggregate amount – not provided

C) Qualifying contributions
1) Per contributor - $100
2) Aggregate amount - $30,000*

*Amounts in excess of this limit are deposited in the Fund.

Trigger Provision - not provided

Refund requirement

A) After the general election, unexpended amounts received from Fund must be refunded to the Fund.

B) Candidates who withdraw or become ineligible must return to the Fund all unexpended amounts received from the Fund.

Sources of Funding

A) Amounts transferred by comptroller every two years from the General Revenue Fund (specifically revenue received from the Attorney Occupation Tax)

B) Amounts refunded by candidates under refund requirements

C) Amounts received by candidates in excess of the contributions limit

D) Amounts appropriated to the Fund

E) Amounts received by the commission or comptroller as gifts or grants to the Fund

Administration and Enforcement

A) Administering Agency - Texas Ethics Commission
1) Certifies the funding of eligible candidates
2) Determines the amount of funding available for candidates

B) Penalties -
1) Using funds for non-campaign use-
- Penalty - ineligible for additional funds and liable for a civil penalty up to three times the amount of unauthorized use

2) Refusal to refund unexpended amounts -
- Penalty - civil penalty up to three times the amount of the money required to be refunded

3) Acceptance of prohibited private contributions -
- Penalty - civil penalty up to three times the amount of the prohibited contributions

Estimated Cost of Public Funding

Estimated amount required to be transferred from the General Revenue Fund -
- 2004 - $21,036,000
- 2006 - $21,288,000

II. BACKGROUND INFORMATION

<table>
<tr><td>State Highest Appellate Courts</td><td>Supreme Court

Civil Jurisdiction Only
9 Justices</td><td>Court of Criminal Appeals

Criminal Jurisdiction Only
9 Judges</td></tr>
<tr><td></td><td>civil appeals</td><td>criminal appeals</td></tr>
<tr><td>State Intermediate Appellate Courts</td><td colspan="2">Court of Appeals

Intermediate Appellate Jurisdiction
14 Courts</td></tr>
<tr><td>State Trial Courts of General and Special Jurisdiction</td><td colspan="2">District Courts

Trial Courts of General Civil and Criminal Jurisdiction
(Some Courts Specialize by Subject Matter)</td></tr>
<tr><td>County Trial Courts of Limited Jurisdiction</td><td colspan="2">County Level Courts
Constitutional County Courts
Limited Civil and Criminal Jurisdiction
(1 in each County)

County Courts at Law
Limited Civil and/or Criminal Jurisdiction

Statutory Probate Courts
Limited to Probate Matters</td></tr>
<tr><td>Local Trial Courts of Limited Jurisdiction</td><td>Municipal Courts

Limited Criminal Jurisdiction</td><td>Justice of Peace Courts

(Small Claims Courts)
Limited Civil and Criminal Jurisdiction</td></tr>
</table>

Provided by the Office of Court Administration

Totals Raised by Supreme Court Candidates
1994 - $7,477,400
1998 - $6,110,300
2000 - $1,816,600
2002 - $4,000,000 +

Public Opinion Surveys and Other Related Studies

A) 1999 survey – A majority of judges (86%), attorneys (99%) and the public (93%) believe campaign contributions to judges have at least some if not substantial influence on judicial decisions.

B) Most judicial campaign contributions come from people with business or interests before the courts.

C) Texas has the highest contribution limits of any of the other nine states that have partisan judicial elections.

1) Individuals may contribute up to $5000 per election

2) Each stage of the campaign process - the primary, runoff and general election - is defined as an election, thus, effectively tripling the amount an individual can contribute.

3) A law firm and its members may contribute up to $30,000 to candidates per election.

4) PACs may contribute up to $300,000 per candidate for each election.

D) General efforts at judicial reform - two measures that were passed in 2001 -

1) State will provide voter guides for judicial elections.

2) State judges can only make limited contributions to committees supporting or opposing judicial candidates ($250 to each).

E) Twenty years ago, Democratic judges dominated the state courts. Since 1994, however, no Democrat has won a contested statewide judicial election.

Provided by Campaign for People and Justice at Stake

Organizations and Individuals in Support of Public Funding

A) The public funding bill was introduced in part by Chief Justice Philips.

B) 16 other chief justices, in states that elect judges, and the ABA (based on a committee chaired by Houston attorney Dudley Oldham) concluded that public financing is the most practical way to remove the influence of money from judicial elections.

Provided by Campaign for People

PUBLIC FUNDING OF JUDICIAL ELECTIONS: GEORGIA

I. SENATE RESOLUTION 520- CREATES THE JOINT LEGISLATIVE STUDY COMMITTEE ON THE PUBLIC FINANCING OF JUDICIAL ELECTIONS*

* Senate read and referred on January 30, 2002. Senate Committee favorably reported on March 19, 2002. Senate read second time on March 25, 2002. Committee stands abolished as of December 1, 2002.

Reasons for Creating the Committee

A) There has been an escalation of judicial campaign expenditures driven by growing politicization and increased donations by public interests.

B) Campaign contributions originate from sources with an interest in the outcome of cases.

C) Highly qualified individuals are deterred from seeking judicial office because they do not want to be fundraisers nor want to feel beholden to donors.

D) Dependence on private donations threatens the independence and impartiality of the judiciary by increasing potential for improper influence and by fostering public perception of improper influence.

E) Many judges and lawyers want to eliminate any perception of improper influence.

F) Racial and ethnic minorities are underrepresented.

G) ABA and the Public Financing of Judicial Campaigns in 2001 recommended that states that elect judges in contested elections finance judicial elections with public funds.

H) An overwhelming majority of southern respondents support public funding of judicial elections.

Resolution Provisions

A) The Resolution creates Joint Legislative Study Committee on the Public Financing of Judicial Elections.

B) The Committee is comprised of six members. The House Speaker appoints three Representatives, the President of the senate appoints three senators, and the Governor appoints one of the members as chairperson.

C) The Committee's purposes are:

1) to study, assess, and evaluate financing of judicial elections with public funds;

2) to examine the nature and extent to which qualified potential judicial candidates without access to wealth, including potential candidates favored by racial or ethnic minorities, are deterred by the current system; and

3) to make recommendations regarding the feasibility and method of public financing as a remedy for enhancing public confidence in the judiciary.

4) The Resolution creates an Advisory Board to be attached to the Committee.

a) The Board is comprised of 12 members chosen from the academy, bench, bar and public.

b) Organizations from which members are chosen include: State Bar, Council of Superior Court Judges, Council of State Court Judges, Georgia Trial Lawyers Association, and the Office of the Secretary of State.

5) Funding for resolution comes from funds appropriated to the House and Senate.

II. BACKGROUND INFORMATION

Georgia Courts	Nonpartisan Election	Size	Term	Expected Elections
Supreme Court	statewide	7 justices	6 years	
Court of Appeals	statewide	judges	6 years	
Superior Court	by circuit	46 circuits	4 years	

Provided by Justice at Stake

Funds Raised by Judicial Candidates-

1) Average funds raised by Supreme Court candidates tripled from $51,694 in 1996 to $198,406 in 2002.

2) Candidates for appellate level elections raised $1.1 million for the primary election of 2002.

3) A 1999 Georgia survey revealed that a majority of the voters support offering public financing to candidates with strict fund-raising and spending limits.

Provided by Georgia Legislators Guide to Public Financing of Judicial Campaigns

Suggested Source of Pubic Funding

Some have suggested earmarking a specific source for public funding**,** such as court fines or attorneys' registration fees.

Provided by The Atlanta Journal-Constitution

Organizations and Individuals in Support of Public Funding

1) The Senate Resolution was strongly endorsed by the Atlanta Bar Association and the Honorable Ogden Doremus, Chairman of the Council of State Court Judges.

2) State Sen. Charlie Tanksley (R-Marietta), a co-sponsor of the resolution, stated that although he has never been a fan of public campaign financing, he reluctantly considers the notion because something must be done to get money out of judicial elections.

Provided by Georgia Legislators Guide to Public Financing of Judicial Campaigns and by The Atlanta Journal-Constitution

PUBLIC FUNDING OF JUDICIAL ELECTIONS: MICHIGAN

I. Current Efforts to Implement Public Funding of Judicial Elections

A) There has not yet been a legislative proposal for public funding in judicial elections.

B) Reports put out by Michigan Campaign Finance Network in 2002 made the following recommendations:

1) Full public funding should be provided for Supreme Court and Court of Appeals candidates.

2) The purpose of public funding would be to protect the appearance as well as the reality of judicial independence. With the aid of public funding, candidates would no longer have to raise hundreds of thousands of dollars from special interests to have a viable candidacy.

3) A potential source of funding would be a negative taxpayer check-off system in which the default is to contribute to the campaign fund unless the taxpayer checks a box to decline.

C) Robin Rich, executive director of the Michigan Campaign Finance Network, made the following recommendations at the Jan. 12, 2004 "Perspectives on Michigan Judicial Elections" symposium at Wayne State University Law School:

1) Full public funding should be provided for Supreme Court candidates.

2) The distribution amount should be based on recent campaigns

3) Matching funds should be provided to publicly funded candidates where a privately funded campaign exceeds the public funding distribution amount or if interest groups pursue independent spending.

4) Through public funding, eligibility for judicial office would not be limited to nominees of the major parties but would include minor parties and petitioners.

5) As to a source of funding, the public fund for gubernatorial campaigns should be redirected to pay for Supreme Court campaigns.

a) The gubernatorial public funding system has been overmatched by contemporary campaign finance trends and needs an overhaul.

II. Background Information Provided by Justice at Stake

Michigan Courts	Nonpartisan Election	Term	Size	Expected Elections
Supreme Court	statewide	8 years	7 justices	2004: 2
Court of Appeals	by district	6 years	28 judges, 4 districts	2004: 7
Circuit Court	by circuit	6 years	210 judges, 57 courts	
District Court	by district	6 years	260 judges, 100 courts	

Various Studies and Reports

A) 86% of cases heard by the Supreme Court between 1990 and 1999 involved a litigant or lawyer who made a contribution to a justice. Half of these cases involved state-employed lawyers who were also contributors and half of the cases involved private interests.

B) Between 1998 and 2000, contributions by DaimlerChrysler to then Justices of the Supreme Court amounted to $98,676.

C) From 1994 to 2000, the average winning Supreme Court candidate campaign costs quadrupled from $284, 000 to $1.3 million.

D) In 2000, party independent expenditures totaled $1.8 million and unreported "issue advertising" probably topped $7 million.

E) In 2002, the Supreme Court race was much less expensive, but still, the average amount raised by a winner's campaign committee was $450,000.

F) The seven current justices have raised more than $8 million.

G) In 2001, one of the candidates for the Court of Appeals raised $502,640, breaking the record of $398,000 set in 1998.

H) The following is results of an opinion poll of 600 likely voters in Michigan:

1) 88% indicated that it is important that judges be independent from the influence of contributors to their campaigns.

2) 80% believe campaign contributions influence decisions that judges make.

3) Only 18% have a lot of trust and confidence in Michigan's state courts and judges.

4) 78% favor full public funding, 47% favor partial funding and 46% favor gubernatorial appointment.

I) In 2001, Governor John Engler recommended gubernatorial appointment of Supreme Court Justices and a resolution calling for gubernatorial appointment was introduced to the Senate.

PUBLIC FUNDING OF JUDICIAL ELECTIONS: OHIO

I. Current Efforts to Implement Public Funding of Judicial Elections

A) There has not yet been a legislative proposal for public funding in judicial elections.

B) Type of authority necessary to implement public funding -
1) Legislative enactment would be necessary to establish a source of revenue from which campaign funding would be derived.
2) Limitations on campaign expenditures associated with public funding could be adopted by either legislative enactment or Supreme Court rule.

C) The Forum on Judicial Impartiality explored the idea of public funding for Ohio judicial elections in their Preliminary Report on March 6, 2003. Here are some of the comments from the report:

1) "Whole or partial financing could reduce the amount of time candidates spend on fundraising, allowing them to concentrate on other campaign duties. Some participants thought public financing could help reduce the importance of money in campaigns, but others questioned this idea. In addition, there are serious questions regarding the qualifications for receipt of public funding."

2) "Another proposal suggested at the Forum was a special version of public financing that could be used when candidates are attacked by negative advertising, particularly ads by independent groups. Candidates who are attacked in this way would get a predetermined amount of money that could be used to combat the attack ad. Volunteers working on this problem should pay special attention to the question of what kinds of ads would trigger the fund."

D) The Forum's progress report of January 2004, while not making any proposals in the way of public funding, mentioned that the next work group meeting will focus on public financing options including a review of information from other states.

Provided by The Next Steps

II. Background Information

Ohio Courts	Election	Term	Size	Elections Expected
Supreme Court	partisan primary; nonpartisan general	6 years	7 justices	2002: 2 or 3 2004: 3
Court of Appeals	partisan primary; nonpartisan general	6 years	66 judges; 12 districts	2002: 19
Court of Common Pleas	partisan primary; nonpartisan general	6 years	375 judges; 88 courts	2002: 167

Provided by Justice at Stake

Various Studies and Reports

A) In 2000, total spending in Ohio Supreme Court elections was over $11,000,000 of which candidates raised $3,379,000.

B) In the 2000 Supreme Court race, a secretly funded "issue-advocacy" organization ran unfair ads slamming a respected member of the Court and alleging that her judicial votes were for sale.

C) In 2002, candidates raised at least $5,500,000; five interest-group committees spent at least another $5,000,000 just on TV time. Most of those groups did not disclose their contributors, but the funds split almost equally between business groups and coalitions of unions and trial lawyers.

D) In 2002, half of all television advertising in the nation's state Supreme Court races was in Ohio.

E) Concerning the 2002 judicial campaign, Chief Justice Moyer said, "Candidates were outraged. Citizens were outraged. Anybody who places their trust and confidence in a constitutional democracy should be outraged . . .. This is the dark side of democracy."

F) 57% of Ohio voters believe that judicial elections should be publicly funded.

Provided by National Center for State Courts and League of Women Voters

WORKING PAPER ON RETENTION ELECTIONS

Appendix G-7

Founded in 1913, the American Judicature Society was the first to suggest retention elections for judges.[1] By 1947, the American Bar Association adopted the idea of retention and in 1940, "Missouri became the first state to establish a merit-selection [and retention] method of choosing judges, which came to be known as 'the Missouri plan'."[2] The implementation of retention elections was "a device to satisfy the voters' desire for self-governance without risk of improper political influences on judges."[3] Retention elections became popular in the 1960s and 1970s[4] and as the founders envisioned, a judge would be retained in an unopposed election so long as the judge acted properly and lack misconduct.[5]

Proponents of retention cite numerous advantages to this form of judicial selection. Retention elections are credited with: (1) promoting independence and focusing attention on judicial duties by not having judges campaign and raise money; (2) attracting those good lawyers to the bench who find raising money distasteful; (3) holding judges accountable for their judicial performance and, if necessary, allowing voters to remove them; and finally (4) solidifying judicial independence by the almost automatic retention produced by this type of election.[6] In New York, retention elections would maintain the public a role in judicial selection.

Concern has been raised that retention elections may slow the diversification of New York's judiciary by ensconcing a non-diverse bench in some parts of the state. While a danger in theory, incumbents almost invariably win re-election when they run in contested elections in New York. Therefore retention elections do little to change the outcome of re-election, but dispense with the need for incumbents to raise money and campaign. A study of Supreme Court races since 2000 showed that 32 incumbents ran in 129 seats up for election and the incumbents were successfully reelected in 31 of 32 cases.[7] In addition, the Commission's survey of sitting judges in New York showed that only 4% of elections for judicial office involve a race in which the incumbents did not win. With incumbent success rates so high, the Commission believes that the threat to diversification is outweighed by the gains in judicial independence. In some parts of the State that enjoy a relatively diverse bench, diversity will benefit from retention elections.

---

[1] *Choosing Justice: Reforming the Selection of State Judges*, Uncertain Justice: Politics in American's Courts, Constitution Project, Century Foundation, Inc. (2000).
[2] *Id.*
[3] *Id.*
[4] Aspin, Larry T., *Judicial Retention Elections: Using the Internet to Enhance Voter Knowledge of Judicial Performance*, GOV'T, LAW AND POL'Y J., vol. 3, no. 2, 40, 40 (Fall 2001).
[5] *Id.*
[6] *Id.*
[7] The only unsuccessful incumbent was Thomas F. Whelan of the 8th District, who lost in 2003. However, the reason he lost is because he failed to get the endorsement of either major party and had to run on a series of minor party lines.

