

OCTOBER 2025

BACKDOOR TO THE BENCH

**NY's Supreme Court Cap Spawned a
Secretive Promotion Process in Which 97%
of "Acting" Judges Serve Permanently**

**Reinvent
Albany.**

scrutinize

CONTENTS

Executive Summary	2
1 Introduction	4
2 Background	5
2.1 The Supreme Court Backlog: Structural Cause	6
2.2 ASCJ Promotions: a Practical Workaround	7
2.3 The Mechanics of ASCJ Promotions	11
3 Findings	12
3.1 ASCJ Promotions Rise and Fall with Changes in Court Administration	13
3.2 Upstate Counties Benefit from ASCJ Promotions, While New York City and Its Suburbs Remain Understaffed	14
3.3 Cap Reform Alone Cannot End Reliance on ASCJs	19
3.4 Despite Higher Workloads, NYC Judges Cannot Rely on Fast Promotions to Catch Up	20
3.5 Once Promoted, Judges Almost Never Exit ASCJ Status, Making the Role a Permanent Rather Than Temporary Feature of the Supreme Court System	21
3.6 ASCJ Promotions are Secretive	22
4 Recommendations	23
5 Methodology	27
5.1 Data sources	27
5.2 Analytic Measures	27

Executive Summary

New York’s Supreme Court power often rests in the hands of Acting Supreme Court Justices (ASCJs), lower-court judges temporarily promoted to decide major cases such as Harvey Weinstein’s criminal trials and the *Harkenrider* ruling that struck down the state’s 2022 legislative maps. Because Article VI §6(d) of the state constitution caps the number of elected Supreme Court justices, the court system relies on ASCJs year after year to cover growing caseloads.

New data confirm that ASCJ promotions have become structural rather than stopgap: nearly all are renewed without interruption, with the relative benefits of this promotion pipeline going to upstate counties with lighter caseloads rather than to the much busier NYC and its suburbs. Despite their prevalence, the Unified Court System discloses little about how these promotions are decided, who is considered, or whether required or discretionary consultations occur.

The only durable solution is constitutional reform. The Uncap Justice Act would allow the Legislature to expand the Supreme Court bench and reduce reliance on ASCJs while providing meaningful caseload relief.

In the interim, court leadership has both the authority and responsibility to open the promotion process to public view. At a historic low point for public confidence in the courts, greater transparency offers a direct way to rebuild credibility and trust in the judiciary. Otherwise, the promotion process will remain vulnerable to perceptions that decisions may be politicized or based on factors other than merit.

Key Findings

- ASCJ headcounts have numbered in the hundreds each year since 2010 and track changes in court leadership.
- ASCJ capacity—and Supreme Court judicial resources more broadly—are concentrated in less burdened upstate courts, while New York City and the suburbs shoulder heavier dockets with comparatively fewer resources.

- Once promoted, 97% of judges remain in ASCJ status without interruption, turning what is supposed to be a temporary assignment into a long-term post in practice.
- OCA produced no records identifying panel members, outside input, or how evaluative standards are applied, leaving the public with no decision-level transparency.

Recommendations

- Guarantee caseload relief and access to justice for New Yorkers by passing the Uncap Justice Act and authorizing sufficient new Supreme Court seats.
- Increase evaluation transparency by publishing the names of panel members and the procedures they use.
- Report outcomes through public guidelines, rosters, and annual reports on promotions and renewals.
- Open the process to consultation by inviting public input and documenting feedback received.

1. Introduction

New York’s trial courts face a structural shortage of Supreme Court justices. The state constitution fixes a maximum number of elected Supreme Court seats per judicial district, tied to population figures.¹ As a result, districts with high caseloads—especially in New York City—operate with far fewer justices than their workloads demand.

For years, the Unified Court System has relied on Acting Supreme Court Justices (ASCJs) to close this gap. These are lower-court judges promoted by the Chief Administrative Judge, who grants them authority to preside over more high-stakes civil and criminal cases.²

New data show these promotions are not stopgaps but an entrenched feature of the courts. Each year, hundreds of judges serve as ASCJs, their numbers shifting with changes in court leadership. Once elevated, nearly all judges retain the status continuously, making the promotion a long-term assignment rather than a temporary fix. And while New York City and some of its suburbs carry the heaviest workloads per judge, several upstate counties now rely more on ASCJs than any City borough.

The promotion process that grants judges this authority is not subject to public scrutiny. Decisions about who is promoted, what procedures apply, and why some judges advance while others do not are never disclosed, leaving the public without any account of how this power is distributed. Indeed, responses to Freedom of Information Law requests reveal that the court system reported it had not located records of evaluation-panel membership, criteria, or outside consultations, while denying a request for internal memoranda.

As a result, hundreds of judges decide high-stakes cases without the public knowing whether their promotions are based on judicial ability and caseload needs. Set against New York’s long-standing reputation for political and patronage-driven judicial selection, this secrecy invites the same doubts about whether promotions rest on merit or necessity.³ In upholding New York’s judicial nominating convention system, the U.S. Supreme Court remarked, “Party conventions, with their attendant ‘smoke-filled rooms’

and domination by party leaders, have long been an accepted manner of selecting party candidates.”⁴ The Second Circuit was blunter: New York “has transformed a *de jure* election into a *de facto* appointment” system, so that only “candidates favored by party leadership” could seek election to the Supreme Court through their party.⁵ In this context, opacity around promotions does more than hide administrative choices—it feeds the perception that powerful roles are awarded on grounds other than need or merit.

Removing the constitutional cap remains the clearest way to reduce dependence on ASCJ promotions,⁶ improve access to justice for New Yorkers, and provide caseload relief to judges across the state.

However, immediate transparency in the ASCJs promotion process is both necessary and achievable. The lack of transparency is a longstanding condition that the current court administration has inherited, not created. It has the authority to change it by publishing evaluation procedures, identifying who conducts reviews, and issuing annual reports on promotions and renewals. These and other straightforward steps would bring ASCJ promotions into the open, ensuring that the Supreme Court they grant is subject to real public scrutiny.

2. Background

A population-based cap in Article VI §6(d) of the New York Constitution has left the Supreme Court chronically short of judges. The Unified Court System compensates by promoting lower-court judges to Acting Supreme Court Justices (ASCJs) status. This section describes how the seat-cap formula limits the number of elected justices across the state and in New York City, explains what ASCJ status entails, and shows how these temporary promotions expand judicial capacity in civil, criminal, and matrimonial parts. It then outlines how the Chief Administrative Judge administers the promotion process.

2.1. The Supreme Court Backlog: Structural Cause

A hard cap in New York's Constitution prevents the Supreme Court bench from expanding to match surging caseloads, driving a persistent backlog and forcing the court system to find workarounds.

Article VI §6(d) of the New York Constitution establishes the core restriction on the number of elected Supreme Court Justice in New York counties:

The legislature may increase the number of justices of the supreme court in any judicial district, except that the number in any district shall not be increased to exceed one justice for fifty thousand, or fraction over thirty thousand, of the population thereof as shown by the last federal census or state enumeration.⁷

This formula imposes a statewide ceiling of about 400 elected justices as of the 2020 census, regardless of how much caseloads grow.⁸ In New York City, the same rule limits the five boroughs to just over 170 elected Supreme Court justices,⁹ well below what's needed to manage more than tens of thousands of new filings each year.¹⁰ In reality, the shortfall is even greater, as some elected justices are assigned to appellate courts, leaving fewer justices to preside in trial parts across the city.¹¹

The scale of the shortage is evident in the fact that, in 2025, 41% of all judges exercising Supreme Court jurisdiction statewide do so through the Unified Court System's opaque, discretionary ASCJ promotion process.¹²

Despite support from Governor Hochul, Chief Judges DiFiore and Wilson, efforts to repeal New York's constitutional seat cap have stalled. The Uncap Justice Act would strike the New York Constitution's Article VI § 6(d)'s population formula and allow the Legislature to set the number of Supreme Court justices by statute.¹³ The measure received first passage in both chambers in 2024 but failed to advance to second passage in 2025. We are unaware of any recommendations regarding how many seats to create once the cap is removed.

Judicial associations have opposed full repeal and advanced a narrower alternative: lowering the cap to one justice per 30,000 residents, calculated at the judicial-district level.¹⁴ The associations warn that eliminating the population formula could politicize the process of assigning newly created seats.¹⁵

2.2. ASCJ Promotions: a Practical Workaround

New York's constitutional seat cap forces court administrators to rely on Acting Supreme Court Justices (ASCJs) as a facially reasonable way to keep the courts functioning.

