

New York Law Journal



On the Web at nylj.com

NEW YORK, THURSDAY, SEPTEMBER 7, 2006

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PRICE \$3.00

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A major religious liberty New York state's interest women's health against convictions of religious opposed to contraception yesterday at the Court of the judges pondered the pervasive impact of its matter what it does.

es uphold the lower court, religious groups to either services they find sinful benefits to their employ- also consider immoral.

If they reverse, the Court will undermine the clear intent of the Legislature and deny women an important health benefit.

And if, as requested by the plaintiff, they redraft the statute, they drift into the universe of legislative prerogative—a place the Court never likes to be.

Catholic Charities of the Diocese of Albany v. Serio,

Candidates Stress Credentials To Gain Edge in Race for A.G.

BY DANIEL WISE

THE THREE remaining candidates in the Democratic primary burnished their credentials to continue in Attorney General Eliot Spitzer's footsteps as the state's top lawyer in a debate yesterday at the New York City Bar Association.

Not until the final moments of the debate, which lasted slightly longer than an hour, did the gloves come off, when Mark Green, a former New York City public advocate and commissioner of consumer affairs, attacked Andrew Cuomo, the frontrunner, for his record as secretary of the U.S. Department of Housing and Urban Development.

The attack brought a strong riposte from Mr. Cuomo, who accused Mr. Green of having a history of stooping to the "most negative campaigning."

Mr. Cuomo called Mr. Green a proponent of the school of campaigning that "when you have the record, pound the record; when you have the vision, pound the vision; and when you have neither, pound your opponent."

Mr. Green retorted that he had raised policy shortcomings and that Mr. Cuomo had responded with a personal attack.

Sean Maloney, an associate at Willkie Farr & Gallagher who worked in the Clinton White House, did his best to stay above the fray, likening



NYLJ PHOTO/RICK KOPSTEIN

Democratic candidates, from left, Andrew Cuomo, Mark Green and Sean Patrick Maloney debated yesterday at the New York City Bar Association.

his role to being on "a U.N. peace-keeping force."

The Democratic primary abruptly turned into a three-way affair with the withdrawal Monday of Charles King, head of a non-profit group that provides housing for the homeless.

The winner will face Republican Jeanine Pirro, former Westchester County district attorney, in the general election.

Yesterday's debate, which was co-sponsored by the city bar and the New York Law Journal, was only the second in which Mr. Cuomo has participated. By election day, the other candidates will have partici-

pated in six public discussions on the issues.

The latest public poll, now two weeks old, had Mr. Cuomo leading Mr. Green by 13 percentage points among likely Democratic voters. Both Mr. Maloney and Mr. King languished in the single digits in the poll, which was conducted by Quinnipiac University.

The three candidates mostly used the six questions posed during the debate as springboards for offering their credentials, which they said best qualified them for the office.

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A.G. Candidates Debate

The questions, which were culled from about 75 submitted by association members, were asked by city bar President Barry Kamins and Kris Fischer, editor-in-chief of the Law Journal.

The format for the debate, which began at 8:40 a.m., required that each candidate address the questions, with an opportunity to respond to a criticism permitted at Mr. Kamins' discretion. Mr. Kamins allowed responses three times.

Defending All Cases

The clearest difference among the candidates emerged in a discussion of circumstances in which they would decline to defend a case.

Mr. Maloney took the most absolutist position, saying "you do the job" because "the attorney general is elected to enforce the laws of this state."

To start picking and choosing cases would result in "a very dangerous erosion of the office's oath and responsibility," he said.

Mr. Cuomo expressed a similar view, saying that the only circumstance in which he would decline to take a case would be one in which he had an ethical conflict.

But Mr. Green said he would not defend a case that in his judgment had "no legal or statutory basis upon which it could be defended."

When Mr. Green mentioned a dispute between former Attorney General Robert Abrams and Governor Mario Cuomo (the candidate's father) over whether a state law could be defended, Mr. Cuomo, claiming a "family policy of rebuttal," weighed in.

Mr. Green had taken the position, Mr. Cuomo said, that he would not take a case where he had previously expressed a prior inconsistent position, and such a decision should not become a question of "subjective judgment."