Currently, 19 states employ some form of retention election.[8] The majority of states use retention elections paired with merit selection, however two states use retention coupled with partisan elections.[9] Since 1964,[10] Illinois' judges are initially chosen through partisan elections and are thereafter subject to in retention elections[11] in which they must receive 60% of the affirmative vote to be retained.[12] Like Illinois' judges, Pennsylvania's judges are initially chosen in partisan elections and subsequently stand in retention elections.[13] Since 1968, after judges are elected, they must stand in retention elections after their first 10-year term.[14] Illinois' Constitution reads as follows:

> Not less than six months before the general election preceding the expiration of his term of office, a Supreme, Appellate or Circuit Judge who has been elected to that office may file in the office of the Secretary of State a declaration of candidacy to succeed himself. The Secretary of State, not less than 63 days before the election, shall certify the Judge's candidacy to the proper election officials. The names of Judges seeking retention shall be submitted to the electors, separately and without party designation, on the sole question whether each Judge shall be retained in office for another term. The retention elections shall be conducted at general elections in the appropriate Judicial District, for Supreme and Appellate Judges, and in the circuit for Circuit Judges. The affirmative vote of three-fifths of the electors voting on the question shall elect the Judge to the office for a term commencing on the first Monday in December following his election. [15]

Retention elections in Pennsylvania are detailed in their Constitution as well:

> A justice or judge elected under section thirteen (a), appointed under section thirteen (d) or retained under this section fifteen (b) may file a declaration of candidacy for retention election with the officer of the Commonwealth who under law shall have supervision over elections on or before the first Monday of January of the year preceding the year in which his term of office expires. If no declaration is filed, a vacancy shall exist upon the expiration of the term of office of such justice or judge, to be filled by election under section thirteen (a) or by appointment under section thirteen (d) if applicable. If a justice or judge files a declaration, his name shall be submitted to the electors without party designation, on a separate judicial ballot or in a separate column on voting machines, at

---

[8] *See generally Judicial Selection in the States,* American Judicature Society, *at* http://www.ajs.org/js (Last visited Feb. 29, 2004).
[9] *See generally Judicial Selection in the States,* American Judicature Society, at Illinois and Pennsylvania, *at* http://www.ajs.org/js (Last visited Feb. 29, 2004).
[10] *Judicial Selection in the States,* American Judicature Society, *at* Illinois, History of Judicial Selection Reform, http://www.ajs.org/js/IL_history.htm. (Last visited Feb. 3, 2004). [hereinafter Judicial Reform in IL].
[11] *Judicial Selection in the States,* American Judicature Society, *at* Illinois, Current Methods of Judicial Selection, http://www.ajs.org/js/IL_methods.htm. (Last visited Feb. 3, 2004). [hereinafter Selection Methods in IL].
[12] Selection Methods in IL, *supra* note 53.
[13] *Judicial Selection in the States,* American Judicature Society, *at* Pennsylvania, Current Methods of Judicial Selection, http://www.ajs.org/js/PA_methods.htm. (Last visited Feb. 14, 2004). [hereinafter Selection Methods in PA].
[14] *Judicial Selection in the States,* American Judicature Society, *at* Pennsylvania, History of Judicial Selection Reform, http://www.ajs.org/js/PA_history.htm. (Last visited Feb. 14, 2004). [hereinafter Judicial Reform in PA].
[15] ILL. CONST. art. IV, § 12 (d).

> the municipal election immediately preceding the expiration of the term of office of the justice or judge, to determine only the question whether he shall be retained in office. If a majority is against retention, a vacancy shall exist upon the expiration of his term of office, to be filled by appointment under section thirteen (b) or under section thirteen (d) if applicable. If a majority favors retention, the justice or judge shall serve for the regular term of office provided herein, unless sooner removed or retired. At the expiration of each term a justice or judge shall be eligible for retention as provided herein, subject only to the retirement provisions of this article. [16]

The New York Constitution need not be amended to provide for retention elections and the change can be made by statute. This is because the provision regarding the election of judges in Article VI, section 6 is not detailed, it provides simply: "The justices of the supreme court shall be chosen by the electors of the judicial district in which they are to serve. The terms of justices of the supreme court shall be fourteen years from and including the first day of January next after their election." A process of retention election in which the retention is held in the last year of the term on a yes/no basis followed by a normal judicial election if the judge is not retained does not constrain the constitutional provision in any material way. Nor does a requirement that the candidate pass a judicial screening commission before standing in a retention election unconstitutionally impair voter choice. The Legislature is free to regulate ballot access in judicial elections, as they have done in the judicial convention nominating system, which in many judicial districts operates in practice to give the "pick" to the political leadership of the dominant political party.

[16] PA. CONST. art. V § 15 (b).

WORKING PAPER ON VOTER EDUCATION

Appendix G-8

I. The Need for Voter Education

In light of recent events, there is widespread concern about the public's perception of the judiciary, and, in particular, the election of judges. More alarming still, against the backdrop of the negative media about judges is the unsettling recognition about how little information the public actually possesses about the judiciary, the workings of the court system, or the process of judicial elections.

Lack of sufficient information about the judicial elective process, combined with a sense of futility in some counties that the electorate's vote does not make any ultimate difference in these elections, exist in the larger framework of low voter turnout throughout the country. While the problems of judicial elections are unique in several respects, they also share many of the same ailments that have recently lead to calls for election reform since the furor over the 2000 presidential elections.

The need for voter education about judicial elections is indisputable. The recent Public Hearings conducted by this Commission throughout New York State provided ample evidence from a chorus of concerned citizens, including those in the legal profession, about the need for educating the public about judicial elections as a first step in restoring public confidence. In addition to the general remove of the public from the judicial branch of government, there are other factors operating in this state which exacerbate voters' lack of knowledge or confusion about the judiciary.

First, is the complex structure of the state's court system, which many legal professionals and lay people alike have a hard time comprehending. A related byproduct of the intricacies of the court system is the public's lack of awareness about how judges are selected. Whether layperson or lawyer, one needs a diagram to navigate through this labyrinth of courts and selection methods. For example, it is the Governor who appoints individuals to the Court of Appeals, designated to the Appellate Division (the intermediate appellate courts), and the Court of Claims, while the Mayor of New York City appoints judges to the Family Court and the Criminal Court, as well as to interim one year Civil Court appointments in New York City. Other courts, however, are subject to elections: Supreme Court, County Court, Family Court (outside New York City), Surrogate's Court, New York City Civil Court, City Court, District Court, and the Town and Village Justice Courts.[1]

[1] *See* www.morderncourts.org/js-nyschart.htm (under "judicial selection") (last visited on June 4, 2004).

Under these circumstances, voter apathy is understandable, especially when one considers that the only information the public receives comes primarily from television or the mass media. Aggravating this state of affairs is the problem of uncontested elections of judicial candidates in areas where one political party dominates. For example, there are no primary elections for Supreme Court candidates. Rather, those candidates are chosen by delegates of their respective parties at a judicial convention.[2] In areas where one party dominates, or a candidate is cross-endorsed by two major parties, the practical result is that the candidate is "elected" at the judicial convention and the role of the public in electing Supreme Court justices is reduced to a mere formality. Of course, there are counties throughout the state where Supreme Court races are contested. Nevertheless, for millions of citizens, Supreme Court justices are chosen at judicial conventions, not at the voting booth. One way of addressing a sense of voter disempowerment is through voter education, which is undoubtedly an essential step in restoring public confidence in the judiciary.

II. Voter Guides

Among the recommendations provided by several speakers at the Commission's Public Hearings was the importance of voter guides as a way of educating the public and disseminating information about specific judicial campaigns.

The recommendation has been echoed in other forums as well. The 2000 Summit of Chief Justices, organized by the National Center for State Courts, called for the creation of voter guides that would provide information on judicial candidates.[3] Similarly, the American Bar Association Commission on Public Financing of Judicial Elections also called for judicial voter guides, as have countless other organizations, commissions, non-partisan/non-profit organizations and scholars who have examined the issue of judicial reform.[4] In a national poll of state court judges and the public about the value of such guides in judicial elections, 81% of 2,428 judges polled said that the state should provide voter guides prior to judicial elections. Likewise, 92% out of 1,000 voters polled supported a voter guide when asked the same question.[5] Moreover, in 2001, the Illinois Voters' Guide Task Force recommended that the State Board of Elections be funded and authorized to create and distribute a voter guide to every household in the state on a pilot basis.[6]

---

[2] N.Y. Election Law §§ 6-124 and 6-126.

[3] NATIONAL CENTER. FOR STATE COURTS, *Call to Action: Statement of the National Summit on Improving Judicial Selection* (Williamsburg, Va. Jan. 2002), at 9, 42.

[4] COMMISSION ON PUBLIC FINANCING OF JUDICIAL CAMPAIGNS REPORT, ABA COMMISSION ON JUDICIAL INDEPENDENCE 1 (2001); *see also* Cynthia Canary, *Know Before You Go: A Case for Publicly Funded Voters' Guides*, OHIO STATE LAW JOURNAL, Vol. 64, No. 1 (2003) at 83*;* WALSH COMMISSION REPORT, *The People Shall Judge: Restoring Citizen Control to Judicial Selection* (March 1996), Recommendation No. 7, Judicial Voter Information.

[5] Canary, *supra*, at 89, citing AM. VIEWPOINT & GREENBERG QUINLAN ROSNER RESEARCH, INC., JUSTICE AT STAKE – FREQUENCY QUESTIONNAIRE (2001) & STATE JUDGES FREQUENCY QUESTIONNAIRE (2002).

[6] ILLINOIS VOTERS' GUIDE TASK FORCE, ILLINOIS CAMPAIGN FOR POLITICAL REFORM, *Final Report of the Illinois Voters' Guide Task Force* (May 18, 2001) (unnumbered pages).

Most recently, in a series of focus groups throughout New York State conducted by the Government Law Center, Albany Law School, 81% (or 73 out of 90 participants) thought that a voter guide was a good idea. In addition, 67%, or 60 participants thought that it was a good idea to include information about both the NY state judicial system and judicial candidates.[7]

a. State Sponsored Voter Guides

State sponsored judicial voter guides are desirable solution because they address many competing concerns and are considered an "efficient and low-cost mechanism" for voter education reform "that can dramatically increase the quantity and quality of voter participation."[8] According to one commentator, "the available data strongly indicate that the [voter] pamphlets should be at or near the top of any policymaker's list of reforms."[9] Two problems facing judicial elections could be addressed by a voter guide: the electorate's lack of familiarity with judicial candidates who often appear at the bottom of the ballot, and the difficulty of distinguishing between such candidates. In fact:

> Official state-funded voters' guides provide a vehicle for judicial candidates to emerge from the bottom of the ballot and highlight their qualifications and philosophy for the electorate. These guides can also serve as a tool for familiarizing the public with the courts, the job of the judge, and the canons of judicial conduct. In short, a well-prepared, even-handed guide can help the public develop better-informed opinions about both specific judicial candidates and the justice system.[10]

As noted above, surveys of voters confirm the importance of voter guides. Out of 801 voters surveyed in Illinois in 1999, 62% of voters supported voter guides even if they were taxed for it.[11] During a 12-year span from 1980 to1992, Utah voters were surveyed 6 times, and 85% of those who responded said that they read all or part of the voter guide, and 90% of those who read it found it helpful.[12] In a 1998 California survey of registered voters, 70% of the respondents listed state-issued voter guides as their most important source of election information over other sources. [13] Surveys of voters conducted in both Oregon and Washington, two states which have a long history of voter guides, are also illuminating.[14] Of those polled, 49% of Washington voters, and 64% of

---

[7] GOVERNMENT LAW CENTER, ALBANY LAW SCHOOL, Report to the Commission to Promote Public Confidence in Judicial Elections: Focus Group Results and Recommendations (June 2004) pp. 24-26.

[8] Peter Brien, *Voter Pamphlets: The Next Best Step in Election Reform*, JOURNAL OF LEGISLATION, Vol. 28 (2002) at 87, 90.

[9] *Id*. at 87.

[10] Canary, *supra*, at 83.

[11] Illinois Voters' Guide Task Force, *supra.*

[12] Brien, *supra*, at 101. Moreover, the author observed that this was a "remarkably engaged voting population," as approximately a third of Utah voters who received the voter guide consistently responded during the 12 year span that they read it all the way through. *Id.* at 102.

[13] *Id.* at 103.

[14] Voter guides began in Oregon in 1903, with candidate biographies introduced for the first time in 1909,

Oregon voters said that the guide was the most important source of information.[15] Bar association surveys, editorials and advertisements "ranked far behind" the voter guides as sources of voter information in both states.[16]

Currently there are thirteen states that distribute statewide voter guides. They are Arizona, Utah, Massachusetts, Washington, Oregon, California, Alaska, Michigan, Montana, Idaho, Nebraska, Maine and South Dakota.[17] Of these, four – Alaska, Oregon, Utah and Washington – have enacted statutes requiring the creation of voter guides that contain candidate-related information to be distributed to the public.[18] Moreover, as an indication of the seriousness with which these states take voter guides, these statutes also contain provisions with respect to the public financing of these guides through appropriations by the state legislature.[19] All four states have printed voter guides, and virtually all the states that have printed guides also have on-line guides. Costs associated with printed voter guides varied from $0.21 per pamphlet in Utah to $1.18 per pamphlet in Oregon.[20] The per unit cost of producing and disseminating the voter guides is extremely low, "generally less than the cost of two first-class stamps."[21] Such costs would include printing, distribution, management of the guide, translation into different languages, creating an on-line version, and advertising the guide in different media. The Illinois Voters' Guide Task Force estimated that the expense per voter would be approximately 36 cents, or a total of 3 million dollars for a statewide voter guide.[22]

Alaska, for example, produces a paper voter guide that is mailed to each registered voter no less than 22 days prior to each general election, but guides are not distributed for primary elections.[23] In 2002, 350,000 guides were produced at a cost of $359,230, of which $60,000 was for postage costs.[24]

In Oregon, the state produces a voter guide that is mailed to each post office mailing address and is also posted to the State's website.[25] In 2000, Oregon became a vote-by-mail state, and voter guides are mailed no more than twenty days prior to a primary, general, or special election. In practice, the paper and online guides contain the same information, with the exception that the paper guide also contains congressional and district maps. That same year Oregon spent $2 million to

---

whereas Washington distributed its first voter guide in 1912. Canary, *supra*, at 88.

[15] *Id.*

[16] *Id.*

[17] *Id.* at 84.

[18] Brien, *supra*, at 89

[19] *Id.* at 94.

[20] *Id.*

[21] *Id.* at 97.

[22] Illinois Voters' Guide Task Force, *supra*, III. Cost Estimates

[23] *See* Report on Voter Guides in Alaska, Oregon, Utah and California: APPENDIX I to Working Paper on Voter Education at 1, *citing* AK ST § 15.58.080.

[24] *See* Costs of Producing Voter Guides: APPENDIX II to Working Paper on Voter Education.

[25] OR ST § 251.175(1).

print and distribute roughly 1.7 million voter guides. Each voter guide cost approximately $1.18.[26] The voter guides in Washington, on the other hand, cost only $0.27 per household for 2000. Thus, the total cost of distributing approximately 3 million, 47 page voter guides was only $805,000.[27]

In Utah, voter guides are not distributed by mail. Instead, Utah produces a paper voter guide, also available online, which is inserted into newspapers throughout the state no more than 40 nor less than 15 days prior to the date of election. The guide is also made available to each county clerk in sufficient volume for free distribution upon request and for placement at polling places. [28] In 2000, the cost amounted to $0.21 per pamphlet, based on the distribution of 1.2 million copies of their 85 page voter guide, for a total cost of $250,000.[29] In 2002, 1,140,000 million copies were produced and distributed at a cost of $335,173.[30] Postage is a major expense associated with the distribution of voter guides by mail. Recognizing postage as a big problem, one of the recommendations of the National Center of State Courts at the Chief Justices' Summit, in December 2000, was to have Congress authorize a free federal mailing frank to voter guides that[31] would enable states to save a significant amount of money.[32]

b. ***Recommendation for a Statewide Voter Guide in New York***

In order to empower and educate the voting public about judicial elections, voter guides should be distributed statewide. They should be mailed to each household with a registered voter during a specified time period before the primary or general election. Mailings would be supplemented by additional forms of distribution in various locations throughout the state, and coordinated with bar associations, community groups and other governmental offices for maximum outreach. This outreach effort would also be in conjunction with a voter guide media campaign as discussed in Part III, infra.