Chief Judge DiFiore and the bar have publicly acknowledged that ASCJs are a direct and necessary response to the seat cap. In her 2020 State of the Judiciary, DiFiore stated:

[E]liminate the obsolete constitutional cap on the number of Supreme Court Justices and relieve court administrators of a responsibility they do not want. Court administrators presently select half of the judges who serve on the Supreme Court in New York City [i.e., via promotion to ASCJ status]. This is a responsibility better left to the voters and those elected officials who appoint our judges.¹⁶

DiFiore made the same point again in 2022:

[The court restructuring plan would also] eliminate the 97-year old constitutional cap on the number of Supreme Court Justices and authorize the Legislature to create a sufficient number of Justices to efficiently handle the Supreme Court's caseload. This would obviate the need to appoint judges of the lower courts to serve as Acting Supreme Court Justices, a longstanding practice that perennially deprives the lower courts of needed judicial resources.¹⁷

The New York City Bar Association has also recognized the ASCJ system as a necessary workaround to the constitutional cap:

The Committee is cognizant that this cap on the number of Justices and the heavy caseload experienced by the Supreme Court – particularly in the First

and Second Departments [*i.e.*, in New York City] – already has resulted in a “work around” system through designations of Acting Supreme Court Justices. Under this system, many judges [from different lower courts] are designated as Acting Supreme Court Justices. This is often done to mitigate case management problems presented by the court system’s growing caseload, while technically complying with the constitutional cap.¹⁸

Or as put by a different New York City Bar Association report: “Without [A]cting [Supreme Court J]ustices, the Supreme Court would itself be incapable of handling its caseload in a timely manner.”¹⁹

2.2.1. What ASCJ Status Means in Practice

ASCJ status is supposed to be a *temporary* judicial promotion (legally, a “designation”) that gives a lower court judge authority to oversee high-stake cases for a renewable one-year term.²⁰ ASCJ status may be conferred on judges who first reach the bench by appointment or by election.

The Chief Administrative Judge holds the authority to approve ASCJ promotions, acting under the New York Constitution:

A judge of [various listed lower courts] may perform the duties of office or hold court in any county and may be temporarily assigned to the supreme court...²¹

While ASCJs exercise authority over all types of cases heard in Supreme Court,²² key differences remain between them and their elected counterparts. Acting Supreme Court justices cannot be certificated for service past the constitutional age limit²³ and are not eligible for appointment to the Appellate Division.²⁴ On the other hand, ASCJs receive the same higher salary as elected Supreme Court justices²⁵ and are permitted to hire an additional law clerk.²⁶ In day-to-day work, ASCJs preside over the same cases and dockets as their elected counterparts.

There is also a difference between the promotion processes for ASCJs. As a matter of practice, Court of Claims appointees (nominated by the Governor and confirmed by the Senate) are promoted to ASCJs status immediately upon appointment, without an

evaluation process by the Chief Administrative Judge.²⁷ The promotion, however, is itself discretionary and not required by law,²⁸ although we note that the UCS holds it is mandatory.²⁹ In 2025, these discretionary but automatic appointments amounted to 17% of the ASCJs promoted.³⁰ By contrast, judges from Criminal, Family, Civil, or County Courts, among other lower courts, become ASCJs through the Chief Administrative Judge's discretionary evaluation process, typically after spending some years on the bench.

2.2.2. How ASCJs Fill the Gaps Across the System

An ASCJ promotion lets a lower court judge exercise all the authority of a Supreme Court justice, including deciding high-value and high-impact cases they could not oversee before.³¹

Civil: Once promoted, a judge can preside over any Supreme Court civil matter, no matter the dollar amount, legal remedy, or complexity, including jurisdiction over a large array of matters, such as foreclosures, partitions, ejectments, broad injunctions, class actions, declaratory judgments, and Article 78 proceedings.³² Civil Court judges, by contrast, are limited to cases under \$50,000, among other limitations.³³

Criminal: ASCJ status permits criminal court judges to oversee indicted felonies. Only Supreme and County Court justices—including those serving as ASCJs—can handle felony trials and sentencing, while Criminal Court judges handle misdemeanors and the pre-indictment stages of felony cases.³⁴ The ASCJ role is thus essential for managing serious criminal dockets.

Matrimonial: ASCJ promotions expand capacity in Supreme Court matrimonial parts, since Family Court does not have jurisdiction over divorces, equitable distribution, or related matrimonial cases.³⁵

2.2.3. Illustrative High-Profile Cases Before ASCJs

Acting Supreme Court Justices now decide some of New York's highest-stakes cases. The closed-door nature of their promotion fuels perceptions of political ties and patronage instead of merit and caseload needs.

Criminal cases

- *People v. Harvey Weinstein*. Acting Justice Curtis J. Farber presided over this felony retrial.³⁶
- *People v. Harvey Weinstein*. Now-retired Acting Justice James M. Burke presided over the first trial.³⁷
- *People v. Luigi Mangione*. Acting Justice Gregory Carro is presiding over this felony case.³⁸
- *People v. Donald J. Trump*. Acting Justice Juan M. Merchan presided over this felony trial.³⁹
- *People v. Daniel Penny*. Now-retired Acting Justice Maxwell T. Wiley presided over this felony trial.⁴⁰
- *People v. Pedro Hernandez*. Now-retired Acting Justice Maxwell T. Wiley presided over this felony trial.⁴¹

Civil cases

- *Harkenrider v. Hochul*. Acting Justice Patrick F. McAllister struck down New York's 2022 congressional and state senate maps.⁴²
- *Police Benevolent Ass'n v. City of New York*. Acting Justice Lyle E. Frank ruled that the City could not enforce its COVID-19 vaccine mandate as a new condition of employment against police officers.⁴³
- *Uber, DoorDash, Grubhub v. NYC Dept. of Consumer and Worker Protection*. Acting Justice Nicholas W. Moyne denied Uber, DoorDash, and Grubhub's bid to block New York City's minimum-pay rule for app-based food delivery workers.⁴⁴

- *Glen Oaks Village Owners, Inc. v. City of New York*. Acting Justice J. Machel Sweeting upheld Local Law 97 in 2023, rejecting a challenge to the City’s building-emissions limits.⁴⁵

2.3. The Mechanics of ASCJ Promotions

The ASCJ promotion process rests on administrative discretion, a system that successive Unified Court System administrations have kept opaque and beyond public scrutiny. The process is outlined in state regulation, 22 N.Y.C.R.R. Part 121, and derives its authority from the state constitution.⁴⁶

Per the regulations, the Chief Administrative Judge (CAJ) controls the process and is given broad discretion with minimal oversight.

- The CAJ can promote lower court judges as ASCJs, based on recommendations from an evaluation panel of administrative judges and other court officials.
- The CAJ may alter the evaluation panel’s composition “where circumstances require.”

The CAJ can renew ASCJ promotions indefinitely, with no public disclosure.

- An ASCJ’s term may not be “greater than one year”, but there is no statutory cap on the number of times a judge may be re-promoted.
- There is no requirement for the court system to publish the terms, status, or renewal history of such re-promotions.
- The regulations only bar the promotion or re-promotion of judges who have received a public admonition or censure from the Commission on Judicial Conduct within the past two years.

The CAJ’s decisions on renewals or removals are entirely opaque to the public.

- The CAJ may rescind an ASCJ promotion “at any time,” so long as the Presiding Justice of the relevant appellate division agrees.
- There is no requirement to publish reasons for non-renewals or removals.

The evaluation process is formally substantive but lacks transparency.

- The evaluation panel must consider each candidate's productivity, scholarship, temperament, work ethic, and "any complaints" filed with court administrators. However, there is no requirement that any information from this process be made public.
- The regulations do not seem to require consideration of *non-public misconduct* findings by the Commission on Judicial Conduct, and it is unclear whether the panel can even access them.

3. Findings

New data reveals that Acting Supreme Court Justice (ASCJ) promotions are not a stopgap measure. They are an entrenched, structural feature of New York's judicial system, relied on year after year to compensate for the constitutional seat cap. Or, in the words of the New York City Bar Association:

[Promoting] lower court judges to the state's constitutional trial court of general jurisdiction [*i.e.*, Supreme Court] has become an established and routine practice, such that it would simply be erroneous to characterize such designations as temporary. In fact, they are anything but temporary.⁴⁷

