

*For Immediate Release*

## **AMICUS BRIEF SUBMITTED TO U.S. SUPREME COURT URGING THAT THE CURRENT JUDICIAL SELECTION SYSTEM IN NEW YORK STATE BE STRUCK DOWN**

***NEW YORK CITY, NEW YORK STATE BAR, NEW YORK CITY BAR, AND FUND FOR MODERN  
COURTS AGREE THAT THE PRESENT SYSTEM "UNCONSTITUTIONALLY BURDENS THE RIGHTS  
OF VOTERS AND CANDIDATES"***

**Contact: Kate O'Brien Ahlers/Connie Pankratz, (212) 788-0400, [media@law.nyc.gov](mailto:media@law.nyc.gov)**

New York, July 16, 2007 – The City of New York, the New York State Bar Association, the Association of the Bar of the City of New York, and the Fund for Modern Courts jointly submitted an *amicus curiae* or “friend of the court” brief on Friday (July 13) to the U.S. Supreme Court urging that the current judicial selection system in New York State be struck down in the case of New York State Board of Elections v. Lopez Torres.

In Lopez Torres, which is scheduled to be argued before the U.S. Supreme Court this October, the U.S. Court of Appeals for the Second Circuit affirmed a federal district court ruling from Brooklyn that the nominating system for state supreme court justices as presently conducted is unconstitutional. The courts imposed an interim process of direct primary elections until a new process is established by state legislation. That interim process has been postponed until after the U.S. Supreme Court hears the case, and will not affect this fall’s judicial elections.

The brief, whose principal author is former New York State Solicitor General Preeta D. Bansal, now Partner and Head of the Appellate Practice Group at Skadden, Arps, Slate, Meagher & Flom LLP, notes that the City, the State Bar, the City Bar, and the Fund for Modern Courts “for long have recognized and publicly reported upon the many severe shortcomings of the present judicial selection system for trial court judges in New York State.”

"This brief represents the consensus, among the City of New York and three of the leading bar associations and institutions in the state, that the current means of selecting state supreme court justices is unconstitutional and desperately needs to be reformed," said Michael A. Cardozo, Corporation Counsel of the City of New York.

The brief states that the City of New York has more cases pending in state supreme court than any other entity. With more than 6,000 case commenced annually in state supreme court, and more than 25,000 such cases currently pending, New York City is involved in over 20 percent of all civil litigation in the state courts.

The brief noted, “As the most frequent litigant before the state supreme court, the City has a vital interest in the quality and independence of the state bench.” Citing corruption within the judicial nomination process and other recent judicial scandals, as well as eroding public confidence in the state judiciary, the brief states that Mayor Michael R. Bloomberg believes the current system is unconstitutional and has made judicial selection reform a “top priority.”

New York State Bar Association President-Elect Bernice Leber said, "The New York State Bar Association has long supported reform of New York's judicial selection system in a manner such that judges are selected because of their professional qualifications, not their political connections. Reform of the judicial selection system is essential to ensuring true judicial independence."

Barry Kamins, President of the New York City Bar Association added, "The Lopez Torres decision was right on the mark in its declaration that our current judicial selection system is a false exercise in democracy. As an organization founded in 1870 to fight judicial corruption, we are hopeful that Lopez Torres will be upheld

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so that New York can use this historic opportunity to bring merit, rather than politics, to the forefront on judicial selection."

As noted in the brief, all four signatories favor a constitutional amendment to institute a merit-based appointive system for state court judges in place of elections. However, because such an amendment, if adopted, would take several years to take effect, the signatories support reforming the judicial convention in the short term to curb the abuses of the current judicial selection system. Each of the signatories oppose open primary elections for judicial candidates because of the negative effects such as the conflict of interest that arises from the need to raise large sums of money to fund campaigns -- often from those who may appear before the judges once elected.

All four signatories to the brief have also testified before the State Senate and Assembly Judiciary Committees on the importance of passing legislation reforming the convention system before the interim process of judicial primary elections can take effect.

Victor A. Kovner, Chair of Modern Courts said, "It is our hope that when the Supreme Court reviews the lower courts' decisions that it will close the door once and for all on the existing judicial convention system, which was described by Judge Gleeson as 'an opaque undemocratic selection procedure that violates the rights of voters and the rights of candidates, who lack the backing of the local party leaders.'" Mr. Kovner added that he believed, "A restructured convention system could resolve the constitutional infirmities identified by the lower courts without resorting to open primaries."

Preeta D. Bansal who drafted the *amicus* brief on behalf of the four signatories said, "The identity of the many impressive amici supporting judicial reform in New York is a testament to the vital need for reform. The State Legislature should continue to heed their voices, even as the Supreme Court considers the critical constitutional issues at stake."

The New York City Law Department is one of the oldest, largest and most dynamic law offices in the world, ranking among the top three largest law offices in New York City and the top three largest public law offices in the country. Tracing its roots back to the 1600's, the Department has an active caseload of 90,000 matters and transactions in 17 legal divisions. The Corporation Counsel heads the Law Department and acts as legal counsel for the Mayor, elected officials, the City and all its agencies. The Department's 690 attorneys represent the City on a vast array of civil litigation, legislative and legal issues and in the criminal prosecution of juveniles. For more information, please visit [nyc.gov/law](http://nyc.gov/law).

The 72,000-member New York State Bar Association is the official statewide organization of lawyers in New York and the largest voluntary state bar association in the nation. Founded in 1876, NYSBA programs and activities have continuously served the public and improved the justice system for more than 130 years.

The New York City Bar Association ([www.nycbar.org](http://www.nycbar.org)) was founded in 1870, and since then has been dedicated to maintaining the high ethical standards of the profession, promoting reform of the law, and providing service to the profession and the public. The Association continues to work for political, legal and social reform, while implementing innovative means to help the disadvantaged. Protecting the public's welfare remains one of the Association's highest priorities.

Founded in 1955, The Fund for Modern Courts is a nonpartisan, nonprofit, statewide organization dedicated to improving the courts in New York State through advocacy, public education and in-court programming.

Serving clients in every major international financial center, Skadden, Arps, Slate, Meagher & Flom LLP is one of the world's leading law firms, with 22 offices and approximately 2,000 attorneys.

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