State funded voter guides are preferable over privately funded guides for a variety of reasons. First, a government sponsored voter guide would carry with it the imprimatur of impartiality and neutrality, an important consideration at a time when there is a public need for accurate, independent sources of information about judicial candidates and the elective process. This is not to diminish the importance of non-governmental voter guides, whether independent, non-partisan ones or those that reflect a particular political position. Such voter guides perform an important function in educating the public or their membership about individual candidates and the elective process. For the public, however, it is sometimes difficult to distinguish between private voter guides that may be advancing a particular agenda from non-partisan guides which strive to deliver impartial evaluations of candidates. An official voter guide distributed by the state would be a source of objective

[26] Brien, *supra*, at 96.
[27] *Id.*
[28] *See* APPENDIX I, Report on Voter Guides, *supra*, at 8.
[29] Brien, *supra*, at 96.
[30] Information received from Amy Naccarato, Utah Director of Elections, in October, 2003.
[31] Illinois Voters' Guide Task Force, *supra.*
[32] National Center for State Courts, *supra*, at 44.

information free from any perceived bias. In addition, because the state is already responsible for the administration of elections, it is in an easier position to compile the other necessary data or information that should be included in a judicial voter guide, such as general information about the judiciary, maps, sample ballots, etc.[33] In New York state, the total enrollment of voters as of March 1, 2004 is at 8,881,364.[34] Based on a calculation of approximately .70-.80 cents per voter guide[35] and assuming that two-thirds of registered voters share a domicile with another registered voter the total cost, including postage, to mail it to each household with a registered voter in the state would be somewhere between $4,150,000 - $4,750,000.

Other costs associated with this endeavor would include staffing and administrative costs, although those are not anticipated to be significant. The funding for this project would require the approval of the state legislature, like in Alaska, Oregon, Utah and Washington. While the State should guarantee funding, every attempt should be made to pursue cost saving measures such as a federal franking privilege and the availability of federal monies to subsidize the cost of the guide.

c. Printed Voter Guides over On-line Guides

Every state that has printed voter guides also has an on-line version. The opposite is not always the case.[36] While the concept of on-line voter guides seems particularly attractive in this age of high tech computer literacy, the available evidence strongly suggests that it should not be the only method of dissemination. In order to be a truly effective means of voter education, voter guides should be in printed form and are preferable to the Internet for a variety of reasons.

The most compelling reason is simply one of access. One recent survey revealed that almost 60% of U.S. households did not have access to the Internet as of August 2002.[37] Thus, a significant percentage of the population may not have the means of accessing the data and that would defeat the very purpose for which the voter guide is intended. There is also some concern that voters in poor communities would be those most likely not to have computer or Internet access. This may very well do the greatest harm to the people who might benefit most from access to such information. "It is well-established that voters of low socio-economic status have fewer cues with which to make voting decisions; therefore, it is critical to provide those voters with information that they are able to readily and reliably access."[38] Moreover, information that appears on websites has been viewed as

---

[33] Canary, *supra,* at 86-87.

[34] See New York State Board of Elections website: www.elections.state.ny.us (last visited April 4, 2004).

[35] Approximate costs per copy derived from figures supplied by Elizabeth Upp, Director of Publications for the New York City Campaign Finance Board, which has produced an annual voter guide throughout the five boroughs since 1988. This figure represents the printing, distribution, and mailing costs but does not include staffing or administrative costs.

[36] Some states which have on-line versions only are: New Jersey, Washington D.C., Hawaii, Colorado, Maine, Maryland, West Virginia, & South Carolina.

[37] Brien, *supra*, at 99.

[38] *Id.*

"essentially a passive measure that fails to specifically target registered and potential voters, and target them at the appropriate time [...] in a way that mailing a voter pamphlet to a household does."[39] In essence, the Internet is still an "emerging medium" that is inferior to other sources of election information.[40] In 2000, the Pew Research Center reported that only 6% of voters got most of their information about the 2000 election from the Internet. In another survey, 84% of voters in the 1998 elections said that they did not ever go online to obtain information about the elections.[41]

The same conclusion was arrived at by the Illinois Campaign for Political Reform, which launched the state's only "non-partisan, non-endorsing, on-line voters guide for judicial election."[42] This site was up for a three week period prior to the mid-November elections in 2002, accompanied by a press release, links from other websites, notices to various organizations, etc. The website received approximately 20,000 "hits" during that time period, a small fraction of the number of registered voters in these judicial elections, and it was clear that the "vast majority of voters . . . paid no attention" to the website.[43] In the testimony of David Morrison, Coordinator for the Illinois Campaign for Political Reform, before the Illinois State Board of Elections on July 16, 2003, he stated that, "even today, too many households do not have internet access. Simply posting data on-line will not get the information into the hands of most voters, too few of whom ever have reason to type [. . .] into their browser."[44]

Thus, if the pilot program in Illinois is any example, voter guides must be in printed form in order to be fully accessible. It should be mailed to every registered voter in a household, with the Internet as an supplemental source of information. While not optimal as the only medium by which voters guides are disseminated, an internet voter guide should not be created in lieu of a printed guide, for the reasons set forth above, at a minimum, an internet voter guide should nevertheless be created as an interim measure as soon as practicable. The costs of designing and administering such a website are much less costly than a statewide distribution of printed voter guides, though still far inferior as far as access issues are concerned.

d. Voter Guides Should Be Translated in Other Languages

Language proficiency among various communities is a prominent issue in cities with culturally and ethnically diverse populations. In states such as California, voter guides have been translated into multiple languages such as Spanish, Tagalog, Korean, Chinese, Japanese, and Vietnamese.[45]

---

[39] *Id.* at 100.

[40] *Id.*

[41] *Id.* at 99-100; citing PEW RESEARCH CENTER FOR THE PEOPLE AND THE PRESS, JUNE 2000 VOTER ATTITUDES SURVEY & 1998 TECHNOLOGY SURVEY.

[42] David Morrison, Coordinator, Illinois Campaign for Political Reform (Untitled Memorandum, November 14, 2002).

[43] *Id.*

[44] David Morrison, Coordinator of the Illinois Campaign for Political Reform, *Testimony Before the Illinois State Board of Elections on the Help America Vote Act Preliminary State Plan* (July 16, 2003).

[45] APPENDIX I, Report on Voter Guides, *supra,* at 5.

The Federal Voting Rights Act requires election materials, including voter guides, to be translated into multiple different languages, including Spanish, Chinese, and Korean, in specified counties in New York State. A judicial voter guide would therefore have to meet the requirements of the Federal Voting Rights Act and provide translation in those languages as statutorily required. One model for a bi-lingual guide is the Voter Guide published by the New York Campaign Finance Board, which is in English on one side, and Spanish on the other.[46]

e. *Voter Apathy and Roll-Off*

There is a general consensus that voters know less about the judicial branch of government, how it functions and its role in the elective process, than the other two branches. Declining voter turnout, as well as voter "roll-off" – the practice of voting for "major" candidates and then ignoring the "lesser" candidates who appear at the bottom of the ballot – are two of the problems associated with judicial candidates.[47]

There is currently a national decline in voter participation. The reasons are complex and varied, but one is the lack of information available to voters. In a poll conducted by the National Association of Secretaries of State, less than 1 in 5 individuals between 18-24 years of age vote, and among those who do not vote, 25% said that lack of information was the reason why.[48] Similarly, it has been suggested that the additional, and aggravating, problem of voter roll off, is not so much attributable to voter fatigue or confusion by the ballot, but that voters may have insufficient information concerning a candidate or office or both to base their decision.[49] Indeed, a majority of New York registered voters chose a lack of information about candidates as the main reason they would not vote in a judicial election, and every focus group agreed. All 9 of the Commission's focus groups stated that citizens will not vote without sufficient information about candidates. This would certainly be true in the case of judicial elections, where voters are "woefully uninformed about the judicial candidates who hold up the rear of the ballot."[50] Moreover, in some communities, the concept of the electorate having a say over the selection of judges may be a foreign one, and a voter guide may help reinforce the idea that part of the duties of being a voting citizen is the duty to elect judges. A voter guide may be able to offset this problem. For example, a study was conducted in Washington State of the voter roll-off rate between 1996 and 2000, the first year that they distributed voter pamphlets prior to the primary elections (until 2000, they were distributed only for the general elections). A comparison of the roll-off rates from the 1996 primary (pre-pamphlet) with the rates from the 2000 primary (post-pamphlet) revealed a dramatic improvement in voter roll-off rates for statewide offices - the roll-off rate in the 2000 primaries fell by almost 17% after the introduction of the voter pamphlets.[51]

---

[46] NEW YORK CITY CAMPAIGN FINANCE BOARD, *Voter Guide, 2003 Ballot Proposals and City Council Districts 6-10.*

[47] For a discussion of roll-off, *see* APPENDIX III, Report on Voter Roll Off.

[48] Canary, *supra*, at 87; Appendix III, Report on Voter Roll Off.

[49] Brien, *supra*, at 107.

[50] Canary, *supra*, at 87.

[51] Brien, *supra*, at 107-108.

The proposed judicial voter guide would therefore serve a twofold purpose: educating voters about the judiciary and providing specific information about candidates.

f. *Content of Voter Guides*

i. General Overview of the Court System

Voters cannot evaluate candidates in a vacuum and it is probably safe to assume that most voters have little or no familiarity with how the court system is structured or about the judicial offices that are the subject of elections. In order to place judicial elections in context, a voter guide should provide a general overview of the court system, the role of judges (including the importance of fairness and impartiality); the difference between the appointive and the elective process, and the various judicial seats (including corresponding maps of judicial districts, where appropriate). It should also provide information about terms of office, salary, and other relevant data.

Some states also include reference to the Canons of Judicial Conduct.[52] Consideration might also be given to an explanation of judicial campaigns, and what type of campaign activity is permitted or prohibited for judicial candidates. Voters are generally confused about the scope of activity permitted in judicial candidates campaigns, and such information might alert the public as to the differences between judicial campaigns and other types of political campaigns.[53]

ii. Specific Information About Candidates

Voter guides serve as an important means of providing specific information concerning judicial candidates about whom voters may have little or no familiarity. In some states, such as Alaska, Oregon, Washington and Utah, and California, the content and format of the voter guide is regulated by statute, including the type of information sought from the judicial candidates.[54] This information varies in scope with each state. Some states, such as Washington, require no more than the candidate's name, photograph and a personal statement about their qualifications for the particular seat.[55] At the other end of the spectrum is Alaska, which permits a candidate to submit a position statement, a biographical statement, as well as a photograph. The biographical information is incredibly detailed and includes the candidate's place and date of birth, his or her spouse, children, address, length of residency in Alaska, education, political and government positions, business and

---

[52] *See* Alaska's Voter Guide at www.gov.state.ak.us/ltgov/elections (last visited June 4, 2004).

[53] Other educational information concerning the voting process that might be included in a general, all-inclusive voter guide are beyond the scope of this report and are not included here, such as registration deadline; registration process; information on voters' rights and balloting procedures; absentee and spoiled ballots; shape and design of ballots; FAQ's; list of polling places and voting equipment instructions.

[54] Brien, *supra*, at 92.

[55] *See* **Error! Main Document Only.***http://www.secstate.wa.gov/elections/previous_elections.aspx* (last visited June 4, 2004).

professional positions, service organization membership, and special interests.[56] Where candidate statements are permitted, the word limit or length varies with the position itself and the state's election law. Very often, the state election authority does not exercise editorial authority over the content of the candidate statements.[57] Many states will charge a flat fee for the inclusion of candidate information in the voter guide and such fee may be determined by the type of office that s/he is seeking.[58]

The information about candidates supplied in non-partisan voter guides, such as those produced by the New York City Campaign Finance Board and the League of Women Voters, to name but two, should also be considered. The 2002 Voters Guide by the Westchester League of Women Voters contains a short section on judicial candidates running for the Supreme Court for the Ninth Judicial District. Included is a description of the duties of the office, the term of office, and salary. Information about each judicial candidate includes residence, education, occupation and a short personal statement.[59] Although the Voter Guide by the New York City Campaign Finance Board does not include judicial candidates, this year's guide for City Council seats permits candidates to supply information about their party affiliation, occupation, occupational and educational background, organizational affiliations and prior public experience.[60] Most of the page, however, consists of the candidate's own statements.[61] It is our recommendation that information about judicial candidates include: name, current occupation, years of practice (or date of admission to the bar), educational background, professional/legal background, judicial experience (if any), and any community or volunteer service. It is strongly recommended that personal, unedited statements from the candidates, in conformity with any applicable requirements, be solicited as well. The voter guides also should include the results of any independent screening panels, but not those of bar associations.

iii. ***Evaluation of Judicial Candidates in Voter Guides***

Two states, Alaska and Utah, include an evaluation of judicial candidates in their voter guides that deserve some discussion.

Judges in both states are initially appointed to the bench through a "merit"[62] selection process, and then subject to retention elections at the end of their terms. In Alaska, the Judicial

---

[56] AK ST §15.58.030(e), (g); APPENDIX I, Report on Voter Guides, *supra*, at 2.

[57] Brien, *supra*, at 92.

[58] *But see* the NATIONAL CENTER FOR STATE COURTS, *supra*, at 44, which recommends that voter guides should be disseminated to all registered voters prior to any judicial election but "at no cost to judicial candidates" and that the cost should be absorbed by the state and local governments.

[59] LEAGUE OF WOMEN VOTERS OF WESTCHESTER, 2002 Voters Guide, at 10-11. The League will be distributing judicial voter guides in all 12 judicial districts n 2004.

[60] NEW YORK CITY CAMPAIGN FINANCE BOARD, *supra.*

[61] *Id.*

[62] That is the term used in both voter guides. *See* www.ajc.state.ak.us and www.elections.utah.gov (last visited on October 3, 2003).

Council is the body that makes recommendations to the Governor for the appointment of judges. It is comprised of seven members: three attorneys appointed by the Alaska Bar Association, the Chief Justice of Alaska's Supreme Court, who sits as the chair, and three non-attorneys appointed by the governor subject to legislative confirmation.[63] Under the heading of "merit selection," the website for the Alaska Judicial Council explains that their "Constitution provides for the merit selection of judges" and that the Council is "required to screen judicial applicants based on their ability to be fair and competent judges, rather than their political contributions, party connections or how well they look on TV."[64]

The Council is also required to evaluate the performance of all judicial candidates, and the recommendations either for or against retention are included in the voter guides. "The Judicial Council collects, and makes available to voters, more information on how judges are doing than anywhere else in the world. Over 8,500 Alaskans were surveyed in 2002, including attorneys, peace and probation officers, jurors, court employees, and others."[65] Based on these surveys, the Judicial Council issues a recommendation either for or against retention, using a rating scale which runs from one to five, with one being the lowest. Judges must score three or better to receive an "acceptable" recommendation.[66] In addition, the Council also provides a statement for each judicial candidate describing any public reprimand, censure, or suspension received by the judge during the period covered in the evaluation. The Council also checks court records, disciplinary records, conflict of interest statements submitted to the court system, and financial disclosure statements submitted to the Alaska Public Offices Commission. The Council's statement may not exceed 600 words.[67]

Utah also has a similar evaluation process contained in its voter guide for judicial candidates. Like Alaska, Utah also has a Judicial Council which evaluates the performance of judges for retention elections and publishes those results in their guides. The Council, established by the Utah Constitution, is "the policy making body for the judicial branch of government"[68] and is delegated, by statute and rules, to conduct performance evaluations of judges, which includes a poll of lawyers who are asked anonymously to evaluate judges they have appeared before, and a similar survey of jurors, if appropriate.

The voter guide includes a separate section that is prepared by the Judicial Council describing the judicial selection and retention process. This section, titled "Information about Judges Appearing on Your Ballot," includes an explanation of the merit selection of judges, judicial retention elections and Utah's Performance Evaluation Program. Next, the guide outlines the criteria for performance evaluation and the minimum standards for performance. There is also a list of attorney survey questions and juror survey questions that appear in the guide.[69]

---

[63] See www.ajc.state.ak.us (last visited on October 3, 2003).
[64] *Id.*
[65] *Id.*
[66] *See* APPENDIX I, Report on Voter Guides, *supra,* at 2.
[67] *Id.*
[68] **Error! Main Document Only.***See* www.ajs.org/js/UT.htm
[69] *Id.* at 59-61.