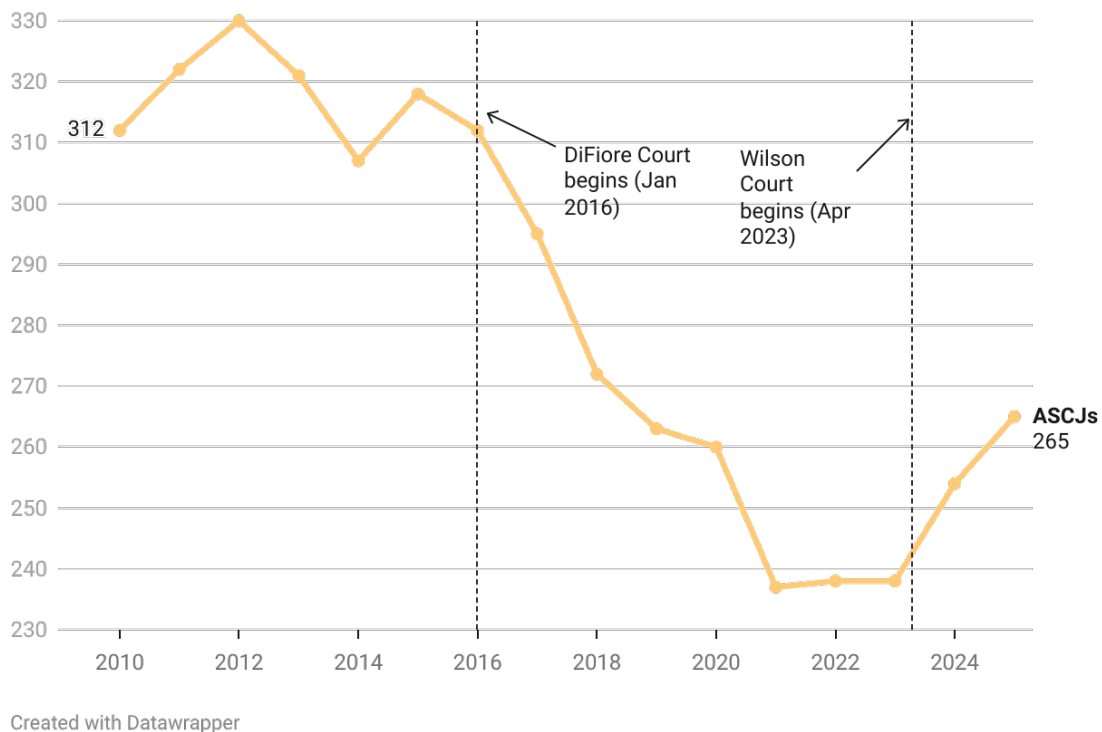
We use data obtained by Scrutinize through a Freedom of Information Law (FOIL) request—records not otherwise published by the Unified Court System—to trace how ASCJ promotions have functioned over the past fifteen years.⁴⁸ These records do not capture the separate process by which Court of Claims judges are promoted as ASCJs.⁴⁹

Our analysis examines three central patterns: how annual ASCJ headcounts expand or contract with shifts in court leadership; how promotions are allocated across counties once population and filing volumes are taken into account; and how, once granted, ASCJ status almost never lapses, functioning less as a temporary tool than as a *de facto* permanent seat on the Supreme Court bench

3.1. ASCJ Promotions Rise and Fall with Changes in Court Administration

Year-by-year headcounts show that ASCJ numbers fell from a peak of 330 in 2012 to a low of 237 in 2021, before flattening through 2023 and beginning to rebound in 2024–2025 (Figure 1).

Figure 1: ASCJ Promotions by Year



Shifts in leadership correlate with the promotion patterns observed in Figure 1. The trajectory tracks closely with changes in the Chief Judge and their choice of Chief Administrative Judge.

During Judge Jonathan Lippman's tenure as Chief Judge (2009–2015),⁵⁰ three different Chief Administrative Judges oversaw the courts.⁵¹ During Chief Judge Janet DiFiore's tenure (2016–2022), Lawrence K. Marks served continuously as Chief Administrative Judge.⁵² The steep decline in ASCJ numbers after 2016 coincides with Marks' and DiFiore's tenure. The drop continued through 2021, after which ASCJ numbers remained largely flat through 2023. This period also saw the COVID pandemic, during which

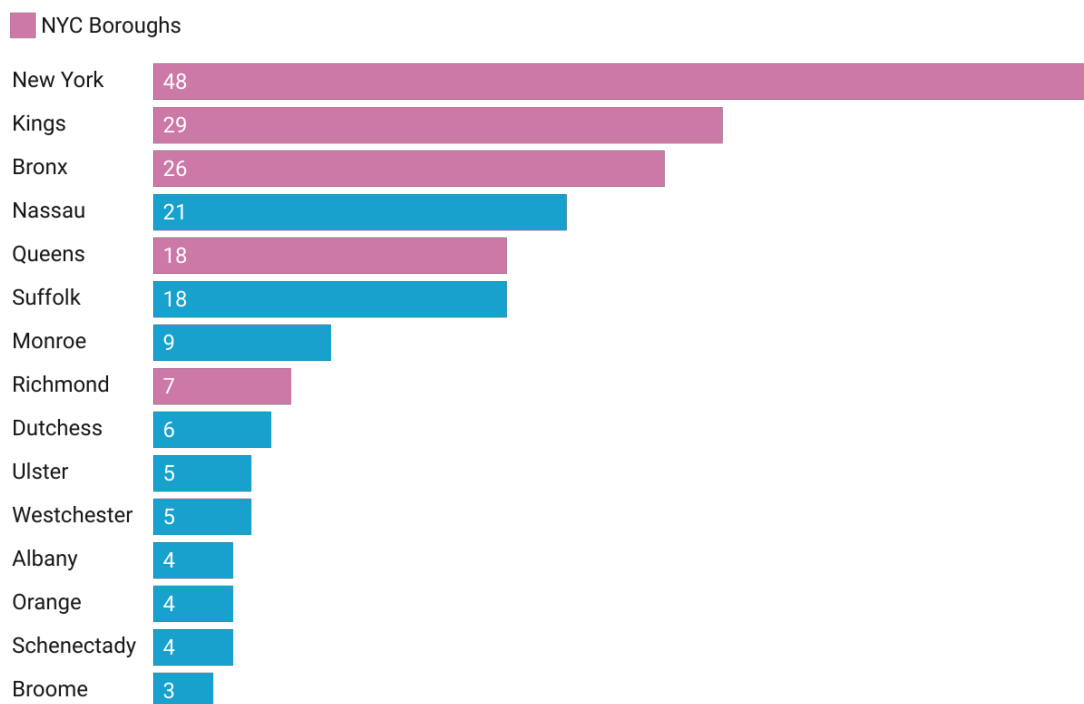
DiFiore imposed a hiring freeze, ended recertification of Supreme Court judges over 70, and suspended programs for judicial hearing officers and referees.⁵³ We were unable to find public sources that speak directly to DiFiore’s policy on ASCJ promotions.

The uptick in ASCJ numbers since 2024 likely reflects new leadership priorities, with the appointments of Chief Judge Rowan Wilson⁵⁴ and Joseph Zayas as Chief Administrative Judge in 2023.⁵⁵ In his 2024 budget testimony, Chief Administrative Judge Joseph Zayas endorsed legislation to abolish the population cap on Supreme Court seats.⁵⁶ The simultaneous rise in promotions and public support for cap removal suggests that the new leadership is addressing immediate caseload pressures—while advocating for a long-term structural change.

3.2. Upstate Counties Benefit from ASCJ Promotions, While New York City and Its Suburbs Remain Understaffed

We next examine the geographic distribution of ASCJ promotions and compare it to population and caseloads. In 2025, nearly half of all promotions (48%, 128/265) occurred in New York City (Figure 2), a share consistent with 2024 (46%, not shown) and 2023 (44%, not shown).

Figure 2: The Number of ASCJs Promotions by County, 2025 (Top 15 Counties Shown)

