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## **COURT DECLINES TO GIVE PARTY MEMBERS A ROLE IN SELECTING PARTY NOMINEES**

*(New York State Board of Elections v. Lopez Torres)*

The U.S. Supreme Court issued a decision today upholding a New York State election scheme that, in practice, has placed control over the selection of judges in the hands of the leader of the political party that is dominant within each of the State's judicial districts. The decision was a setback for the Washington Legal Foundation (WLF), which filed a brief in the case, *New York State Board of Elections v. Lopez Torres*, urging the Court to strike down the election scheme.

The Court rejected WLF's argument that New York's electoral scheme for Supreme Court Justices violates the First Amendment rights of rank-and-file party members by denying them any effective access to the candidate selection process. The Court overturned a decision of the U.S. Court of Appeals for the Second Circuit, which last year struck down the New York electoral scheme on First Amendment grounds.

"If New York were to adopt a law declaring that only the leaders of the most powerful political party within each judicial district are allowed to vote in elections for Supreme Court Justice, the law would surely amount to an unconstitutional abridgement of voting rights," said WLF Chief Counsel Richard Samp after reviewing the Court's decision. "Based on the trial court's detailed factual findings, that is the precise effect of the current election scheme. Today's outcome is disappointing. It does not matter that voters nominally are permitted to participate in elections, if in practice their votes make no difference," Samp said.

Judges are popularly elected in New York. Since 1921, however, there have been no direct primary elections as a means of selecting the nominees of political parties; rather, New York law requires that nominees be selected at judicial district conventions. Delegates are chosen for these conventions by means of "delegate primaries" open to all members of the political party.

In actual practice, the system operates to place exclusive control of nominee selection in the hands of the local party leader. For a variety of procedural reasons, it is virtually impossible for prospective candidates to put together a slate of delegates to run against the slate of delegates put forward by the party leader. The subsequent nominating conventions are perfunctory events lasting no more than a few minutes, at which

prospective candidates are rarely provided an opportunity to speak, many of the delegates fail even to show up, and party leaders essentially dictate to the convention who the party's nominees are to be. Thus, prospective candidates can win their party's nomination only by gaining the favor of the local party leader, a process that often requires the nominee to commit himself, if elected, to operating his chambers in a manner deemed acceptable by the party leader.

In upholding the scheme, the Court rejected WLF's argument that rank-and-file party members have a constitutional right to be able to play a meaningful role in the selection of judges. WLF argued that the current system denies party members any role, regardless whether their views constitute a majority within the party. The Court disagreed with that premise, finding that any constitutional issue is obviated by provisions granting all party members an opportunity to express their candidate preferences to the nominating conventions. Nor did the Court attach any constitutional significance to the fact that the outcomes of New York judicial primaries conclusively determine the outcome of the general elections because, as the district court found, the dominant political party *always* wins judicial elections in New York State. (Democrats dominate in New York City, while Republicans dominate in upstate New York.)

WLF's brief stressed that it supports the right of political parties to establish their own rules for nominating candidates. For example, WLF strongly supports granting parties the right to exclude non-members from their primaries. WLF argued, however, that the decision striking down New York's judicial electoral system does not in any way interfere with the rights of political parties to associate as they see fit. The Court did not disagree, but held nonetheless that individual party members do not possess a right to a "fair shot" at winning their party's nomination.

The Washington Legal Foundation is a public interest law and policy center with supporters in all 50 States, including many in New York. WLF devotes a significant percentage of its resources to defending and promoting free enterprise, individual rights, and a limited and accountable government. WLF has regularly appeared in federal courts in cases raising First Amendment issues regarding the conduct of elections.

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For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302. A copy of WLF's brief is posted on its website, [www.wlf.org](http://www.wlf.org).