In addition to a judicial candidate's background information, there is a section on the judge's "compliance with performance standards,"[70] and also a table which indicates the number of attorneys or jurors who responded, and their responses to the questions.[71]

g. *Voter Guide Task Force*

This Commission has been given the responsibility of issuing recommendations to promote public confidence in judicial elections. The actual implementation of any recommendations with respect to voter guides is beyond the scope of the Commission's authority. Therefore, a Voter Guide Task Force should be established to continue the work begun by this Commission. Such a Task Force should consist of members of the legal community, judges, lawyers, members of bar associations, civic and community organizations, scholars in this subject, and politicians.

h. *Evaluation of Voter Guides after each Election.*

The Task Force will create its own goals and objectives. However, an evaluation process should be included in any distribution of the judicial voter guides.

II. *Increasing Voter Education Efforts*

In the broadest sense, voter education in the context of judicial elections includes any information about the judiciary that will help people make more meaningful choices when voting for judicial candidates. Given the significant information gap that exists between the public and the legal system, most types of educational activities about the judiciary would likely fall under the definition of voter education if the purpose is to create a more informed citizenry. This would include the volunteer services of judges and other court personnel who engage with the community and speak at schools and civic organizations, bar associations that act as a conduit between the legal profession and the public, civic education leaders and organizations who are actively engaged in educating and nurturing our young citizens of tomorrow, and a myriad of civic, community and non-profit organizations concerned about democratic participation.

The recommendation concerning voter guides is only one identifiable outreach mechanism to

[70] One of the standards listed is whether the judge is "[i]n substantial compliance with the Code of Judicial Conduct.

[71] The questions are numbered 1-15 and refer readers back to p.61 for the actual questions, which include those such as "[b]ehavior is free from impropriety and the appearance of impropriety," "[b]ehavior is free from bias and favoritism,""[a]voids ex parte communications,""[u]nderstands the rules of procedure and evidence," etc. *Id*. at 61-62.

educate the public about judicial elections. Indeed, the lack of access and information about the judiciary extends beyond the mere need for voter guides and speaks to a profound disconnect between the populace and the judicial system generally. How to bridge that information gap is the central challenge we face today, and when we think about the citizens who comprise the fabric of our society, studies suggest that the gap becomes even wider for citizens the more marginalized they are as voters, whether by virtue of economics, gender, language access, race, or cultural background. Accordingly, there is even more of a pressing need to disseminate information about voter education to those with the most tenuous access to it.

This would include, for example, young people in this country, which a recent survey found, "do not understand the ideals of citizenship, . . . are disengaged from the political process, . . . lack the knowledge necessary for effective self-government, and their appreciation and support for American democracy is limited. The older generations have failed to teach the ideals of citizenship to the next generation."[72] In a report entitled "Citizenship: A Challenge for All Generations," released in September of 2003 by the Representative Democracy in America Project at the first Congressional Conference on Civic Education in Washington D.C., a survey of 15 to 26 year olds - the "DotNet" generation[73]- revealed that only 54% of the younger generation said that attention needed to be paid to government and politics, compared with 78% of those in the older generation, and only 66% of the DotNets said that voting is a necessary quality for being a good citizen, compared with 83% of those over age 26.[74] More young people knew the name of the reigning American Idol (64%) or the cartoon Simpson's hometown (82%) than the political party of their state's governor (48%).[75] On a positive note, however, the report found that young people who had taken a civics course were two or three times more likely to vote, follow government news and contact a public official about an issue that concerns them, lending support for the need of civic education in schools.

Despite what the public may believe, however, there is a tremendous amount of activity taking place throughout the state around voter education on different fronts simultaneously, often overlapping, sometimes not, involving not just the legal profession but civic and community organizations, bar associations, and civic education groups. The major area of concern is not so much what is being done, but how these efforts are being communicated to the public in such a way as to increase public perception and confidence in judicial elections. Thus, this section is concerned with communication, outreach and coordination of efforts, and how to maximize the work already underway in a manner that will have a meaningful impact on voter education efforts.

---

[72] NATIONAL CONFERENCE OF STATE LEGISLATURES, *Citizenship: A Challenge for All Generations* (Sept. 2003), Executive Summary, available at www.ncsl.org/public/trust/citizenship.pdf.

[73] Referring to the 40 million or so young people born after 1976, one of whose defining characteristics is coming of age along with the Internet, *id.* at p. 2

[74] *Id.* at p. 3

[75] *Id*. at p. 7

1. Coordination of Information Regarding Voter Education Efforts

Activities concerning voter, civic and law related education are taking place all the time, whether on a grass roots community level, by the state or local government, the Office of Court Administration, bar associations, or in the schools. A problem, however, is that this information is scattered all over the place and but for the perseverance of an individual trying to piece together these disparate strands, there is no centralized source of information about these activities or resources. Lack of access to information therefore becomes an obstacle to effective participation by the voting public, and similarly, an absence of any comprehensive overview or coordination of information can potentially undermine the effectiveness of these various educational endeavors. Thus, on the most basic level, centralizing this information in an accessible manner will help in developing an overview and an assessment of judicial and voter education efforts.

a. Resource Guide/Directory

A resource guide or directory would provide a listing of law-related, voter, and civic education organizations and individuals throughout the state, including educators, judges, bar associations, civic, non-profit and community organizations, and OCA, with their contact information, as well as a brief description of their relevant educational activity or program. It could be a voter education handbook and serve as a valuable resource tool for the legal and educational community as well as the public.

b. Website

A user-friendly, easy access website designed to appeal to the general population. This website would include, among other things, the information listed in the resource guide or directory, but would also be a site containing an up-to-date calendar of events throughout the state, as well as links to other organizations' websites/URL's. Ideally, this should become a website that is a familiar URL for everyone in the legal community (law schools, legal employers, bar associations) and would serve the purpose of disseminating this much needed information to the public. This site could also provide linkages between the legal profession, for example, and community based organizations doing voter education work, information about civic education in schools, contain message boards and chat rooms, and become a virtual community fostering more open communication between various organizations and individuals in the legal and non-legal community. For such a website to be successful, however, it would require the necessary funding to ensure that the graphic design and layout is contemporary, aesthetically pleasing, and eye-catching. This project, as with many of the recommendations listed in this section, can and should be a collaborative effort among a variety of different entities so as to maximize the possibilities for success and effective outreach, and to increase the availability for funding from private as well as governmental sources.

c. Judicial Directory

Currently there exists no state court judicial directory that provides background information about our elected and appointed judges, even though one exists for the federal judiciary and state legislators.[76] An important issue that arose from the focus groups is a disconnect between the public and the judiciary. A judicial directory would be a low cost and effective way to let the citizens public know who serves them as judges. A judicial directory of elected and appointed state judges should be created, and include information about state court judges, including the judge's name, date and place of birth, education, current judicial seat, prior judicial service, information on the judge's professional career, and diversity information. Such a directory would achieve one of the goals of voter education as far as making information about the judiciary accessible to the public.

d. OCA--Specific Recommendations

The Office of Court Administration (OCA) is a statewide organization with thousands of employees which oversees the entire court system in New York State. It is involved in a multitude of educational activities in partnership with various legal, educational and civic organizations, the legal profession, schools, and local governments. Within the past ten years, OCA has been at the forefront of introducing innovative, problem solving treatment courts in the court system, including statewide Drug Treatment Courts and the Integrated Domestic Violence Courts. Concomitant with its vision about the role of the judiciary has been its extensive community and education outreach efforts, many of which, at the Administration level, are overseen by the Office of Public Affairs. OCA, through this office, has coordinated many activities related to this year's 50th Anniversary celebration of Brown v. Board of Education, Law Day events, has initiated jury participation programs, outreach to schools and communities, created a Speaker's Bureau, etc. On Law Day, for example, Chief Judge Judith S. Kaye announced the launch of a new interactive Community Outreach and Education Web Site.[77]

Because of the unique relationship between OCA and the judges over whom it has administrative control, many of the community and educational volunteer efforts of judges occur on a more individual and unsupervised basis. Outside of administration-sponsored initiatives, such activities that take place on the local level by either judicial or non-judicial staff appear to be more decentralized and loosely structured, and entirely dependent upon the particular circumstances of the locality in question. There are many judges who spend a considerable amount of time in community related efforts to educate people about the court system and the judiciary, but such efforts go unrecognized primarily because that is an individual decision by the respective judge, and this information is not centralized or coordinated by any particular body within OCA.

---

[76] See www.fjc.gov (last visited on May 4, 2004); see also Joyce Purnick, "Who On the Bench? Who Can Tell?," New York Times, May 17, 2004 at B1.

[77] See www.courts.state.ny.us/Community_Outreach (last visited on May 4, 2004).

While the Office of Public Affairs can be commended for its successes, there is still much that OCA can do to make its work even more relevant. For example, compiling and disseminating information about judges' and local court activities would certainly be relevant to voter education, and, along with OCA sponsored activities throughout the state, such efforts should be compiled and documented on a regular basis. This would also give OCA a chance to take credit for its achievements, be an effective PR tool, and provide ample demonstration about what OCA is doing to increase public awareness and public confidence about the judiciary. Some of the coordination of OCA's educational activities might be centralized in one office, which would, for example, be involved in the following:

- Serve as a resource for judges and non-judicial staff engaged in educational efforts in communities and schools;
- Provide linkages and coordinate with other non-judicial groups involved in civic education and in increasing civic participation in NY;
- Develop a tool kit or uniform curricula for judges and non-judicial staff to use in their speaking engagements;
- Participate in the annual training of judges/court attorneys with the goal of encouraging their involvement with efforts to increase public confidence;
- Obtain quarterly updates compiled by the administrative judges in each district about educational and community activities related to the courts;
- Post this information regularly on a user friendly, easy to access website, and
- Compile this information for an Annual Report.

2. Multi-media Awareness Campaigns

a. Voter Guide Campaign

A judicial voter guide should be accompanied by a well thought-out and strategic campaign to educate the public about the importance of voting, the court system, and the citizen's role in judicial elections. Such a campaign should involve the participation of community, civic, and voter registration groups with respect to outreach efforts, and it should also be coordinated with different types of multi-media outreach efforts.

b. Radio Announcements

Radio announcements can be quite an effective outreach tool because they can potentially reach a larger audience than print media. One suggestion would be to develop a media campaign that would involve several different 30-second radio spots designed to establish confidence in the judiciary. For example, airing recently were a series of radio announcements sponsored by the NYS Bar Association, as part of their Committee on Public Relations, to improve the reputation of the

legal profession. In a series of 30-second spots during a four-week period, these announcements reinforced the importance of lawyers and promote the legal system and are aired during prime time hours. They are part of a "Non Commercial Sustaining Announcement" program sponsored by the State Broadcasters Association in which a reduced rate is provided to organizations (at 25% of the value of airtime), thus making it a feasible method of reaching the public.[78] Although such a media campaign would not come inexpensively, it is worth the investment precisely because there is the potential of reaching the largest number of people and to have the greatest possible impact around perceptions of the judiciary and judicial elections.

c. Youth Targeted Campaigns

Any consideration of a multi-media awareness campaign about the judiciary and voter education should give serious thought to targeting young people, particularly in light of the demonstrated problems with young people and civic participation. Focusing on youth not only prepares a new generation of young voters but young students who are taught about civic education and voting can also involve their parents, who might not have access to the information made available to students.

d. Innovative Multi-media Projects

While funding remains a challenge, it is important to think creatively and to think outside the box. One possibility is to have a multi-media competition among students (anywhere from high school to graduate students) concerning voter education, or even involve advertising agencies that are willing to provide some type of *pro bono* service. It might also be helpful to consider innovative approaches through the use of popular culture as a way of reaching different communities.

3. Partnerships and Collaborations

There already exists an impressive synergy between various organizations that are involved in partnerships on a variety of voter education issues. Efforts currently underway should not be duplicated, but augmented such endeavors in a manner that will provide additional support to the legal, civic and educational community as a whole.

Because the scope of voter education is so enormous, it would make perfect sense to convene a meeting, or perhaps even a conference, to bring participants together in order to share information

[78] The leadership provided by various bar associations is also an important element in the area of educational outreach, as demonstrated, for example, by the stated objectives of Thomas Levin, the current President of the NYS Bar Association, one of whose goals it to increase the Association's public education efforts.

and to develop a statewide agenda around voter education issues. One of the objectives of the meeting might be to develop some collective short and long range goals. Since there is so much work already being done in this area, the next logical step is to share strategies and to develop some long range objectives which will collectively strengthen each other's work.

An example of such a model might be the Summit on Civic Education that took place in March of 2004, and included, among other organizations, OCA, NYS Bar Association, NYS Council for the Social Studies, the Justice Resource Center,[79] the Law Youth and Citizenship Program,[80] the Center for Civic Education, and the Council for Citizenship Education. Initiated by Steven Schechter, Director of the Council for Citizenship Education, the purpose of the meeting was to discuss what was happening on a statewide level, some of the common issues they face, develop a mission statement, and to work on the development of a more uniform curricula about civic education in connection with the "Civic Mission of Schools".[81] Although the Summit was narrowly focused on the issue of civic education, it represents the type of coordinated effort around voter education issues that should be strongly encouraged.

Indeed, civic education would be one important topic, among many, to be addressed at a conference or meeting on voter education. Whether this would naturally follow at the conclusion of such a meeting, a working group on voter education should be created. This type of broad based working group would include educators, civic and community organizations, members of the legal profession, bar associations, the judiciary, OCA, politicians, and members of the Board of Regents.

---

[79] JUSTICE RESOURCE CENTER coordinates all law-related programs throughout the five boroughs; is involved in mentoring programs and moot court competition for high school students with law firms and corporations; collaborates with the Law Related Education Comm. of the NY County Lawyers' Association.

[80] LAW YOUTH & CITIZENSHIP PROGRAM is a funded 30-year collaboration between the New York State Bar Association and the NYS Department of Education that involves a variety of educational programs for students and teachers. It is a statewide law-related education program designed to "enhance student understanding of the law, our constitutional form of government and the rights and responsibilities of citizens." Their programs for 2004 include five summer professional development institutes for teachers entitled "Revitalizing Law-Related and Civic Education," one of which is called "We the People: The Citizen and the Constitution" (in conjunction with the Center for Civic Education), and a variety of other projects. See www.nysba.org/lyc (last visited on April 4, 2004).

[81] *"The Civic Mission of Schools"* - a report on the importance of civic education arising out of a series of meetings convened in 2002 with scholars and practitioners by the CENTER FOR INFORMATION AND RESEARCH ON CIVIC LEARNING AND ENGAGEMENT (CIRCLE) and CARNEGIE CORPORATION OF NEW YORK "to determine, based on solid data and evidence, the components of effective and feasible civic education programs" (Report, Executive Summary at 4). See www.carnegie.org or www.civicyouth.org (last visited on May 4, 2004).

Appendix I to Working Paper on Voter Education

REPORT ON VOTER GUIDES IN ALASKA, OREGON, CALIFORNIA, & UTAH

Alaska

The State of Alaska produces a paper voter guide that is mailed to each registered voter no less than 22 days prior to each general election.[1] A different voter guide is produced for each of four geographic regions and is distributed to households according to location.[2] Recorded copies of the voter guide are available to blind voters at no cost through the State library.[3] An identical online version is also available.[4] Voter guides are not distributed for primary elections.