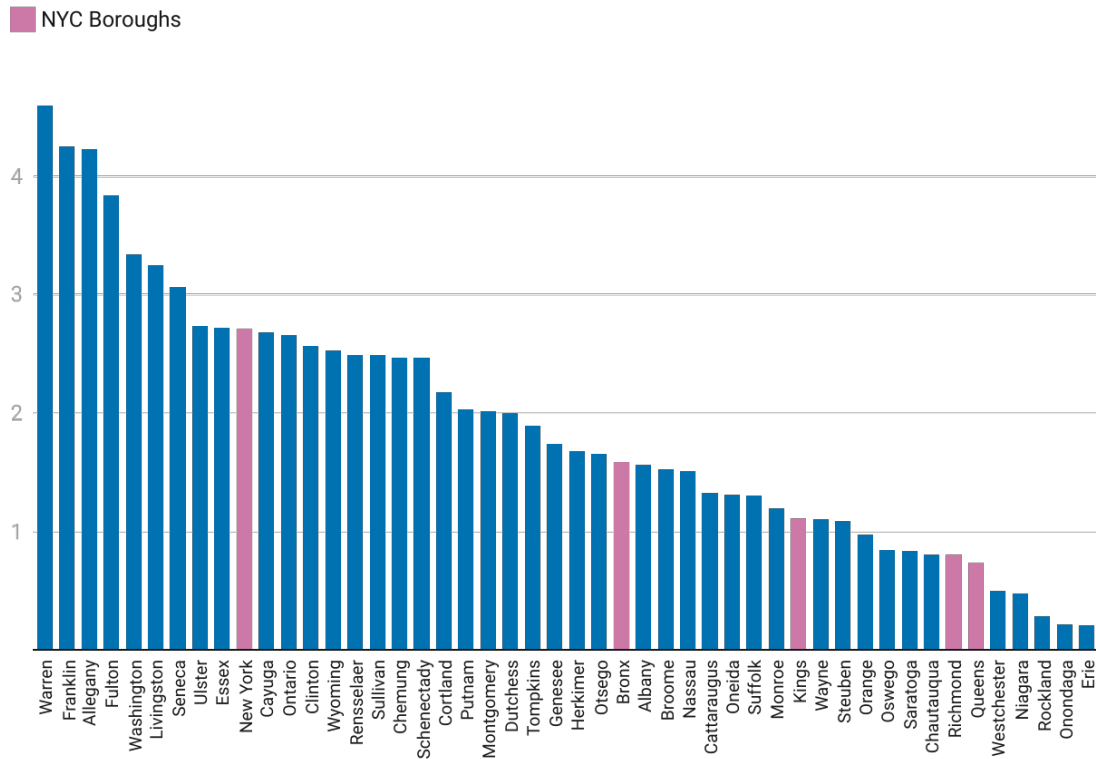


Created with Datawrapper

Yet the raw promotion counts in Figure 2 tell only part of the story. While New York City continues to account for the largest number of promotions in absolute terms, population-adjusted figures show that small upstate counties receive far more ASCJ coverage relative to their size (Figure 3). Using 2024 filings data (the most recent available), we find that Warren, Franklin, and Allegany counties each recorded more than 4 ASCJs per 100,000 residents—well above any New York City borough. These results mirror 2023 (data not shown), when several upstate counties again exceeded 4 ASCJs per 100,000 residents—a rate well above that of the New York City boroughs.

In short, many of the state’s counties with smaller populations now enjoy a higher per-capita share of ASCJ resources than New York City and its busy suburbs.

Figure 3: ASCJ Promotions per 100,000 Residents, by County (2024)

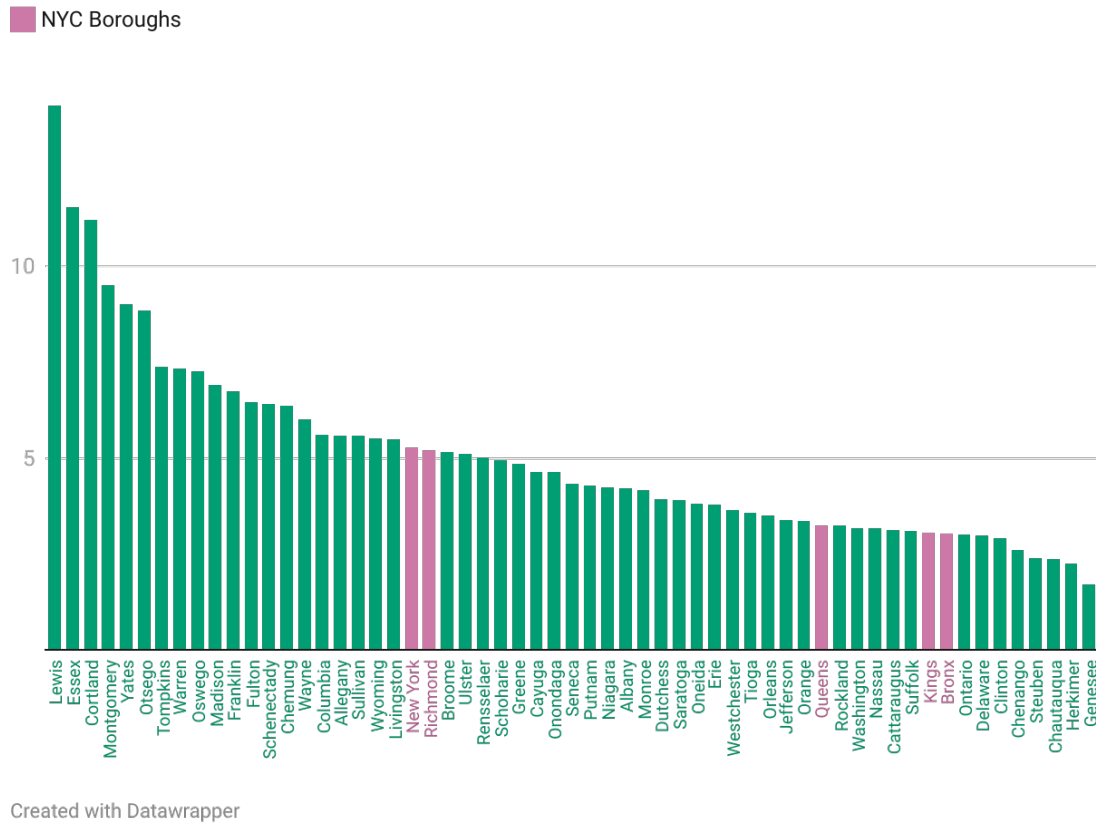


Created with Datawrapper

Population-adjusted measures, however, still fail to capture workload differences.

Urban, commercial, and financial hubs generate litigation volumes that may dwarf their population base. To account for this, we compare Supreme-level⁵⁷ judicial capacity to actual inflows of cases in Supreme Court civil terms and felony matters in Supreme and County Courts. A higher ratio means more judges are available per filing.

Figure 4: Supreme-Level Judges per 1,000 Filings, by County (2024/2025)



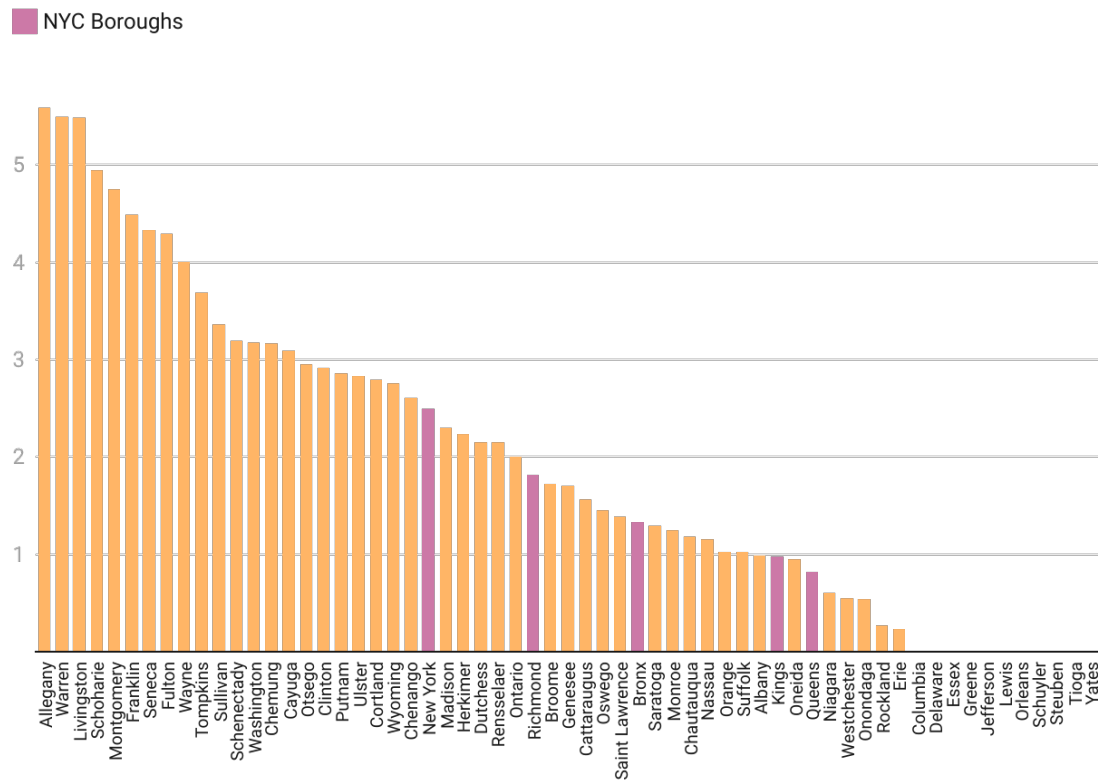
58

Figure 4 demonstrates that workload-adjusted capacity is comparably thin in some of the State’s highest-volume courts. New York City’s busiest boroughs in 2024—Kings, Queens, and the Bronx—record only about 3.0 to 3.25 judges per 1,000 filings. Nassau and Suffolk counties, with similarly high caseloads, saw rates of 3.1 to 3.16 judges per 1,000 filings. By contrast, small upstate counties, such as Lewis, Cortland, and Essex, have rates more than three times as high.

We next isolate the share of judicial capacity supplied through ASCJ promotions. This ratio tracks how many ASCJs are deployed per 1,000 filings, reflecting how heavily each county’s court relies on administrative promotions rather than non-ASCJ Supreme-level judges.

The results show a skew: Relative reliance on ASCJs is high in low-volume counties such as Allegany, Warren, and Livingston, while New York City—home to tens of thousands of cases—records far lower rates of reliance.