Mr. Green shot back that Mr. Cuomo had created "a straw man," saying that, in a separate instance, Mr. Abrams had refused to defend Westway, a planned highway on Manhattan's West Side, because he had made statements against it in his campaign for office. Those statements could have been used in court by the highway's opponents should Mr. Abrams have chosen to defend the case, Mr. Green said in defending Mr. Abrams' choice.

There was one thing Mr. Cuomo and Mr. Green agreed on: The most serious environmental issue facing the attorney general's office will be forcing General Electric to live up to its commitment in a consent decree to clean up the Hudson River.

Mr. Green, however, gave an opening to Mr. Maloney in responding to a question about what the candidates would do, if elected, to prevent pedophiles from trolling for victims on the Internet. Mr. Green responded that health care was a more important priority for him.

Mr. Maloney, following Mr. Green in addressing the question, said the attorney general has to be able "to walk and chew gum at the same time." He called the issue "an absolute priority" and said he would work with Web sites like myspace.com, which was specifically referred to in the question, to obtain "cooperation agreements" to require the use of credit cards that would enable parents to better monitor their children's Internet activities. He said he would also try to agree to get sites such as myspace.com to require those making posts to disclose their age.

Credential Stressed

Each candidate often circled back to his credentials.

Mr. Cuomo said that as HUD secretary he had brought 2,000 anti-discrimination actions; spearheaded a settlement that would have revamped the way guns are marketed in this country if it had not been abandoned by the Bush administration; and advanced 100 pieces of legislation that were enacted into law.

Mr. Green touted lawsuits and other actions he had taken that advanced legislation that had forced the tobacco industry to curtail advertising aimed at children, barred dry cleaners in residential neighborhoods from using a toxic solvent, relaxed organized crime's control of the private carting industry and exposed lax punishment of police officers accused of harassing blacks and Latinos.

Mr. Maloney stressed his work as an associate at Willkie Farr handling investigations of corporate wrongdoing for independent board members and his experience managing the work flow in the Clinton White House as staff secretary.

In a dustup at the end of the debate, Mr. Green questioned Mr. Cuomo's record, citing a New York Times editorial, a Village Voice article and a lawsuit brought by the state Attorney General's Office.

The Times article described a HUD mortgage program in poor neighborhoods in Brooklyn and Harlem as a "failure." Mr. Green said, while an article in this week's Village Voice raised questions about Mr. Cuomo's taking a job with a real estate investment fund several years after settling charges of kickbacks by a housing management company that is also owned by the head of the fund.

The state attorney general's suit, Mr. Green said, faulted Mr. Cuomo for not implementing regulations to

a law enacted while he was head of HUD, which was designed to protect children living in public housing from pesticides.

Mr. Cuomo likened the attack to Mr. Green's "exploitation of diversity and race politics" in his ultimately losing bid for mayor in 2001.

Press Conferences

At the conclusion of the debate, Mr. Green held a press conference at which he announced the backing of 100 lawyers. David Boies, who represented former Vice President Al Gore in *Bush v. Gore*; First Amendment lawyer Floyd Abrams; ethics expert Stephen Gillers; and Michael Hardy, a lawyer for the Reverend Al Sharpton confirmed their support for Mr. Green at the press conference.

Mr. Cuomo won the backing of Connecticut Attorney General Richard Blumenthal, who likewise announced his support at a press conference yesterday. In addition, Mr. Cuomo's spokeswoman, Wendy Katz, said he has an extensive lawyers' committee.

Marisa McNee, a spokeswoman for Mr. Maloney, said he has been endorsed by Karen Burstein, a former Family Court judge who unsuccessfully ran for attorney general as a Democrat in 1994, and Benito Romano, a partner at Willkie Farr who was a former U.S. attorney in the Southern District of New York.

— Daniel Wise can be reached at dwise@alm.com.

Correction

In an article yesterday, "Escape Conviction Upheld for Man Who Flew 50 Feet," the name of a Bronx assistant district attorney was misspelled. The prosecutor's name is Frances Y. Wang.