Alaska State judges are initially appointed by the governor according to a merit system, based upon nominations received by the governor from the Alaska Judicial Council (the "Council"), a citizen's commission constituted by three non-attorney members, three attorney members, and the Chief Justice of the Alaska Supreme Court, who sits as chair.[5] Judges are then subject to retention elections at the end of their terms.[6] The section of the voter pamphlet concerned with judicial retention elections lists all statewide (Supreme Court and Court of Appeals) candidates, as well as candidates in the judicial district (Superior Court and District Court) for which the guide was published.[7] Judicial candidates may submit a position statement, a biographical statement, and photograph. The position statements are limited to 250 words or less and the biographical statements are limited to 150 words or less.[8] Photographs must be black and white, 5" x 7" in size, must have been taken in the past five years, and may show only the head, neck, and shoulders.[9] The position statements generally discuss the candidates' commitment to serving the people of Alaska and upholding the basic tenets of judgeship. The biographical information generally includes the candidate's date and location of birth, spouse, children, address, length of residency in Alaska, education, political and government positions, business and professional positions, service organization memberships, and special interests.[10]

Also included for each judicial candidate is a recommendation from the Council either for or against retention, and a rating scale.[11] Candidates are rated on legal ability, impartiality, integrity, temperament, and diligence; the rating scale runs from one to five, with one being the lowest, and judges must score three or better to receive an "acceptable" recommendation from

---

[1] AK ST 15.58.080(a).
[2] AK ST 15.58.080(a).
[3] AK ST 15.58.080(b).
[4] See http://www.gov.state.ak.us/ltgov/elections/2002oep/2002oepindex.htm.
[5] AK ST § 22.05.080(a); see also, e.g.; State of Alaska Official Election Pamphlet, November 5, 2002, p. 138.
[6] AK ST § 22.05.100.
[7] The highest state court is the Supreme Court, which hears appeals from the lower state courts.
[8] AK ST § 15.58.030(e).
[9] AK ST § 15.58.030(f).
[10] State of Alaska Official Election Pamphlet, November 5, 2002, p. 137-159.
[11] AK ST § 15.58.050.

the Council.[12] The Council's recommendation is derived from surveys of Alaskan attorneys, peace officers, social workers, guardians ad litem, court appointed special advocates, jurors, court employees, and the judges themselves, and a review of conflict-of-interest annual statements and financial disclosures filed with the Alaska Public Offices Commissions and separate forms filed with the court system, court case files, Commission on Judicial Conduct public files, and performance-related court data such as the number of peremptory challenges filed against a judge and the number of reversals on appeal.[13] The Council also holds public hearings for all judges standing for retention, interviews judges upon the judge's request, and considers any other publicity and input, including information from CourtWatch.[14] The Council's statement may not exceed 600 words.[15]

Any judicial candidate who submits materials for inclusion in the guide must pay for their inclusion: candidates for the Supreme Court and Court of Appeals must each pay $300 to include material in the guide; candidates for the Superior Court and District Court must each pay $150 to include material in the guide.[16] Regardless whether a judicial candidate chooses to submit materials, the Council's evaluation of that judicial candidate is included in the guide at no charge.[17]

Absent from the Alaska State voter guide is any reference to the role of judges within the State's government, including such themes as the importance of fairness and impartiality. Additionally, the guide provides only a brief description of the judicial appointment and election processes.[18] Each guide does contain, however, general information on voting, including basic questions and answers on voting, information for disabled voters, a list of polling places, absentee voting information and a sample ballot, as well as information on other statewide and regional candidates, and ballot measures.[19]

OREGON

The State of Oregon produces a voter guide that is mailed to each post office mailing address and is also posted to the State's website.[20] Additional copies are available at the State Capitol, local post offices, courthouses, and all county election offices.[21] Oregon is a vote by mail state as of 2000, and voter guides are mailed no later than twenty days prior to a primary, general, or special election.[22] In practice, the paper and online guides contain the same

---

[12] State of Alaska Official Election Pamphlet, November 5, 2002, p. 139. See also, e.g.; (http://www.ajc.state.ak.us/retention/retent.htm) for more detailed judicial evaluation information.
[13] State of Alaska Official Election Pamphlet, November 5, 2002, p. 138-139, 143.
[14] State of Alaska Official Election Pamphlet, November 5, 2002, p. 138. CourtWatch is a private group founded by Victims for Justice (http://www.ajc.state.ak.us/retention/retent.htm).
[15] AK ST § 15.58.050.
[16] AK ST § 15.58.060(a)(1)-(2).
[17] AK ST § 15.58.060(c).
[18] State of Alaska Official Election Pamphlet, November 5, 2002, p. 138.
[19] AK ST § 15.58.020; see also, e.g.; State of Alaska Official Election Pamphlet, November 5, 2002.
[20] OR ST § 251.175. The voter resources and current voter guides are located at http://www.oregonvotes.org/; an archived version including judges may be viewed at http://www.sos.state.or.us/elections/may212002/may212002.htm.
[21] OR ST §251.175. see also, e.g.; Voter Guide, General Information section, http://www.sos.state.or.us/elections/may212002/guide/geninf.htm.
[22] OR ST § 251.175(1).

information, with the exception that the paper guide also contains congressional and district maps. While the same types of information are provided in the primary and general election guides, the actual content of each guide will differ as candidates and measures will change. Additionally, candidates are permitted to submit new statements for the general election guide.

All Oregon judges are elected to six-year terms and run in competitive elections. Candidates for Supreme Court, Court of Appeals, and Circuit Court judgeships are included in the voter guide.[23] Candidates may include a photograph and a personal statement.[24] Candidates' statements may not exceed 325 words and must begin with a summary of his or her occupation, educational and occupational background, and prior governmental experience.[25] Candidates' statements and arguments may contain only words or numbers, and may not include the names of persons or organizations cited as supporting or opposing a candidate unless the secretary of state receives a statement signed by the person or organization whose name is cited consenting to the use.[26] If a person's or entity's name is used in a quotation made by that person or entity, the name may not be used unless the quotation was publicly disseminated prior to its inclusion in the statement and the quotation is identified in the voter guide by source and date. [27]

Candidates' portraits must have been taken within two years of the date they are filed with the secretary of state and may not be smaller than 1.50" x 1.75".[28] Additionally, the photograph must be "conventional," with a plain background, and may show only the head neck and shoulders of the candidate.[29] The photograph must not include the hands of the candidate or anything held in the hands of the candidate, nor may it show the candidate wearing a judicial robe, a hat, or a military, police or fraternal uniform, or the insignia of any organization.[30]

At the time a candidate files his or her portrait and statement or argument, he or she must pay a fee to the secretary of state for space in the voters' pamphlet.[31] The fee varies based on the office that the candidate seeks; for judicial candidates the fee is $300.[32] If a candidate chooses not to include a statement or photograph, his or her name and the office sought will still be included in the voter guide.[33]

The guide contains no voter education on the role of judges or the process of electing judges, although it does contain general information on voter registration and the vote by mail program, as well as information on ballot measures and other candidates.[34] County clerks may also print and distribute voter guides for county elections, including county judicial elections.[35]

---

[23] Oregon State Voter's Pamphlet, Nonpartisan Candidates. see also, e.g.; http://www.sos.state.or.us/elections/may212002/guide/geninf.htm.
[24] OR ST § 251.067(1).
[25] OR ST §§ 251.095(2), 251.085.
[26] OR ST §§ 251.046(1), 251.049(1), (2).
[27] OR ST §§ 251.046(1), 251.049(1), (2).
[28] OR ST § 251.075(1).
[29] OR ST § 251.075(2).
[30] OR ST § 251.075(3)(a)-(c).
[31] OR ST § 251.095(1).
[32] OR ST § 251.095(1)(b).
[33] OR ST § 251.165.
[34] OR ST § 251.026.
[35] OR ST § 251.305.

CALIFORNIA

The State of California produces a voter guide that is available in English, Spanish, Tagalog, Chinese, Japanese, Vietnamese, and Korean.[36] One copy is mailed to each registered voter no less than 21 days before each election, and is also available over the Internet.[37] Additionally, guides are made available in every public library, public high school, and public institution of higher learning.[38]

California State judges are appointed by merit selection and are then subject to retention election. If the ballot contains a question as to the confirmation of a justice of the Supreme Court or a court of appeal, the voter guide must include a detailed written explanation of the electoral procedure for justices of the Supreme Court and the courts of appeal as follows:

> *Under the California Constitution, justices of the Supreme Court and the courts of appeal are subject to confirmation by the voters. The public votes "yes" or "no" on whether to retain each justice. These judicial offices are nonpartisan. Before a person can become an appellate justice, the Governor must submit the candidate's name to the Judicial Nominees Evaluation Commission, which is comprised of public members and lawyers. The commission conducts a thorough review of the candidate's background and qualifications, with community input, and then forwards its evaluation of the candidate to the Governor. The Governor then reviews the commission's evaluation and officially nominates the candidate, whose qualifications are subject to public comment before examination and review by the Commission on Judicial Appointments. That commission consists of the Chief Justice of California, the Attorney General of California, and a senior Presiding Justice of the Courts of Appeal. The Commission on Judicial Appointments must then confirm or reject the nomination. Only if confirmed does the nominee become a justice. Following confirmation, the justice is sworn into office and is subject to voter approval at the next gubernatorial election, and thereafter at the conclusion of each term. The term prescribed by the California Constitution for justices of the Supreme Court and courts of appeal is 12 years. Justices are confirmed by the Commission on Judicial Appointments only until the next gubernatorial election, at which time they run for retention of the remainder of the term, if any, of their predecessor, which will be either four or eight years.*[39]

---

[36] See online voter pamphlet at http://voterguide.ss.ca.gov/home.asp.

[37] CA ELEC §§ 9082.7, 9094(a). Alternatively, the secretary of state may mail one copy to each household with a registered voter in lieu of mailing one copy to each registered voter. The Internet version, a .pdf file, is identical to the printed version. It can be viewed at http://voterguide.ss.ca.gov/home.asp.

[38] CA ELEC § 9096. See also, e.g.; CA ELEC § 9084(f), stating that the guide must indicate conspicuously on its cover that additional copies are so available.

[39] CA ELEC § 9083.

Only candidates for California's highest court, the Supreme Court, are included in the State voter guide.[40] Candidates for judicial offices that are not voted on statewide are included on one of fifty-eight individual county sample ballots that are sent to all registered voters. Supreme Court candidates are permitted to include only background information in the voter guide, including their current employment, date of bar admission, educational, professional, and legal background, and judicial experience. Candidates' statements may not exceed 250 words.[41] Photographs of the candidates are not included.

No fee for inclusion in the guide is specified in the State's statutes or the code, and in previous years candidates were not charged for inclusion in the guide. However, for the 2003 elections (which did not include any elections for judges covered by a guide) the State charged $10 per word, for a maximum of $2,500.[42]

The guide does not contain any information on the role of judges, but does contain general voting information, including how to register, how to locate a polling place, and how to vote by mail, as well as information on candidates for all other statewide offices and ballot issues.[43]

UTAH

The State of Utah produces a paper voter guide that is also available online.[44] The paper voter guide does not differ from the online voter guide, and is distributed in two ways: one copy of the voter guide is placed in one issue of every newspaper of general circulation in the state no more than 40 nor less than 15 days prior to the date of the election, and the guide is made available to each county clerk in sufficient volume for free distribution upon request and for placement at polling places.[45] Voter guides are not distributed by mail.

Judges in Utah are initially appointed by merit selection and then must stand for retention election at the end of each term.[46] Justices of the Supreme Court and judges of the Court of Appeals are statewide offices and appear on the ballots of every county; judges of the district court and juvenile court only appear on the ballots of the counties within their respective judicial districts.[47] Additionally, judges of the justice court appear on the ballots of the voting precincts of their court precinct.

The voter guide contains all judges standing for retention for the electoral district for which the guide is produced.[48] Information on judges is submitted by the Judicial Council (the "Council"), the policy making body for the Utah judiciary.[49] For each candidate, the Council submits for inclusion in the guide: the counties in which the judge is subject to retention election;

---

[40] See "Guide to California Courts" at http://www.courtinfo.ca.gov/reference/guide.htm.
[41] CA GOVT § 85601.
[42] CA Const. Art. 2 § 2.5.
[43] California General Election Official Voter Information Guide, November 5, 2002, pp. 58-65.
[44] http://www.elections.utah.gov/voterinformation.html.
[45] UT ST §§ 20A-7-702(3)(a), (c).
[46] UT ST §§ 20A-12-201; UT Const. Art. 8 § 8.
[47] Utah Voter Information Pamphlet, November 5, 2002, p. 61.
[48] UT ST § 20A-7-702(2)(h)(v).
[49] UT ST § 20A-7-702(2)(h).

a short biography of professional qualifications;[50] a recent photograph;[51] a statement as to whether or not the judge met each standard of performance of the judicial evaluation process (and if not, the manner in which he or she failed to meet that standard); a statement provided by the Utah Supreme Court identifying the cumulative number of informal reprimands (when consented to by the judge in accordance with UT ST § 78-7-107(2)(d), which requires the Commission on Judicial Conduct to obtain the permission of the judge to publicly disclose informal reprimands), formal reprimands, and all orders of censure and suspension issued by the Utah Supreme Court during the judge's current term and the immediately preceding term, along with a detailed summary of the supporting reasons for each violation of the Code of Judicial Conduct; and a statement identifying whether or not the judge was certified in compliance with the ethical, competency, and other standards set forth by the Council.[52] As a space-saving measure, pictures are not included for judges of the justice court.[53]

In addition, the Council must provide a description of the judicial selection and retention process.[54] This section must include (in order): a description of the merit selection process; a description of the judicial evaluation process; [55] a description of the judicial retention election process; and a list of the criteria and minimum standards of the judicial performance evaluation.[56] The guide must also contain, in graphic format, the results of a statistical survey of attorneys, jurors, and others for each judge used by the Council for certification purposes.[57]

Each guide must also include an explanation of the voting process, voter registration information, information on how to obtain an absentee ballot, and a list of all county clerks' offices and phone numbers.[58] Finally, each guide contains a brief discussion on the role of judges.[59] There is no cost to candidates to be included in the voter guide; every two years, the Board of Elections requests approximately $750,000 from the legislature to fund production and distribution of the guide.[60]

---

[50] There are no specific constraints or requirements on the biographical information provided for each candidate.
[51] There are no specific photo requirements.
[52] UT ST § 20A-7-702(1)(h)(vi).
[53] Per telephone call with Rozan Mitchell, Deputy Director of Campaign Finance, Wednesday, September 10, 2003.
[54] UT ST § 20A-7-701(2).
[55] The Performance Evaluation Program (the "Program"), is administered by the Council. Under the guidelines of the Program, the Council provides the public with information to determine whether each judge should be retained. The evaluation of the judge's performance is conducted every two to four years, depending on when the judge is standing for retention election. An independent surveyor conducts a poll of lawyers appearing before each judge and asks the lawyer to anonymously evaluate the judge based on several criteria. Additionally, a similar survey of jurors is conducted for district court judges and other judges sitting temporarily in the district court. Prior to the close of a judge's term of office, the Judicial Council reviews the results of the polls and other standards of performance and determines whether the judge is qualified for retention. The information is provided to the public in the guide, including survey questions asked of lawyers and jurors and the scoring system that corresponds to their responses.
[56] UT ST § 20A-7-702(1)(h)(i)-(v).
[57] UT ST § 20A-7-702(1)(h)(vii)(A).
[58] UT ST § 20A-7-702(1)(i)-(k).
[59] Utah Voter Information Pamphlet, November 5, 2002, p. 59.
[60] Per telephone call with Rozan Mitchell, Deputy Director of Campaign Finance, Wednesday, September 10, 2003, there is no statute that requires the funding but to date the legislature has never refused the request.

Costs of Producing Voter Guides

APPENDIX II to Working Paper on Voter Education

State	# of guides produced	# of races included	Frequency of publication	Cost	Lead-time from the date of ballot access determinations to production of the voter guides, including how different states deal with the time constraints	Contact
Alaska						
	In 2002, approximately 350,000 guides were produced	Depends on the year; the guide includes: all candidates running for the state House of Representatives (2 year term with 40 members); candidates running for half of the state Senate seats (10 seats are open every 2 years); candidates running for governor every 4 years; candidates for U.S. Senate every 6 years; judges and justices (in 2000, more than 30 ran for retention election; in 2002 there were significantly fewer).	General elections, every two years	Printing - $259,000; postage - $60,500; personnel/travel/misc. - $40,000	Information is sent to the printer as soon as it is received, because it is often not known until the last minute if a party is going to substitute a candidate, for instance. The law requires that pamphlets be mailed three weeks prior to the general election. The voter guide staff literally camps out at the printer to make last minute changes. The staff consists of two temporary employees who work from mid-May through the general election, even though the guides have already been mailed, to get the files in order and revise the desk manual to assist the team that will be producing the guide two years ahead.	Virginia Breeze

State	# of guides produced	# of races included	Frequency of publication	Cost	Lead-time from the date of ballot access determinations to production of the voter guides, including how different states deal with the time constraints	Contact
Oregon						
	No updates from 2000 available (in 2000, 1,700,000 guides were produced); voter guides are produced for statewide elections only.[1]		2-3 guides are produced per year depending on number of special elections (in off years, there are only special elections).	A total of $2,000,000 was spent on the guides in 2000, $450,000 of which was spent on postage.		
	[1]State said these numbers are still about the same for 2003.					