Figure 5: ASCJs per 1,000 Filings, by County (2024)



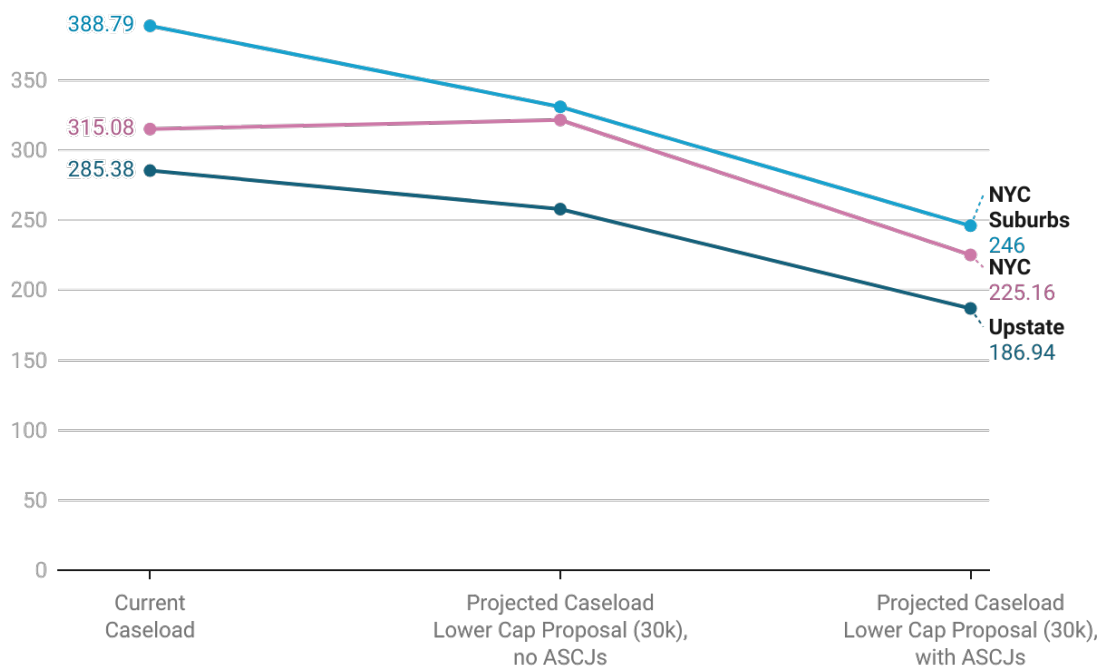
Created with Datawrapper

Taken together, the per-capita and filings-adjusted measures show that ASCJ capacity—and Supreme Court judicial resources more broadly—are concentrated in less-burdened upstate courts, while New York City and the suburbs shoulder heavier dockets with comparatively fewer resources.

3.3. Cap Reform Alone Cannot End Reliance on ASCJs

We next assess how the proposal to lower—but not eliminate—the constitutional seat cap would affect reliance on ASCJ promotions. The measure would revise the formula for allocating elected Supreme Court justices, reducing the ratio from one justice per 50,000 residents to one per 30,000, applied at the judicial-district level (“30k” proposal).⁵⁹ We compare current Supreme Court seat counts with those projected under the 30,000-resident ratio, both with and without ASCJs, measured against existing filing volumes.

Figure 6: Annual Caseloads per Judge Under Current, 30k, and 30k+ASCJ Scenarios



Created with Datawrapper

Our results show that lowering the constitutional cap to one justice per 30,000 residents would not resolve caseload pressure and the resulting widespread reliance on ASCJ promotions. If the 30k formula were implemented and ASCJs eliminated, workloads would barely shift, leaving judges with virtually the same caseloads as under the current system. Caseloads decline more meaningfully only if ASCJs remain in place

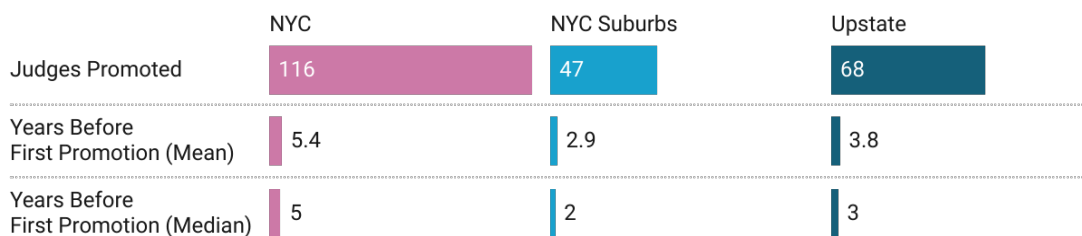
alongside the new seats. Yet even under this scenario, judges in New York City and the surrounding suburbs would continue to carry more than 220 new filings each year—far above desirable levels.

Instead, the results suggest that the 30k proposal is insufficient to resolve New York court’s caseload problems. Moreover, because the promotion process is opaque, continued reliance on ASCJs—even if the 30k proposal were enacted—would leave unresolved the central concern of this report: the public has no way to know whether individual promotion decisions reflect caseload needs, judicial ability, or other considerations.

3.4. Despite Higher Workloads, NYC Judges Cannot Rely on Fast Promotions to Catch Up

Analysis of ASCJ promotions in 2025 shows that New York City judges wait significantly longer for promotion than their counterparts elsewhere in the state.⁶⁰ Both the median and average time from reaching the bench to first ASCJ promotion is higher in New York City than the NYC suburbs and upstate areas.

Figure 7: Average and Median Years to ASCJ Promotion for Judges Promoted to ASCJ in 2025, by Region



Created with Datawrapper

The disparity underscores how unevenly the ASCJ promotion system functions. Outside New York City, judges are often promoted to ASCJ status within a few years of taking the bench—sometimes immediately—so that suburban and upstate courts supplement their Supreme Court capacity. This faster pipeline aligns with heavier caseloads per

judge in parts of the suburbs (e.g., Nassau and Suffolk, see Figure 4), but stands in contrast to the relatively lighter caseloads in many upstate counties. In New York City, where Supreme Court workloads per judge are also very heavy (Figure 4), judges face longer waits before being promoted.

3.5. Once Promoted, Judges Almost Never Exit ASCJ Status, Making the Role a Permanent Rather Than Temporary Feature of the Supreme Court System

Analysis of the FOIL-derived roster shows 757 of 781 judges (~97%) served without a single gap from first to last promotion between 2010 and 2025. Thus, annual ASCJ headcounts are driven by continuous promotion renewal, not by turnover or new promotions. In the words of a NYC Bar report, “[I]t is rare, if ever, that an acting justice is returned to his or her original judicial office.”⁶¹

Figure 8: ASCJ Service Gaps in Years



Created with Datawrapper

Only 25 judges in our 2010–2025 data experienced a true break in Acting Supreme Court Justice status: they were promoted for one or more years, then not promoted for one or more years, and later promoted again.⁶² The Unified Court System does not make public any reasons for these breaks, leaving unexplained whether they reflect discipline, reassignment, personal leave, or administrative choice.

3.6. ASCJ Promotions are Secretive

Despite becoming a permanent layer of the court system, Acting Supreme Court Justice (ASCJ) promotions remain shielded from public scrutiny and any form of systematic accountability. As a result, the public can only guess whether promotions reflect merit and caseload needs—or political pull and convenience.

This opacity predates the current administration and the current Chief Administrative Judge. It reflects practices built over many years. But while the present leadership has inherited a system with thin public disclosure, it is well positioned to fix it.

3.6.1. Missing: Public Roster of ASCJs

Basic facts about who is promoted and how remain out of reach for the public. The Unified Court System (UCS) publishes little information about ASCJ promotions. There is no centralized public record showing when an ASCJ's term begins, ends, lapses, or is renewed.⁶³ The current roster of Acting Supreme Court Justices was released only after Scrutinize's Freedom of Information (FOIL) request and repeated follow-ups—not as a matter of routine transparency.⁶⁴ Outside of FOIL, New Yorkers have no way to independently confirm who is serving as an ASCJ, or whether any judge's assignment remains current.

3.6.2. Missing: Evaluation Procedures and Panel Membership

The evaluation and promotion process is equally opaque. UCS does not publish the names or roles of the evaluation panel members who help select judges for promotion. In response to a FOIL request for this information, UCS reported that, after a "diligent search," it had not located records identifying panel membership, policies, or internal guidelines related to the promotion process.⁶⁵ Thus, while state regulations make public the general criteria for evaluating a candidate for promotion, UCS provides no evidence so the public can verify that these standards are applied, discussed, or consistently enforced.

3.6.3. Missing: Internal Memos and Reports

UCS denied a FOIL request for anonymized “internal memos, reports, or communications” related to the evaluation panel’s work, stating that the request was not “reasonably described.”⁶⁶ A revised request, framed more precisely, is currently pending with UCS.⁶⁷

3.6.4. Missing: Evidence of Required Consultations

The evaluation panel must consult with administrative judges and bar associations, and may consult with other persons or groups, in the process of evaluating promotions.⁶⁸

There is no public information about who participates in any such consultations, or what issues are discussed. In response to a FOIL request, OCA did not produce or identify records reflecting such consultations, so the public cannot verify whether any outreach occurs.⁶⁹

UCS’s handling of FOIL requests further deepens concerns over the promotion process’s integrity. In response to a FOIL request, UCS refused to describe the search methods which failed to produce any records about the evaluation panel or external consultation.⁷⁰ We cannot independently verify the search.

4. Recommendations

If accurate, the absence of records documenting the promotion process over more than a decade would be atypical for a process of this significance and raise concerns about administrative documentation and oversight. This absence affects public confidence that promotions are guided by the criteria set out in state regulation. Without clear records, it is not possible to assess why some judges are advanced within a year or two while others are not, leaving the process opaque and vulnerable to perceptions of inconsistency or bias. Greater transparency is essential to ensure the promotion system is perceived as fair, accountable, and legitimate.

The most effective way to bring transparency to the ASCJ promotion process is to address the Supreme Court backlog directly by repealing the constitutional cap on

elected seats. Without the cap, court administrators would not need to lean so heavily on ASCJ promotions to keep dockets moving.

Therefore, our primary recommendation is to eliminate the constitutional cap and authorize more elected seats than the 30k formula would permit, delivering substantial caseload relief without continuing to rely on ASCJs. Yet ASCJs are unlikely to disappear altogether. Even with more elected Supreme Court justices, the court system may continue to use promotions. That makes transparency in the promotion process both an immediate necessity and a permanent safeguard.

Transparent, independent review of ASCJ promotions is feasible. The fix does not require legislation; the current leadership can amend 22 N.Y.C.R.R. Part 121 and issue administrative orders, addressing a problem that has built up over many years.

New York's recent overhaul of ethics-commission appointments shows how UCS leadership can make oversight transparent with simple, well-defined procedures. In 2021, the Legislature amended Executive Law § 94 to create the Independent Review Committee (IRC), a panel comprising the deans of New York's fifteen ABA-accredited law schools.⁷¹ The IRC is responsible for vetting candidates nominated for appointment by the Governor, Attorney General, Comptroller and Legislative Leaders, and has the authority to approve or deny nominations.⁷² The procedures⁷³ and final determinations are published on a dedicated website,⁷⁴ along with background questionnaires and instructions for public comment.⁷⁵ This structure provides transparency and increases public confidence in nominees.

Replicating the spirit of the IRC transparency model for ASCJ promotions requires only targeted administrative changes. The Chief Administrative Judge should implement the following transparency requirements, and, perhaps more importantly, enforce compliance with these rules. By adopting them, court leadership would reinforce the legitimacy of ASCJ appointments and build public confidence that promotions are guided by merit and serious review.

Evaluation Process Transparency

1. Disclose the names and titles of members of the ASCJ evaluation panel, along with the roles and responsibilities of members.
 - a. When the Chief Administrative Judge changes the composition of the panel, publish what the changes were and the circumstances that prompted them.
2. Make public any internal criteria, organizational materials, guidelines, or other policies followed by the evaluation panel.
 - a. If no such materials exist, UCS should develop them based on best practices and release them for public review.

Clear Criteria and Transparent Outcomes

1. Disclose all questionnaires or forms used to vet candidates, along with any memos or policies that expand on the criteria used for evaluations.
 - a. If no such materials exist, UCS should develop them based on best practices and release them for public review.
2. Publish regular reports on the ASCJ promotion process, including:
 - a. The number of positions filled, and the names of judges promoted, with the length of each promotion term;
 - b. The number of judges denied promotion, with anonymized reasons for denial in each case;
 - c. The number of promotions rescinded in a given year, with anonymized reasons for rescission in each case;
 - d. The number of judges promoted who had outstanding verified or pending complaints, with an explanation of why promotion went forward in each case;
 - e. The total number of candidates reviewed and aggregate demographic information on candidates;
 - f. County-level data showing which jurisdictions received ASCJ appointments and

from which courts the promoted judges were drawn.

3. Provide an explanation of the number and distribution of ASCJ promotions each year, tied to county filings, workload data, and other relevant factors, so the public can assess whether promotions reflect genuine system needs.

Consultation Process Transparency

1. Issue a public call for input on each judge under consideration for promotion, far enough in advance to allow the public, practitioners, and firms meaningful time to respond.
2. Publish an annual report showing, for each judge, the number of individuals and organizations that submitted feedback in response to the public call, while preserving anonymity by not disclosing names.
3. If not already part of the review, gather information on any *non-public misconduct* findings by the Commission on Judicial Conduct for judges under consideration for promotion.

Amend N.Y.C.R.R. Parts 33 and 121 to End the Court of Claims Exclusion

1. Remove the carve-out that exempts Court of Claims judges from the ASCJ evaluation process.
 - a. For a judge's initial year of promotion, allow the Chief Administrative Judge to rely on the record developed by the Judicial Selection Committee that vetted the Governor's appointment.
 - b. For subsequent promotions, require Court of Claims judges to undergo the same evaluation procedures and transparency measures that apply to all other lower-court judges.

5. Methodology

5.1. Data sources

This report draws on multiple official and public data sources.

- **Freedom of Information Law (FOIL) response from OCA #1.** The roster of all judges promoted to Acting Supreme Court Justices (ASCJs) status between 2010 and 2025.
- **Freedom of Information Law (FOIL) response from OCA #2.** The [roster](#) of all judges sitting on the bench as of May 1, 2025 (excludes town and village judges; these do not handle supreme court matters).
- **Judicial Directory (2025).** [Official directory](#) of sitting judges maintained by OCA. Contains information on court assignments and counties of service.
- **Population data.** County population estimates from [data.ny.gov](#).
- **30k Proposal calculations.** Sourced from New York City Bar Association, [Exhibit 4, Repeal the Cap and Do the Math: Why We Need a Modern, Flexible, Evidence-Based Method of Assessing New York’s Judicial Needs](#) (2024).
- **Court filings data.** County-level civil supreme court and supreme court / county court criminal filing counts from the Unified Court System’s [2024 Annual Report](#).
- **Supplemental public records.** When county assignments were missing or inconsistent for ASCJs in 2023 and 2024, we verify judges’ service using biographies, local court websites, or press reporting.

5.2. Analytic Measures

We generate several analyses to assess patterns in ASCJ promotions and their distribution.

- **Figure 1.** We count distinct Acting Supreme Court Justices (ASCJs) by calendar year from the FOIL-produced roster, 2010–2025.

- **Figure 2.** We list the 15 counties with the most ASCJs in 2025 (and 2023 and 2024, not shown in the report). All judges included in this figure were successfully matched to a county. County assignments are built by merging four sources in order of trust and availability: (i) 2025 bench roster from OCA FOIL, (ii) OCA’s online Judicial Directory, (iii) public records obtained by querying chatGPT5 Pro, and (iv) public records obtained through manual internet searches.
- **Figure 3.** We population-adjust ASCJ presence by county using official NYS population estimates. Starting from a list of 2024 ASCJ promotions, matched to county, we count distinct ASCJs by county, aggregate by county, and match each county to NYS 2024 county population data from data.ny.gov. We then compute the number of ASCJs per 100,000 residents.
- **Figure 4.** We construct a comprehensive county-level dataset using New York State population figures, then merge three elements: (i) 2025 ASCJ counts by county; (ii) 2024 total new filings—civil and criminal Supreme Court matters—from the Unified Court System’s 2024 Annual Report; and (iii) a 2025 roster of all Supreme-level judges by county, drawn from the OCA FOIL bench list and limited to judges whose court is listed as “Supreme Court” or “County Court.” In this coding, Court of Claims judges assigned to Supreme Civil or Criminal Terms, along with ASCJs, are treated as “Supreme Court.”
- **Figure 5.** Using the data process described for Figure 4, we use the number of ASCJs per county to calculate the number of ASCJs per 1,000 filings per county.
- **Figure 6.** We model caseload effects of lowering the constitutional ratio to one justice per 30,000 residents, region-wide. We parameterize *proposed* Supreme Court justice counts for three regions—NYC; NYC Suburbs (Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, Westchester); and Upstate—using totals from the New York City Bar Association’s report, *Repeal the Cap and Do the Math* (Exhibit 4). We then aggregate 2024 filings to the same regions.
- **Figure 7.** We measure how long judges promoted to ASCJ in 2025 waited for their first promotion, broken down by region. Using the ASCJ roster, we identify each

judge's first ASCJ year and keep only those whose last promotion occurred in 2025. To avoid left-censoring, we further limit the sample to judges whose first ASCJ year is after 2010, since our data does not extend earlier. We then link the 2025 bench roster to calculate total years of judicial service, drawing on OCA's FOIL response #2 and the Judicial Directory. Judicial Directory records also provide years served in courts ineligible for ASCJ promotion (e.g., town and village courts). From these sources, we derive each judge's first year on the bench and calculate the time spent eligible for—but not yet promoted to—ASCJ status. That waiting period is the measure shown in this figure.