State	# of guides produced	# of races included	Frequency of publication	Cost	Lead-time from the date of ballot access determinations to production of the voter guides, including how different states deal with the time constraints	Contact
Utah						
	In 2002, 1,140,000 guides were produced.	All races are included; 3 congressional seats, 1/2 of utah state senate (16 races), all 75 house seats; 8 state school board seats; judges run for rentention elections only, and in 2002 82 judges ran for retention.	general elections, even numbered years only	printing - $159,509; distributed in newspapers $175,664 for insertions (doesn't include layout, proofing, etc that is covered by staff)	Primary is held on 4th Tuesday in June, and around then all candidates are finalized. Law gives them a time-frame that pamphlet must be ready in (between 15 and 40 days before general election) so they have two months	Amy Naccarato, anaccarato@utah.gov

APPENDIX III TO WORKING PAPER ON VOTER EDUCATION

REPORT ON VOTER ROLL-OFF

The tendency of voters to vote in a major partisan election, but to refrain from voting for offices or measures located near the bottom of the ballot is known as "voter roll-off" or "voter fatigue."[1] In most electoral districts in New York State, candidates are listed, not at the bottom of the ballot, but rather horizontally along the top of the ballot, with the names of candidates for the Supreme Court appearing after the major candidates (president, governor, etc.) and before the candidates for United States House of Representatives, State Senate and Assembly. Unlike voters who might experience "voter fatigue" because of the length of the ballot, in New York the propensity of New York voters to cast a ballot in a major partisan race and then skip over the judicial candidates to vote for members of the legislative and on other measures has more appropriately been labeled "voter leap over."[2]

In 1982, the Fund for Modern Courts published a groundbreaking report which analyzed voter participation in State Supreme Court elections in New York State and calculated "voter roll-off" for the 1978 gubernatorial and the 1980 presidential elections.[3] Two years later the Fund for Modern Courts published a second report which began where the previous study left off and analyzed New York State's Supreme Court elections in 1981, 1982 and 1983, including voter participation and "roll-off" for 1982, which was a gubernatorial election year.[4]

In 2003, the Fund for Modern Courts again reviewed New York State gubernatorial and Supreme Court general election races of 2002 and calculated the "voter roll-off."[5] A comparison of voter participation in the 1980, 1982 and 2002 elections shows a significant increase in "voter roll-off" between presidential and gubernatorial elections as compared to Supreme Court races, as demonstrated by Table 1.

In addition, a comparison of the 1980, 1982 and 2002 voting data (Table 2) reveals sharp declines over the past twenty years in percentage of registered voters casting a ballot in the presidential and gubernatorial races, but even more precipitous declines in the percentage of registered voters voting in Supreme Court Races.

These comparisons demonstrate a significant fall-off in voter participation in judicial elections. Voter roll-off may be affected by such variables as presidential races and hotly-contested (or uncontested) races.[6] As one recent study of voter roll-off concluded: "While the causes of roll-off

---

[1] A. Clarke & G. Peterson, "Too Far to the Bottom? Exploring the Phenomenon of Voter Roll-Off," www.uwec.edu/petersgd/research/SPSCA2002.pdf (last visited Sept. 23, 2003) ("Too Far to the Bottom?"); "Justice in Jeopardy: Report of the American Bar Association Commission on the 21st Century Judiciary" at 36 (June, 2003)

[2] Fund for Modern Courts, Inc., "Judicial Elections in New York, Voter Participation and Campaign Financing of State Supreme Court Elections 1978, 1979 and 1980" (1982) (M.L. Henry, Jr., Executive Director) ("Fund Report I") at 74. ("Since the Supreme Court candidates do not appear at the bottom of the ballot, the calculation of 'roll-off' in these races in New York is more statistically significant than in other states." Id. at 35.)

[3] Fund Report I.

[4] Fund for Modern Courts, Inc., "Judicial Elections in New York, Voter Participation and Campaign Financing of State Supreme Court Elections, 1981, 1982 and 1983" (1984)(M.L. Henry, Jr., Executive Director)("Fund Report II").

[5] Fund for Modern Courts, Inc., "Comparative Overview of 2002 New York State Gubernatorial & Supreme Court General Election Races" (2003)(Christopher Cesarani)(Comparative "2002 Overview").

[6] "Too Far to the Bottom," supra at 13-14.

remain unclear, the consequences are more obvious."[7] By increasing the electorate's knowledge of the candidates and their qualifications, enabling voters to make informed choices, we may be able to stop the slide and reverse the downward spiral.

TABLE 1					
Comparison of 1980, 1982 and 2002, Presidential, Gubernatorial and State Supreme Court General Elections[8]					
VOTER ROLL-OFF (%)[9]					
Judicial District	**1980** (Presidential)	**1982** (Gubernatorial)	**% Change** (1980-1982)	**2002** (Gubernatorial)	**% Change** (1982-2002)
1st	29%[10]	58%[11]	+100%	31%	-46%
2nd	27%	34%	+26%	39%	+15%
5th	17%	16%	-5%	20%	+25%
8th	18%	21%	+17%	21%	0%
9th	13%	12%	-8%	17%	+42%
11th	25%	25%	0	32%	+28%
12th	N/A	27%	-----	41%	+52%

[7] Id. at 14.
[8] Source: Fund Report I, Fund Report II and Comparative 2002 Overview.
[9] The Fund acknowledged that "the calculation of voter participation in districts with multiple vacancies for Supreme Court posed a special problem…" and concluded that the best analytical method available to calculate voter participation was to divide "the number of votes cast by the number [judicial] vacancies in order to determine the number of 'whole ballots' cast." Report I at 34.
[10] Until 1982, the 1st Judicial District was composed of New York and Bronx Counties.
[11] The 1982 Supreme Court election in New York County was unique. "Ten Democratic candidates for Supreme Court were denied a place on the ballot because the county Democratic organization failed to file nomination papers with the NYC Board of Elections." Fund Report II at 15. The absence of any Democratic candidates would likely explain the high number of voters who failed to vote for Supreme Court Justice.

TABLE 2						
Comparison of 1980, 1982 and 2002, Presidential, Gubernatorial and State Supreme Court General Elections[12]						
PERCENTAGE (%) OF REGISTERED VOTERS						
Judicial District		**1980**	**1982**	**% Change** (1980-1982)	**2002**	**% Change** (1982-2002)
1st	**Pres./Gov.**	65%[13]	66%	+2%	35%	-47%
	JSC	26%	28%	+7%	24%	-14%
2nd	**Pres./Gov.**	65%	65%	0	32%	-50%
	JSC	25%	43%	+72%	19%	-56%
5th	**Pres./Gov.**	N/A[14]	77%	-----	47%	-39%
	JSC	N/A[15]	65%	-----	37%	-43%
8th	**Pres./Gov.**	87%	77%	-11%	44%	-43%
	JSC	46%	61%	+33%	35%	-43%
9th	**Pres./Gov.**	86%	76%	-12%	45%	-41%
	JSC	48%	67%	+40%	38%	-43%
11th	**Pres./Gov.**	70%	70%	0	33%	-53%
	JSC	29%	52%	+79%	23%	-56%
12th	**Pres./Gov.**	N/A	64%	-----	29%	-55%
	JSC	N/A	47%	-----	17%	-64%

[12] Source: Fund Report I, Fund Report II and 2002 Comparative Overview.
[13] Includes New York and Bronx Counties. See fn. 7 supra.
[14] No Supreme Court races.
[15] No Supreme Court races.

Appendix G-9

PROPOSED RULES OF THE CHIEF ADMINISTRATOR OF THE COURTS

PART 114
JUDICIAL CAMPAIGN PRACTICE COMMITTEES

Sec.

114.1 Purpose
114.2 Composition
114.3 Procedure
114.4 Determinations
114.5 Confidentiality
114.6 Rule making

§114.1 Purpose. There are hereby created Judicial Campaign Practice Committees (JCPC) in each Appellate Division to receive and evaluate complaints relating to campaign activity from candidates for election to judicial office. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, files nominating petitions for said office, or authorizes solicitation or acceptance of contributions.

§114.2Composition. (a) The Chief Administrator of the Courts, in consultation with the appropriate Presiding Justice of the Appellate Division, shall establish a separate JCPC for each grievance or attorney disciplinary committee that exists in an Appellate Division.

(b) A JCPC shall be composed of no less than five members, to include attorneys and non-attorneys appointed for a four year term. The Chief Administrator in consultation with the appropriate Presiding Justice shall both determine the total number of members of each JCPC and appoint a chair for each JCPC for a one year term. No member shall serve longer than one four year term.

§114.3 Procedure. (a) All complaints to a JCPC shall be in writing signed by a candidate and on notice as required by the rules of the JCPC to the respondent.

(b) Complaints must allege, detailing particular facts and circumstances, a violation of a specific provision of Part 100 of the Rules of the Chief Administrator of the Courts (22 NYCRR 100).

(c) Respondent shall have two business days after receipt of the complaint to reply to the JCPC.

§114.4 Determinations. (a) All determinations of the JCPC shall be issued no later than seven business days after receipt of the complaint. In making its decision, the JCPC may request such supplemental material as it deems necessary.

(b) If a majority determines that there is no violation, the JCPC will dismiss the complaint and notify the parties that the matter is closed.

(c) If a majority determines that there has been a violation, the JCPC will, immediately after the date of the general election, refer the complaint to the Commission on Judicial Conduct if the respondent has won the election or the appropriate attorney discipline or grievance committee of the Appellate Division if the respondent has lost and is an attorney.

§114.5 Confidentiality. Complaints made to and determinations made by a JCPC and the facts and circumstances on which they are based, shall be confidential and shall not be disclosed by the JCPC other than to the parties to the complaint. Deliberations of the JCPC shall be confidential.

§114.6 Rule making. The Chief Administrator, in consultation with the Presiding Justices of the Appellate Division, shall adopt such rules as necessary to carry out the provisions of this part.

WORKING PAPER ON CAMPAIGN FINANCE DISCLOSURE
Appendix G-10

The role of disclosure in judicial campaigns was an integral component of the Commission's consideration of how to restore public confidence to the elected judiciary of New York State. The perceived relationship between campaign contributions and judicial impartiality make clear the necessity of providing a significant degree of transparency in the campaign finance system through meaningful disclosure. Such transparency promotes confidence in the campaign finance system and allows voters to evaluate candidates.

New York State election law currently requires substantial and detailed disclosure of judicial candidates. However, to be useful to the public, disclosure must be timely, easily accessible, accurate, and complete. Filings not made in time for public review prior to election day are of little use in cultivating an informed and civically invested public. Likewise, filings that are inaccurate or incomplete can be frustrating, misleading, and may ultimately seem suspicious. Moreover, such filings, even if complete, accurate, and timely, are of little use if the public lacks meaningful access to them. Overly cumbersome search mechanisms – manual or electronic – actually deter meaningful public participation and cast a hue of impropriety.

This section considers first the filing requirements of judicial candidates as they currently exist. It then discusses the current system from the perspectives of candidates and other filers, the public and press, audit and enforcement, and academic research. The section goes on to discuss the disclosure requirements of other jurisdictions and concludes with recommendations for improving the New York State system of campaign finance disclosure.

I. Current System

1. Legal Requirements and Obligations: Purposes of Disclosure

A. Judicial Candidates' Filing Requirements

Candidates must file at least three reports for each election: for a primary election, reports must be filed 32 days and 11 days prior to the election and 10 days after the election; for a general election or a special election, reports must be filed 32 days and 11 days prior to the election and 27 days after the election.[1] Additionally, 24-hour notices must be filed for any contribution or loan that exceeds $1,000 and is received after the cut-off date for reporting transactions in the last full report before election day. (The contribution or loan must also be disclosed in the post-election report.)[2] In addition to the election reports, the NYSBOE requires semi-annual disclosure reports due every January 15 and July 15 as long as a candidate's political committee remains in existence.[3] If a candidate does not spend more than $50 in the aggregate during the course of his or her campaign, he or she does not need to file disclosure statements.[4]

[1] NY Elec. § 14-108(1); 9 NYCRR 6200.2(a).
[2] NY Elec. § 14-108(2); 9 NYCRR 6200.2(g).
[3] NY Elec. § 14-108(1); 9 NYCRR 6200.2(b).
[4] NY Elec. § 14-124(5); 9 NYCRR 6200.3(a).

A committee may file an "In-Lieu-of Statement", which can substitute for a more detailed disclosure statement, if the Committee supports only one candidate, and if, at the close of the reporting period for which the statement would be required, neither the total receipts nor the total expenditures for the entire campaign exceeds $1,000.[5] Committees that qualify for In-Lieu of Statements need only file the cover page of the required report.[6] However, if the committee's total receipts or expenditures subsequently exceed $1,000, the Committee must file an itemized report covering all transactions since the beginning of the campaign.[7] All copies of all campaign materials[8] must be submitted with the post-election report.[9]

All receipts and disbursements must be disclosed.[10] The name, address, date, check number, and amount of each contribution and contributor must be detailed on the appropriate contribution schedule, unless the committee has received less than $100 in the aggregate from any one contributor.[11] If any individual expenditure exceeds $49.99, the candidate must provide the date, check number, name and address of the payee, the amount of the expenditure, and its purpose on the appropriate schedule.[12] Committees also must disclose the name of the lender, its address, the amount of the loan, any interest to be charged, and the repayment schedule.[13] Additionally, committees must provide proof of all indebtedness in their filings (to ensure that neither candidates nor contributors use loans as a way to circumvent contribution limits). [14] If the loan was received from a lending institution, the evidence of indebtedness, such as a loan agreement or promissory note, must include the name and address of any cosigner, obligor, or any other person providing security for or otherwise guaranteeing the loan.[15] Additionally, committees must continue to report all loans so long as they remain outstanding (a loan is deemed outstanding until it is either repaid or forgiven). Loan repayments must also be reported – the statement must include the original date of the loan, the complete name and address of the lender, the check number, the date repaid, and the amount paid.[16]

Political clubs that are registered as political action committees ("PAC's") do not need to itemize the expenditures they make on behalf of candidates, because they are not permitted to make direct expenditures on behalf of candidates. All other disclosure requirements applicable to political

---

[5] NY Elec. § 14-124(4).
[6] NY Elec. § 14-104(1). See also the NYSBOE's 2003 "Handbook of Instructions for Campaign Financial Disclosure," p. 33.
[7] See the NYSBOE's 2003 "Handbook of Instructions for Campaign Financial Disclosure," p. 33.
[8] NY Elec. § 14-106 provides that "all advertisements, pamphlets, circulars, flyers, brochures, letterheads and other printed matter purchased or produced and a schedule of all radio or television time, and scripts used therein, purchased in connection with such election by or under the authority of the person filing the statement or the committee or the person on whose behalf it is filed, as the case may be" must be included.
[9] NY Elec. § 14-106.
[10] NY Elec. §§ 14-102(1), 14-104(1).
[11] NY Elec. § 14-102(1). Contributions are reported on schedules A, B, C, D, or E, depending on the type of contribution.
[12] NY Elec. §14-102(1). Expenditures are reported on schedule F.
[13] NY Elec. § 14-102(1). Loans received are reported on schedule I. Interest repayments are reported on schedule F.
[14] NY Elec. § 14-102(1), discussing generally the requirement that proof of indebtedness be included with the report of any loan. See also the NYSBOE's 2003 "Handbook of Instructions for Campaign Financial Disclosure," p. 46, schedule I, which includes specific instructions on fulfilling the obligation to provide evidence of indebtedness.
[15] NY Elec. § 14-102(1), discussing generally the requirement that proof of indebtedness be included with the report of any loan. See also the NYSBOE's 2003 "Handbook of Instructions for Campaign Financial Disclosure," p. 46, schedule I, which includes specific instructions on fulfilling the obligation to provide evidence of indebtedness.
[16] NY Elec. § 14-102(1). Loan repayments are reported on schedule J, loan forgiveness is reported on schedule K, and outstanding loans are reported on schedule N.

committees apply to PACs.[17] Political clubs that are not registered as PACs are considered political committees and must provide all disclosure that is required of political committees in the Election Law.[18] Political committees, including political clubs, that support more than one candidate are required to itemize in their disclosure statements on whose behalf they have made expenditures.[19]

2. Practical Application

A. Filings Made by New York State Supreme Court Candidates

Pursuant to Article 14 of the New York State Election Law and Part 6200 of the Rules of the NYSBOE, candidates for New York State Supreme Court are required to file campaign finance disclosure statements with the NYSBOE.[20] The Election Law was amended in 1997 to require the NYSBOE to develop an electronic system for financial statement reporting. The electronic filing only applies to statewide candidates, state office holders, and Justices of the Supreme Court, and thus no candidates for other levels of offices, including other judicial offices, are required to file electronically. The electronic filing requirements are triggered if a candidate raises or spends, or expects to raise or spend, more than $1,000 in any calendar year.[21] However, candidates may file for a waiver permitting them to file on paper.[22] Whether a candidate files electronically or on paper, the information is made available on the NYSBOE's website as soon as practicable but in no even later than ten business days after its receipt by the NYSBOE.[23] If a candidate files on paper, the NYSBOE manually enters the disclosure information into its database.