- **Figure 8.** We measure how often a judge's ASCJ status lapses between first and last ASCJ year. For each judge we compute the full year span of promotions, list missing years in that span, and count them. We then collapse to a frequency table.

Endnotes

1. New York Constitution, Article VI, § 6(d). ↩
2. 22 N.Y.C.R.R § 121; New York Constitution, Article VI, §§ 26 and 28. ↩
3. See, e.g., Chris Bragg, *Patronage Never Left: New York Courts Still Favor the Politically Connected*, New York Focus (Mar. 5, 2025); Peter Sterne, *Brooklyn Dems meet in back room of lobster restaurant to pick borough's judges*, City and State (Aug. 8, 2023); Chris Gelardi and Arabella Saunders, *Inside the Chaos Brewing in the Manhattan Democratic Party*, New York Focus (Aug. 10, 2023); Ross Barkan, *Judge Of 17 Years No Match For The Tangled Web Of Queens Surrogate's Court*, Gothamist (Feb. 20, 2020); Greg B. Smith, *Judge Who Put Harvey Weinstein Away Denied Reappointment by Mayor Adams' Advisory Panel*, THE CITY (Oct. 31, 2022). ↩
4. *New York State Bd. of Elections v. Lopez Torres*, 552 U.S. 196 (2008). The decision also referred to the testimony of one of the plaintiffs, Judge Lopez Torres, that party leaders pressured her to make *patronage* hires, leading the local party to oppose her in the judicial convention. *Id.* ("Respondent López Torres was elected in 1992 to the civil court for Kings County—a court with more limited jurisdiction than the Supreme Court—having gained the nomination of the Democratic Party through a primary election. She claims that soon after her election, party leaders began to demand that she make patronage hires, and that her consistent refusal to do so caused the local party to oppose her unsuccessful candidacy at the Supreme Court nominating conventions in 1997, 2002, and 2003."). ↩
5. *López Torres v. New York State Bd. of Elections*, 462 F.3d 161 (2d Cir. 2007) ("All of the evidence presented, and accepted by the District Court, reduces to this bottom line: through a byzantine and onerous network of nominating phase regulations employed in areas of one-party rule, New York has transformed a *de jure* election into a *de facto* appointment. '[I]n every practical sense,' these regulations preclude all but candidates favored by party leadership 'from seeking the nomination of their chosen party,

no matter how qualified they might be, and no matter how broad or enthusiastic their popular support.’”). ↩

6. For discussion of the proposal to remove New York’s constitutional cap, see Section 2, *The Supreme Court Backlog and Its Structural Cause*. ↩

7. New York Constitution, Article VI, § 6(d). ↩

8. New York State Association of Counties, *Executive 2024-25 State Budget Joint Legislative Budget Testimony*, at 5 (2024); U.S. Census Bureau, *QuickFacts: New York State – Population, Census, April 1, 2020* (2020 census population: 20,201,249). ↩

9. N.Y. Judiciary Law § 140-a. ↩

10. See, e.g., Modern Courts, *The Constitutional Limit on the Number of Justices in the Supreme Court*. ↩

11. See Modern Courts, *The Constitutional Limit on the Number of Justices in the Supreme Court*; New York City Bar Association, *Exhibit 6, Repeal the Cap and Do the Math: Why We Need a Modern, Flexible, Evidence-Based Method of Assessing New York’s Judicial Needs* (2024). ↩

12. New York City Bar Association, *Exhibit 6, Repeal the Cap and Do the Math: Why We Need a Modern, Flexible, Evidence-Based Method of Assessing New York’s Judicial Needs* (2024). Including judges serving through the separate certification process—a separate administrative designation process—the share of judges exercising Supreme Court authority through opaque UCS procedures rises to just over 50%. ↩

13. N.Y. State Senate, *2023 Senate Bill S5414*; N.Y. State Assembly, *2023 Assembly Bill A5366*; N.Y. State Senate, *2025 Senate Bill S3849*; N.Y. State Assembly, *2025 Assembly Bill A1100 (Amendment A)*. ↩

14. Noah Powelson, *Albany Offers Two Visions for Supreme Court Expansion* (Apr. 7, 2025). ↩

15. Ryan Schwach, *Lawmakers Want to Raise Supreme Court Justice Cap, but Judges Aren’t on Board* (May 23, 2024). ↩

16. Chief Judge Janet DiFiore, *State of Our Judiciary 2020* (2020). ↩

17. Chief Judge Janet DiFiore, *State of Our Judiciary 2022* (2022). ↩

18. New York State Bar Association, *Report and Recommendations of the New York State Bar Association Committee on the New York State Constitution: The Judiciary Article of the New York State Constitution – Opportunities to Restructure and Modernize the New York Courts* (2017). ↩

19. New York City Bar Association, *Repeal the Cap and Do the Math: Why We Need a Modern, Flexible, Evidence-Based Method of Assessing New York’s Judicial Needs*, at 40 (2023). See also New York City Bar Association, *Support for Legislation that Will Help Ensure Adequate Judicial Resources in New York State Courts* (2025) (“To address the lack of judicial resources, the Office of Court Administration (OCA) moves judges from one court to another court on an acting basis. This “robbing Peter to pay Paul” approach further depletes courts of resources and has created a de facto permanent and large class of temporary assignments, creating adverse impacts on the courts.”). ↩

20. New York Constitution, Article VI, § 26; 22 N.Y.C.R.R. §§ 121.1, 121.3. ↩

21. New York Constitution, Article VI, § 26. ↩

22. New York Constitution, Article VI, §§ 26(i) and (k). ↩

23. New York Constitution, Article VI, § 25(b). ↩

24. New York Constitution, Article VI, § 4(c). ↩

25. N.Y. Judiciary Law § 224. ↩
26. See New York Constitution, Article VI, §§ 26(i) and (k); N.Y. Judiciary Law § 36(1), 22 N.Y.C.R.R. § 5.1(a) (Supreme Court staffing). ↩
27. As a matter of law, “[a] judge of the court of claims may ... be temporarily assigned to the supreme court,” and temporary assignments “shall be made by the Chief Administrator of the Courts, in his or her discretion.” New York Constitution, Article VI, § 26(b); 22 N.Y.C.R.R. § 33. In the rules governing selection and evaluation for Acting Supreme Court service, assignments from courts of limited jurisdiction “other than the Court of Claims” are subject to panel screening and term-limited promotions—confirming that Court of Claims promotions are handled differently. 22 N.Y.C.R.R. §§ 33.1, 121.1. As a matter of practice, however, state budget documents and UCS publications report that the “additional” Court of Claims judges (the cohorts authorized under Court of Claims Act § 2(2)(b), (d), (e)) are immediately promoted to ASCJs status upon appointment. See Transcript, *Court of Claims (OCA) interview* (Judge Sise stating that Court of Claims judges “are immediately made Acting Justices to the Supreme Court”). For background on the expansion of the Court of Claims in response to the Rockefeller Drug Laws, see New York City Bar Association, fn. 228, *Repeal the Cap and Do the Math: Why We Need a Modern, Flexible, Evidence-Based Method of Assessing New York’s Judicial Needs* (2024). ↩
28. This arrangement affords the Governor a measurable foothold in shaping the Supreme Court bench, even though no such role is provided for in the state constitution or in statute. ↩
29. Article VI 26(b) of the New York Constitution provides that “[a] judge of the court of claims may perform the duties of office or hold court in any county and may be temporarily assigned to the supreme court in any judicial district.” (emphasis added). Likewise, the Court of Claims Act § 2(2)(b), (d), and (e) authorize such cross-assignments but do not require them. Textually, these provisions appear to leave discretion to the Chief Administrative Judge as to whether a Court of Claims judge is promoted to the Supreme Court. The Unified Court System, however, interprets these provisions differently and holds that promotion to the Supreme Court is mandatory for Court of Claims judges. ↩
30. New York City Bar Association, *Exhibit 6, Repeal the Cap and Do the Math: Why We Need a Modern, Flexible, Evidence-Based Method of Assessing New York’s Judicial Needs* (2024). ↩
31. New York Constitution, Article VI, §§ 26(i) and (k). ↩
32. See, e.g., New York Constitution, Article VI, § 7(1). ↩
33. See, e.g., New York Constitution, Article VI, § 15. ↩
34. Criminal Procedure Law §§ 10.10-10.30. ↩
35. See, e.g., N.Y. Domestic Relations Law § 236; N.Y. C.P.L.R. § 602(b); New York State Unified Court System, *Divorce Basics* (“In New York State, the Supreme Court is the only court that handles divorce cases.”). ↩
36. Scrutinize, *Judicial Profile - Curtis J. Farber*; Hurubie Meko, Maria Cramer, and Anusha Bayya *Judge Declares Mistrial on Final Weinstein Charge*, *New York Times* (Jun. 12, 2025). ↩
37. Jan Ransom, *Harvey Weinstein Is Found Guilty of Sex Crimes in #MeToo Watershed*, *New York Times* (Feb. 24, 2020). ↩
38. Scrutinize, *Judicial Profile - Gregory Carro*; Samantha Max, *Luigi Mangione doesn’t need shackles or bulletproof vest in NY state court, lawyers say*, *Gothamist* (Jun. 4, 2025). ↩
39. Scrutinize, *Judicial Profile - Juan M. Merchan*; William K. Rashbaum and Jonah E. Bromwich, *Judge in Trump Company Trial Knew How to Read the Numbers*, *New York Times* (Dec. 6, 2022). ↩

40. New York State Unified Court System, [Judges of the Trial Courts - Maxwell Wiley](#); Charles Lane and Brittany Kriegstein, [Jury finds Daniel Penny not guilty in NYC subway chokehold case](#), Gothamist (Dec. 9, 2024). ↩
41. New York State Unified Court System, [Judges of the Trial Courts - Maxwell Wiley](#); Hurubie Meko, [A Judge Gave a One-Word Answer. It Torpedoed the Etan Patz Case](#), New York Times (Jul. 26, 2025). ↩
42. *Harkenrider v. Hochul*, [Order](#), Index No. E2022-0116CV (Sup. Ct., Steuben Cty. May 21, 2022); Nicholas Fandos, [Judge Tosses N.Y. District Lines, Citing Democrats' 'Bias'](#), The New York Times (Mar. 31, 2022). ↩
43. Scrutinize, [Judicial Profile - Lyle E. Frank](#); Maya Rajamani, [Judge: City must reinstate PBA members who refused vaccine](#), NY1 (Sep. 23, 2022). ↩
44. Scrutinize, [Judicial Profile - Nicholas W. Moyne](#); Claudia Irizarry Aponte, [Court Clears Minimum Hourly Pay for NYC Food Delivery Workers](#), THE CITY (Sept. 28, 2023); *Uber Tech., Inc. v New York City Dept. of Consumer & Worker Protection*, 80 Misc 3d 1221(A) (Sup. Ct. N.Y. County 2023). ↩
45. Scrutinize, [Judicial Profile - J. Mabelle Sweeting](#). ↩
46. 22 N.Y.C.R.R. § 121; New York Constitution, Article VI, §§ 26 and 28. The evaluative procedures in Part 121 apply to lower-court judges, while Court of Claims judges are promoted to Supreme Court discretionally but immediately. ↩
47. New York City Bar Association, [Repeal the Cap and Do the Math: Why We Need a Modern, Flexible, Evidence-Based Method of Assessing New York's Judicial Needs](#), at 38 (2024). ↩
48. Scrutinize, [Public Records of Acting Supreme Court Justice Promotions](#) (2025). ↩
49. The FOIL data identifies which judges were promoted as ASCJs each year, but not their underlying court or appointment. To approximate, we compared the 2025 roster of 83 active Court of Claims judges (produced by OCA in response to a separate [FOIL request](#)) against the ASCJ data. Only 4 of those 83 appeared in the ASCJ dataset. Because OCA has not provided comparable Court of Claims rosters for prior years, we cannot assess how many such automatic promotions were included in earlier ASCJ tallies. Our conclusion therefore rests on 2025 data alone. ↩
50. James C. McKinley, [New York's Chief Judge Leaving a Legacy of Reforms Inspired by Social Justice](#), New York Times (Dec. 29, 2015). ↩
51. Ann Pfau (2007–Dec 2011), A. Gail Prudenti (Dec 2011–July 2015), and Lawrence K. Marks (July 2015 onwards). See Law.com, [First Woman Judge Appointed To Head N.Y. Court Administration](#) (May 31, 2007); William Glaberson, [At 64, a Longtime Judge Receives a Crash Course On the Ways of the Bench](#), New York Times (Mar. 1, 2012); Historical Society of the New York Courts, [A. Gail Prudenti](#); New York State Unified Court System, [Hon. A. Gail Prudenti to Leave Her Position As Chief Administrative Judge to Join Academia](#) (2015); New York State Unified Court System, [Hon. Lawrence K. Marks Named Chief Administrative Judge](#) (2015). ↩
52. New York State Unified Court System, [Message from Acting Chief Judge Anthony Cannataro](#) (2022) (Marks retiring under Acting Chief Judge Cannataro). ↩
53. Robert Gavin, [Top NY judge says court employment could drop to level 'not seen in many years'](#), Times Union (Dec. 7, 2020); Ian Ward, [Concerns Over Budget Cuts to State Court System Amid Massive Case Backlog](#), Gotham Gazette (Nov. 13, 2020). ↩
54. New York State Unified Court System, [Chief Judge of the State of New York](#). ↩
55. New York State Unified Court System, [Hon. Joseph A. Zayas](#). ↩

56. Chief Administrative Judge Joseph A. Zayas, [Statement to the Joint Legislative Hearing on the 2024–25 Judiciary Budget](#) (2024). ↩
57. “Supreme-level” includes elected Supreme Court justices, County Court judges (who oversee felony cases), Court of Claims judges assigned to Civil or Criminal Terms, and other ASCJs. Court of Claims judges not presiding in Civil or Criminal Terms are excluded, as Court of Claims filings are not included in the filings data we use. ↩
58. We calculate judicial capacity using the 2025 judge roster obtained through a Freedom of Information Law request to UCS, paired with 2024 filings data. Filings for 2025 are not yet available, and UCS does not release annual rosters; as a result, we could not use a 2024 roster for this analysis. ↩
59. Noah Powelson, [Albany Offers Two Visions for Supreme Court Expansion](#) (Apr. 7, 2025). ↩
60. For judges who previously served in positions not eligible for ASCJ promotion, we exclude those years and count only the years spent presiding in courts where promotion is permitted. ↩
61. New York City Bar Association, [Repeal the Cap and Do the Math: Why We Need a Modern, Flexible, Evidence-Based Method of Assessing New York’s Judicial Needs](#), at 4 (2024). ↩
62. Judges who left the acting roster because they were elected to the Supreme Court or retired are not counted, since their departure was permanent rather than a lapse followed by re-promotion. ↩
63. The Unified Court System’s online Judicial Directory sometimes lists the year a judge was first promoted as an Acting Supreme Court Justice, the Chief Administrative Judge who made that promotion, and an indication that the acting status continues to the present. However, these profiles are inconsistently updated and do not reflect that ASCJ promotions must be renewed annually, nor do they show any gaps, non-renewals, or the specific start and end dates of individual terms. New York State Unified Court System, [Judicial Directory](#) (2025). ↩
64. Scrutinize, [Public Records of Acting Supreme Court Justice Promotions](#) (2025). ↩
65. New York State Unified Court System (Office of Court Administration – FOIL), [Re: FOIL Request \(#2\)](#) (May 1, 2025). ↩
66. New York State Unified Court System (Office of Court Administration – FOIL), [Re: FOIL Request \(#2\)](#) (May 1, 2025). ↩
67. Scrutinize, [Re: Freedom of Information Law Request](#) (May 16, 2025). ↩
68. 22 N.Y.C.R.R. § 121.2. The regulation provides that “the evaluatory panel shall consult with administrative judges and with bar associations and other persons or groups as may be appropriate.” The last-antecedent rule suggests that the phrase “as may be appropriate” modifies only “other persons or groups,” not “bar associations.” However, no formal analysis appears to have resolved the ambiguity in the text. ↩
69. New York State Unified Court System (Office of Court Administration – FOIL), [Re: FOIL Request \(#2\)](#) (May 1, 2025). ↩
70. Private correspondence with the UCS FOIL Office, dated June 9, 2025. ↩
71. Ethics Commission Reform Act of 2022, [Senate Print 8006-C, Part QQ \(L. 2022, ch. 56\)](#) (repealing and replacing Executive Law § 94; defining “independent review committee” as the ABA-accredited New York law school deans or interim deans). ↩
72. Exec. Law §§ 94(2)(b) (defining selection members), 94(3)(b) (IRC “shall... approve or deny each candidate” within 30 days), 94(3)(d) (approved candidates “shall be appointed”; denials require a new nomination). ↩

73. Independent Review Committee for Nominations to the Commission on Ethics and Lobbying in Government, [Committee Procedures](#) (2024). ↩
74. New York State, [Independent Review Committee for Nominations to the Commission on Ethics and Lobbying in Government](#). ↩
75. Independent Review Committee for Nominations to the Commission on Ethics and Lobbying in Government, [Pre-Interview Questionnaire](#) (2024); Independent Review Committee for Nominations to the Commission on Ethics and Lobbying in Government, [Candidate Reappointment Questionnaire](#) (2024). ↩