The public may get access to Supreme Court candidates' disclosure information via the NYSBOE database.[24] Individuals may search for disclosure statements by selecting the Supreme Court candidate, and then the candidate's authorized committee, the statement filed, and the schedule. Thus, the public must know which authorized committee, statement, and schedule contains the disclosure sought, or must review each schedule individually. Schedules are displayed in .pdf format and include the name, date, address, amount, and check number or credit card reference number associated with each reported transaction.

In addition to allowing the public to view individual disclosure statements, the database allows users to search contributions across candidates. The public has access to contributor information by searching by type of contributor, contribution amount, and/or the name or partial name of the contributor. On any given search, the public can view the name of the contributor, the amount and date

---

[17] PACs are not defined in New York State Election Law, but are discussed in the glossary, p. 4, of the New York State Board of Elections Handbook.
[18] NY Elec. § 14-114(1).
[19] NY Elec. §§ 14-102(1), 14-114(4). Whether political committees, including political clubs, do make this disclosure is questionable.
[20] NY Elec. §§ 14-102, 14-104, 14-110; 9 NYCRR 6200.1(a)(1).
[21] NY Elec. §§ 14-102, 14-104.
[22] NY Elec. §§ 14-102, 14-104, each providing that the NYSBOE may provide a waiver in instances where filing electronically would constitute a substantial hardship. See also NY Elec. § 3-102(9-A).
[23] NY Elec. § 3-102(9-A) (e). It is widely acknowledged that the timing of the release of information is critical. Disclosure information should be available before the election is complete. See discussion infra at Section II.b.ii.d.
[24] See the NYSBOE's online Financial Disclosure Information System at http://nysboewww01.elections.state.ny.us:7778/portal/page?_pageid=153,42096,153_42310:153_42314&_dad=portal&_schema=PORTAL, last visited on June 23, 2004. See also NY Elec. § 14-108(4), discussing generally the obligation of the NYSBOE to make disclosure statements available to the public.

of the contribution, the filing year, the recipient, and the schedule on which the contribution was reported, as well as the office and district sought by the candidate (if applicable).

A schedule legend assists viewers in determining whether the contribution was monetary, in-kind, a transfer, or a non-campaign housekeeping contribution, as well as the type of contributor (individual/partnership, corporation, or other). Additionally, by clicking on the name of the committee, the public can view all of that committee's disclosure statements filed to date. Within each schedule .pdf file, users can search for specific information by using the "Control F" search function.

The public may download all disclosure filed for any particular filing period in ASCII delimited format. However, the user must download all disclosure filed with the NYSBOE for the desired period – it may not limit the download to a particular candidate. Further, formatting and using the data once it has been downloaded is difficult. As a result, downloading into ASCII delimited is not only of limited utility, but takes a long time – indeed, some computers may not have the capacity to do it. Users can, however, copy and paste information from a .pdf file of a schedule into a word processing document.

Because of the .pdf format used by the database, only searches of contributions are practicable. Comparing expenditures, loans, and other transactions made by different committees (even of the same candidate) requires viewing each report individually. To determine expenditures made by multiple committees to a single payee, for example, it is necessary to go to each committee name, to open each disclosure statement and relevant schedule, and to search each .pdf file separately for the desired payee. This makes viewing expenditures across a single candidate cumbersome, and viewing expenditures across multiple candidates even more so.

In addition, the contribution information search function is inflexible. The public cannot indicate a date or range of dates to be searched, but must instead select an entire filing year. Nor can the public search by a particular contribution amount, except within a predetermined range of amounts that the database is set up to accommodate (contributions over $100, $500, $1,000, $1,500, $2,500, and $5,000). The type of contributor for which the public can search is limited to three fields: "Corporations," "Committees, Partners, Unions, Assoc, etc.," and "Individuals." The public cannot conduct searches for subcategories of these predetermined contributor types, such as family, candidate, spouse, candidate committee, political party committee, political action committee, limited liability company, or union. For the user to isolate union contributors, for instance, he or she must select the contributor type that includes unions ("Committees, Partners, Unions, Assoc, etc.") and review that list to identify those contributors that are unions. (If the user is searching for a specific union and knows its name, he or she can enter that information on the contributor search page.)

Further, the database does not provide the occupation or the name of the employer for any contributor. Additionally, while the database will sort contributions by either name of contributor or amount of contribution, it cannot sort by transaction date, by purpose, or across candidates, making it difficult to locate and interpret information. Moreover, the database does not include information on "intermediaries" (those who deliver the contribution of others to the candidate, commonly referred to as "bundlers").

While data can be downloaded from the database in ASCII format, the size of each file is significant, making it difficult to download the files in their entirety. Additionally, once downloaded, the individual must determine how to format the information so that it may be interpreted and sorted. The public can also obtain copies in this format on diskette for $5.00 per filing period by contacting the NYSBOE's Public Information Office.

B. Filings Made by All Other Judicial Candidates

The NYSBOE requires that all judicial candidates, other than those seeking the office of Supreme Court, file disclosure statements at their local boards of elections.[25] The judicial candidates who file disclosure statements with local boards are those seeking election to: Surrogates Court, Civil Court of the City of New York, and County, District, City, Family (outside of New York City), Town, and Village Courts. There are nearly 2,200 judicial seats filled by election in New York State. Of those, 85% (approximately 1,800) are judgeships for which candidates must file disclosure statements with the local boards.[26] The remaining 15% (approximately 315 judicial seats) are Supreme Court judgeships for which candidates must file disclosure statements with the New York State Board of Elections. Judicial candidates who file at the local level are required to file on the same forms, and provide the same disclosure, as Supreme Court candidates.[27] However, all filings at the local level continue to use the paper forms, unless otherwise required by the local board of elections.

There are 62 local boards of elections in New York State, one in each county and one for the City of New York.[28] Many local boards have websites containing general information, such as names of commissioners, voter registration, and absentee ballot information. Only one local Board, Westchester County, found that has piloted a website that allows candidates, including judicial candidates, to file their financial disclosure statements electronically and permits limited search access by the public online. However, even in Westchester County the electronic filing program is voluntary. In fact, few judicial candidates appear to have filed their financial disclosure information online. The Westchester County Board of Elections has made this service available since July 15, 2001, but only four judicial candidates appear to have filed their financial disclosure information online. (See http://www.westchestergov.com/boe/, last visited on May 25, 2004.) While the local board websites commendably provide basic information to the public, the local boards simply do not appear to have the resources to develop and maintain a computer system capable of receiving disclosure statements electronically which would permit candidates, the public, and enforcement officials to have wide-ranging online access to judicial campaign finance disclosure information, such as is available at the better websites, including the New York City Campaign Finance Board's website.[29]

---

[25] 9 NYCRR 6200.1(a)(2).

[26] The amount of money raised and spent by judicial candidates who file with local boards often exceeds that of those who file with the State Board. For example, in one Fall 2003 Erie County Surrogate race, one candidate spent approximately $306,885 and another candidate spent $95,215 based on Board of Elections filings. The Journal News reported on November 3, 2000 that the two candidates for Westchester County Surrogate had spent, as of that date, a combined nearly $500,000. The Syracuse Post-Standard reported November 7, 2001, that the two candidates for Cayuga County Surrogate had spent a total of $95,000 on a race in which fewer than 20,000 were cast. In addition, on July 21, 2003, the New York Post reported that one candidate for Civil Court in Brooklyn raised over $140,000 for her 2003 re-election, even though reportedly she had no primary opponent.

[27] NY Elec. § 3-102(8).

[28] For a list of the 62 local boards of elections, see http://nysboewww01.elections.state.ny.us:7778/portal/page?_pageid=153,42096,153_42424:153_42428&_dad=portal&_schema=PORTAL, last visited on June 22, 2004.

[29] www.nyccfb.info, last visited on June 18, 2004.

II. Value and Deficiencies of the Current System

1. Four Perspectives

The value and deficiencies of the current judicial campaign finance disclosure system can be evaluated from at least four different perspectives: those of the candidates and other filers, the public and press, audit and enforcement, and academic research.

A. Candidates, their Committees and Other Disclosure Filers

Since all judicial candidates (except those expressly exempt) are required to provide the same campaign financial disclosure information, the principal question from the candidates' and other disclosure filers' point of view is which filing system – electronic or paper forms – is easier to use.

Judicial candidates who are required to file their disclosure with the New York State Board of Elections must file in an electronic format created by software which can be downloaded directly from the state board's website, unless they are exempt from electronic reporting.[30] The State Board also offers technical assistance related to the software by telephone or by email and there is also a user guide available from the State Board's web address, as well as a Help menu in the software. Once the disclosure forms are filled out by the judicial candidates or their committees, they must be filed electronically either by diskette or e-mail.[31]

Political committees that are registered with the State Board of Elections must file their reports with that board electronically, unless exempt. If these committees also support local candidates, they must also file with each applicable county or local board.

Local filers, including local judicial candidates and their committees, may use the electronic software to create paper reports to file with the local boards. However, they must attach a separate paper cover page and the summary page to their paper reports since the software does not create these pages, and the software available from the State could and should be much improved from the filer's point of view. A judicial candidate seeking both a local position and a seat on the State Supreme Court must file disclosure statements with both the State Board of Elections (electronically) and the local board (on paper).[32]

County committees must file with their respective county boards of elections. When any of their reports show support for a candidate for Justice of the Supreme Court, they must also file a copy of that report with the State Board of Elections.

Under the current system, filers may need to file several copies of the same disclosure report in several locations; electronically with the State Board of Elections with printed paper copies, including additional cover pages and summary pages, filed with one or more local boards. Original signatures are required on each paper copy.

---

[30] http://nysboewww01.elections.state.ny.us:7778/portal/page?_pageid=153,42096,153_42310:153_42362&_dad=portal&_schema=PORTAL, last visited on June 22, 2004. See fn.22 above for a discussion of exemptions from electronic reporting.

[31] There remain potential questions about the value and security of electronic signatures.

[32] Instances in which a candidate runs at the same time for more than one judicial seat, while rare, are not unprecedented. Two candidates in Brooklyn in 2003 ran for re-election to the Civil Court (one raising over $140,000) while at the same time declaring their candidacy for a vacancy on the State Supreme Court (N.Y. Post, July 21, 2003, N.Y.L.J. Sept. 12, 2003 at 4).

There are serious penalties and consequences for failing to file required financial disclosure statements. Under the current filing system, there is an increased risk that those penalties and consequences will be assessed because the same disclosure statement may have to be filed in several separate locations; sometimes electronically, other times on paper with additional cover and summary pages.

From the perspective of candidates, their committees, and other disclosure filers, there would be less duplication of effort and less risk of incurring penalties and consequences, if all judicial candidates (or their political committees) filed their required disclosure statements electronically at one location.

In addition, the software utilized by the New York City Campaign Finance Board allows candidates to keep track of contributors and their affiliates and issues prompts to alert the filer when, for example, contribution limits have been, or will be, exceeded and thereby aids the candidates in general compliance with campaign finance laws. Moreover, data entry into a computer is easier than handwriting entries in schedules, especially when the same names are being entered repeatedly, and it is possible to program software for candidates that minimizes the demands of even this function.[33]

B. Public/Press

Interns from The Committee for Modern Courts last summer visited three local boards of elections: New York City, Westchester County, and Nassau County. The purpose of their visits was to determine what judicial campaign disclosure information and resources are available to the public and to candidates. The interns considered a uniform set of issues for each board visited, including the completeness of files, the technology available for use by the public, whether statements are filed on time, and what measures are taken by the local board in the event that they are not, staffing, and methods of filing. They rated the boards with regard to technology, friendliness, ease of access, quality of copies, price of copies, speed of copies, and legibility of files.[34]

The Modern Courts Report concluded that there appears to be no uniform system in place for viewing candidates' statements at the various local boards of elections. The lack of an electronic filing system at the local board level requires that members of the public must physically go to each local board of elections, where the candidate files his or her statements, to view those filings. Once there, members of the public must wait for the relevant files to be located and brought to them. In some cases, individuals must endure the additional step of awaiting an observer to watch them view the files. Some boards permit only one candidate's file to be viewed at a time, while others permit multiple files to be viewed simultaneously. Although one board permitted filings to be made electronically, only a few candidates actually filed information electronically, and the public was not permitted to use a computer to view that information at the local board. The interns reported observing various levels of legibility

[33] For example, the New York City Campaign Finance Board's software is programmed to avoid the necessity for re-entering repeat data for contributors and vendors.

[34] Committee for Modern Courts, Inc., "Initial Comparative Research of Accessibility to the Public of Candidate Finance Information at the New York City, Westchester and Nassau County Board of Election Offices" (Sept. 3, 2003) (the "Modern Courts Report"). A copy of the Modern Courts Report is annexed hereto as Interim Report Appendix D, Committee for Modern Courts September 2, 2003 Memorandum To The Commission, Initial Comparative Research of Accessibility to the Public of Candidate Campaign Finance Information at the New York City, Westchester and Nassau County Board of Election Offices.

and completeness of candidates' files. In some instances, entire statements were missing from the candidate's files. Additionally, the paper forms, often completed by hand (as opposed to type-written), were sometimes illegible and appeared to be placed in the files haphazardly.[35]

The process of obtaining copies is also not uniform. To obtain paper copies, individuals must complete FOIL (Freedom of Information Law) forms and wait for staff members to locate the files and produce the copies. In addition to being somewhat more expensive than is standard,[36] copies of candidates' files provided to the interns were often incomplete, missing statements and letters that interns noted as being present when they viewed the originals on site at the board. Copies were sometimes provided to the interns on premises while at other times they had to wait over one week to receive copies.[37]

Resources available to the public also vary by board. Some boards did not provide adequate table space or chairs for members of the public to view statements on premises. Computers were not provided at all locations, which would otherwise enable members of the public to do additional research that may be necessary in determining which candidates' filings are of interest, or which years are relevant to a search.[38]

Finally, the lack of a service-oriented attitude perceived by the interns from the staff tended made the process both difficult and unpleasant. Interns were often asked to wait for long periods of time before they were even permitted to fill out the necessary paperwork to view a file. Staff members in some cases seemed inconvenienced by requests for copies or other assistance. On occasion, interns experienced open hostility from staff members. Members of the public who visit boards of elections during filings periods are at a particular disadvantage, the interns observed, as staff members seemed unable or unwilling to assist them in making copies or even providing originals for on premises viewing during these times. Office hours, though standard, were not always adhered to.[39]

While the interns were performing a job, and so were far more likely to persist in their research efforts, it is questionable whether members of the public viewing the files for the purpose of making a voting decision would have the time or the inclination to overcome the obstacle course placed before them. Overall, the interns found that the cumbersome nature of the process of researching and reviewing statements inhibited both in-depth research of statements at a single board and broader, more topical research at a larger number of boards.[40]

With respect to utilization of judicial campaign finance information by the media, especially the press, the Commission heard testimony that the State Board of Elections' computerized database of campaign contributors served as a central part of one newspaper's 2002 examination of the way judges are elected in New York.[41] This testimony noted the difficulty of compiling the data. Indeed, the

---

[35] Id. at 7, 10 and 15.
[36] The local boards charged $0.25 per copy. Modern Courts Report at 6.
[37] Compare id. at 6 (Westchester) with id. at 10 (Nassau).
[38] Id. passim.
[39] Id., passim.
[40] Common Cause/NY and the New York Public Interest Research Group encountered similar difficulties at some local boards while researching corporate contribution patterns. Over the Top: Corporations Exceeding the Limits of New York State Campaign Finance Law, Common Cause/NY and the New York Public Interest Research Group (April 2003).
[41] Testimony of Stephen W. Bell, a Managing Editor, The Buffalo News (September 23, 2003); Testimony of Rex Smith, Editor, Albany Times-Union (September 30, 2003).

extraordinary difficulties of dealing with paper filings are well known and documented.[42] Missing filings, illegible filings, and filings not susceptible of meaningful analysis are common complaints. In this testimony, the integral role the media plays in disseminating information about campaign finance on all levels was stressed. The Commission was urged to recommend that paper reports now filed at local boards of election be computerized, which would expedite the examination of those records not only by reports, but also by the general public.[43]

C. Audit/Enforcement

It appears that the State and local Boards of Elections do not perform any review of campaign finance filings – (e.g., a facial review, random desk audit, field audit, or other investigation of potential violations of campaign finance requirements), unless a specific complaint is filed. This raises serious questions about the accuracy and reliability of the information being filed with these boards.

In 2000, the New York State Comptroller's Office issued an audit report on the New York State Board of Elections relating New York Election Law compliance.[44] The Report started out noting that the New York Election Law authorizes the State Board to regulate campaign practices, including overseeing the filing of periodic campaign finance reports that disclosed campaign contributions received and expenditures made on behalf of a candidate and monitoring compliance with campaign contribution limits.[45]

The Report then described in the current two-tiered filing system under which some campaign financial disclosure information is filed electronically with the State Board, while all other information is filed at local boards of elections in hard copy (paper) only.[46]

The Report found that while the State Board had taken significant steps to implement an automatic campaign finance reporting system for filings made to the State Board, disclosure information filed at local boards of election "is not monitored by either the State Board or the local boards to ensure compliance with the contribution limits specified in the Election Law."[47]

---

[42] Deborah Goldberg, Craig A. Holman (Brennan Center for Justice at NYU School of Law) and Samantha Sanchez (National Institute on Money in State Politics), "The New Politics of Judicial Elections: How 2000 Was a Watershed Year For Big Money, Special Interest Pressure, and TV Advertising in State Supreme Court Campaigns" (Justice at Stake, 2000), at 20.

[43] Testimony of Rex Smith, Editor, Albany Times-Union (September 30, 2003).

[44] Office of the State Comptroller, Division of Management Audit and State Financial Services, Report 98-5-8, "New York State Board of Elections, Compliance With the State's Election Law." (January 21, 2000) ("Report").

[45] Report at 1-2. The Report observed: "The State's Election Law limits the amount of funds that corporations may contribute for political purposes to $5,000 for State and local elections in any calendar year. The amount any individual, partnership or Political Action Committee (PAC) may contribute is limited to $150,000. This information is reported, by source of the contribution, to the State Board or local boards by the various campaign committees." Id. at 5.

[46] See discussion in Section II (b)(ii)(A).

[47] Report at 5.

The Report further found potentially serious enforcement lapses:

> …local boards are not able to determine the amount contributed by a corporation to campaign committees that file financial disclosure reports with more than one local board. We identified three corporations (as listed and reported by campaign committees) that appeared to have contributed in excess of $5,000 in the aggregate in 1998 to campaign committees that filed financial disclosure reports with various local boards. However, because the amounts of the contributions reported to any one local board did not exceed the $5,000 limit, they would not be identified as a violation of the Law.[48]

The Report concluded that the principal reason that the State Board is prevented from adequately monitoring campaign contribution limits is "because campaign committees that file disclosure forms at local election boards are not required by law to file with the State Board."[49] Another reason the State Board may not be able to monitor contributions that should be aggregated for purposes of enforcement is that the internal programming of the State Board of Elections' data may not provide means to use computer resources in this way. If so, this is a programming defect that should be remedied. The Report recommended that the State Board seek corrective legislation extending the provisions of the Election Law "to require both State and local campaign committees to electronically file financial disclosure data with the State Board"[50] in order to enable the State Board to compile and monitor total campaign contributions. The Commission does not read State law so narrowly, for the State Board of Elections may already have the power to require electronic filing at all levels of office without the need for additional legislation.[51] However, in order to expedite much needed reform of the current disclosure system, the Commission recommends that the Office of Court Administration be the repository for all electronic judicial campaign finance disclosure and administer public access to that information.

In 2001, the State Board submitted legislation to require all local financial filings be filed electronically with the State Board and be disseminated in the State Board's website.[52] To expand public access to all disclosure reports, the bill also provided that each local board of election "be required to maintain a computer terminal which shall be accessible to the public for statements filed electronically with the State Board of Elections."[53] In its supporting memorandum, the State Board stated that: "Electronic filing of local campaign financial disclosure reports is a natural extension of the existing requirements for filing with the State Board of Elections. Establishing a single source for all campaign financial disclosure will provide truly meaningful financial disclosure."[54]

To date, the State Board's proposed bill has not been enacted. In the meantime, a 50-state ranking by the California-based California Citizens Voter Foundation rated New York State's disclosure

[48] Id. at Executive Summary, p 2.
[49] Id. At p.1.
[50] Id. at 8.
[51] NY Elec. § 3-102(9)-A.
[52] NYSBOE, Legislative Proposal SBE01-6 ("An Act to amend the election law, in relation to local campaign financial disclosure").
[53] Id. At §4. Memorandum in Support, NYSBOE, Legislative Proposal SBE01-6.
[54] NYSBOE, Legislative Proposal SBE01-6 ("An Act to amend the election law, in relation to local campaign financial disclosure").

overall at a D, which was 25th in the listing.[55]

D. Academic/Evaluative Research

Academics and researchers report major obstacles in compiling complete and accurate summaries of contributions and expenditures in judicial elections. Among the reasons cited is erratic record keeping by state agencies. One report stated, "collecting campaign finance information can be a matter of sorting through thousands of pages of campaign finance statements stored in dingy state government offices – an extremely resource-intensive endeavor at best. Sometimes, files have been irretrievably lost. Moreover, disclosure laws vary from state to state, and none of them requires expenditure reporting at a level of specificity that makes it possible to ascertain precisely how money is spent or by whom."[56]

The report, however, offered practical steps state agencies could take to improve meaningful public disclosure and accountability:

> State disclosure agencies are steadily progressing toward meaningful public disclosure of the sources of campaign funding for all state offices, but the results are still far from adequate. Timing is the greatest problem, as many states do not release information until after the election is complete. Information as important as the identities of the economic interests that are supporting candidates should be available to the voters prior to voting, when it could have an impact on their decision at the polls and when other hard information about the candidate is generally scarce.
>
> Another major issue is the format in which information is provided. In all too many states, the data can be obtained only by purchasing copies of the candidates' filings from the state at a substantial per-page cost. Complete copies of statements for the cycle can cost thousands of dollars, taking the data out of the definition of "publicly-available information" by most people's standards. The data should be provided to the public in an easily searchable format, such as an interactive web site, that gives voters complete and timely lists of contributors, their addresses, and their employment.
>
> Mere images of the reports posted on web sties do not allow the contents to be searched and are often hard to read and decipher. These scanned images are better than pages stuffed in a file cabinet, but they do not clearly reveal contribution patterns. Electronic filing, although not mandatory in most states where it is available, is speeding the production of databases but often results in incomplete or partial databases containing

[55] State rankings available at www.campaigndisclosure.org/gradingstate/rank.html, last visited on May 26, 2004.
[56] Deborah Goldberg, Craig A. Holman (Brennan Center for Justice at NYU School of Law) and Samantha Sanchez (National Institute on Money in State Politics), "The New Politics of Judicial Elections: How 2000 Was a Watershed Year For Big Money, Special Interest Pressure, and TV Advertising in State Supreme Court Campaigns" (Justice at Stake, 2000), at 20.

> the reports only of the candidates who voluntarily chose to file electronically. State agencies need to provide complete information to the voters, not just the information that is easily available.[57]

Another study calling for improving disclosure in judicial elections stated:

> Full, effective, timely public disclosure is a necessary component of any system of political funding and a cornerstone of campaign finance law. It is an essential safeguard against corruption or the appearance of corruption, since it ensures the transparency needed to subject candidate finances to public scrutiny, as well as to ensure proper enforcement of the law. Disclosure also allows voters to make more informed decisions by providing a means of judging a candidate based on his or her sources of financial support.[58]

These concerns were echoed at the public hearings held by the Commission. One witness stressed that campaign disclosure for judges should be widely accessible over the Internet stating: "All the disclosure in the world is worthless unless people can get to it."[59]

The current disclosure system in New York plainly fails those in the academic and research community who seek to gather data on the cost of judicial races, who gives to judicial candidates, and how much is given and how the money is spent. Indeed, the work of this Commission is hampered by the impossibility of aggregating sets of data on judicial campaigns even in this modern age of heavily computerized data in so many other fields. Researchers must have faith in the accuracy and completeness of the judicial campaign disclosure system, in order to have confidence in their studies and recommendations for improvement. Unfortunately, there is good cause to lack faith in the current system.

III. Other Jurisdictions

A detailed description of the disclosure requirements for judicial candidates in other states is set forth in Appendix I.

---

[57] Id.

[58] Committee for Economic Development, Research and Policy Committee, "Justice For Hire, Improving Judicial Selection," at 29 (2002).

[59] Testimony of J.J. Gass, Associate Counsel, Brennan Center for Justice (Sept. 16, 2003). See also Testimony of Barbara Reed, Director, Courts Initiative, The Constitution Project (Sept. 16, 2003) and Geri Palast, Executive Director of Justices at Stake (Sept. 16, 2003)(electronic filing of disclosure information in New York should be expanded to Surrogates and Civil Court races).

APPENDIX I

Manner of Disclosure in Other States for Judicial Candidates

1. **North Carolina.** If the candidate does not exceed $3,000 in contributions, loans, and expenditures, he or she is not required to file.[60] Candidates for statewide office with a cumulative total of more than $5,000 in contributions, loans, or expenditures must file reports electronically.[61]

2. **Wisconsin.** Candidates with aggregate contributions of $20,000 or more in a campaign period are required to file electronically.[62] Filings are searchable by candidate only, not across candidates.[63] In addition to filing electronically, candidates who receive contributions of $20,000 or more are also required to file a paper report. If candidates receive less than $20,000, they are required to file by paper and are given the option of also filing electronically. When a candidate opts to file solely on paper, only summary totals appear on the website. Statements are sometimes filed both electronically and on paper, depending on the cumulative contributions raised by the candidate.

3. **Pennsylvania.** Reports can be completed online and submitted via the Internet directly from the website.[64] Reports may also be filed on diskette or CD. Candidates who choose to file electronically must still submit by mail or in person the notarized cover page of the report with the filer's appropriate affidavits and signatures. Filings are reviewable online and can be searched by election year, cycle, office, district, party, and candidate name.[65] Candidates may choose to file reports by paper.

4. **Georgia.** Supreme Court and State Appeals Court candidates whose contributions or expenditures aggregate to $20,000 or more are required to file electronically. Superior Court candidates whose contributions or expenditures aggregate to $10,000 or more are also required to file electronically. The public can view the information in a searchable database.[66] However, because Georgia lacks an "electronic signature" law that would allow electronic reports to stand as the official, legal copy, paper reports must also be filed with the Elections Division of the Secretary of State's office. The public can view the filings in PDF-format via a searchable database.[67]

5. **Arizona.** Campaign finance information is submitted electronically and is searchable by committee, but not across committees (you enter the committee ID and it brings up the information). Paper disclosure is not permitted.

---

[60] See N.C. Gen. Stat. § 163-278.10A.
[61] See N.C. Gen. Stat. § 163-278.9(f)(1).
[62] See Wis. Code Ann. § 11.21(16).
[63] See database: http://elections.state.wi.us/efiling/Electronic%20Filing%20Notice%206%2028%2002.htm, last visited on June 18, 2004.
[64] See www.dos.state.pa.us, last visited on June 18, 2004.
[65] See database: http://web.dos.state.pa.us/perl/camp_fin/dsf/cf_data_srch.cgi, last visited on June 18, 2004.
[66] See http://www.sos.state.ga.us/cgi-bin/disclosureindex.asp, last visited on June 18, 2004. See also http://www.sos.state.ga.us/elections/efiling/faqs.htm, last visited on June 18, 2004.
[67] See http://www.sos.state.ga.us/elections/disclosure.htm, last visited on June 18, 2004.

6. **Idaho.** All candidates file financial disclosure statements on paper. The reports are then scanned and posted for public viewing.[68] Disclosure requirements are uniform across the state.

7. **Arkansas.** All reports are filed on paper, which are then scanned into an internet database that can be searched by name of candidate or committee only.[69]

8. **Michigan.** Candidates that spend and receive in excess of $20,000 in the preceding calendar year or expect to spend and receive in excess of $20,000 in the current calendar year are required to file electronically.[70] Disclosure reports that are electronically filed are available on the Internet in a database and these reports can be searched or downloaded.[71] Disclosure reports filed on paper are imaged and made available on the Internet for review by the public.[72] Candidates that do not expect to receive or expend more than $1,000 for any single election may request a waiver of filing requirements but the waiver is automatically lost if the candidate exceeds the $1,000 threshold.[73]

9. **Oregon.** There is a searchable database that allows the public to search by committee name to view a summary of a candidate's contributions and expenditures.[74] The database is not searchable across committees. Information from both electronic and paper filings are available in the database. State candidates whose combined contributions and expenditures exceed $50,000 in an election must file electronically.[75] Individuals who do not meet the $50,000 threshold are required to file on paper.

10. **Illinois.** Candidates who raise or spend more than $3,000 must file disclosure reports, and candidates who raise or spend more than $10,000 must file electronically.[76] Electronically filed data is available on the Board of Elections website.[77] The online database can be searched by candidate, committee, contributor, contribution, and expenditure. The information is not downloadable, but can be printed. Disclosure reports filed on paper can be reviewed manually at the board of elections and also may be obtained by mail.[78]

11. **California.** Paper filing requirements exist for all candidates, but candidates who raise or spend $50,000 or more are required to file electronically as well.[79] Individual candidates' electronic disclosure filings can be viewed online by selecting the desired year and then the relevant candidate.[80] Disclosure filings of candidates who only file on paper can be viewed only at the office of the

---

[68] See www.idsos.state.id.us to view reports, last visited on June 18, 2004.
[69] See http://sos.state.ar.us/arkimg/index.html to view database, last visited on June 18, 2004.
[70] See M.C.L.A. § 169.218(15). See also Candidate Committee Statement of Organization at http://www.michigan.gov/documents/CANSofOwithEF_71512_7.pdf, last visited on June 18, 2004.
[71] See SOS website at http://www.michigan.gov/sos/0,1607,7-127-1633_8723---,00.html, last visited on June 18, 2004.
[72] Id.
[73] See M.C.L.A. § 169.233(6).
[74] See http://www.sos.state.or.us/elections/other.info/ce.htm, last visited on June 18, 2004.
[75] See Or. Rev. Stat. §260.159; see also http://www.leg.state.or.us/ors/260.html last visited on June 18, 2004.
[76] See Ill. Comp. Stat. Ann. §§ 5/9-1.8, 5/9-10(a), and 5/9-28.
[77] See database at http://www.elections.state.il.us/CDS/pages/StatusWelcome.asp, last visited on June 18, 2004.
[78] See http://www.elections.state.il.us/CDS/pages/CampDiscFAQ.htm, last visited on June 18, 2004.
[79] See Ann. Cal. Gov. Code § 84605(a). Paper filing requirements confirmed via telephone conversation with David Hulse, Senior Political Reform Specialist, Office of the Secretary of State, April 8, 2004.
[80] See database at http://cal-access.ss.ca.gov/Campaign/Candidates/, last visited on June 18, 2004.

Secretary of State in Sacramento, but copies can be requested at .10 per page.[81] The public can search contribution information by contributor and candidate names. The public can also search contributions received or made in the days immediately preceding the election ("late contributions"), independent expenditures made in the days immediately preceding the election ("late independent expenditures"), and expenditures by expenditure type. Additionally, several types of summary reports can be produced showing how much was raised and spent by candidates and elected officials and ending cash balances reported, inter alia, by contest, by candidate name, or by candidate name and political party.[82]

[81] Confirmed via telephone conversation with Colleen Flagg, Program Technician 3, Office of the Secretary of State, April 8, 2004.
[82] See database at http://dbsearch.ss.ca.gov/, last visited on June 18, 2004.