

Friday, February 11, 2000

A Gannett Newspaper for Westchester County

www.nyjournalnews.com

OPINION

The Journal News Friday, February 11, 2000 11B

New cross-endorsement deal for surrogate judge doomed to failure

COMMUNITY VIEW: Why would the Democrats in a Democratic county in a presidential year agree to a GOP surrogate?

ELI VIGLIANO

It turns out that the infamous 1989 three-year deal for cross-endorsement of seven judgeships in the Ninth Judicial District (Westchester, Putnam, Dutchess, Rockland and Orange) between then-Democratic Westchester boss Richard Weingarten and Republican boss Anthony Colavita did not tell the full story.

That deal, in writing, implemented at the judicial nominating conventions effectively disenfranchised voters in the five counties. This, in violation of our state constitution.

Apparently, there was more. It now looks like the deal-making Albert J. Emanuelli, who became Westchester County surrogate 10

years ago, also got an added bonus: the promise of another cross-endorsement when his term expires this year.

When inducted in 1990, Surrogate Emanuelli expressed the hope that no judge would have to run in the future without benefit of cross-endorsement, a hope shamelessly endorsed by state Supreme Court Justice Sondra Miller. However, such blatant judicial cross-endorsement deals were not utilized in the intervening years, thanks to the challenges raised by the Ninth Judicial Committee in state and federal lawsuits it spearheaded.

Contrary to the assertion in a Jan. 21 news story, our state's highest court, the Court of Appeals, did not uphold the three-year deal challenged by the Ninth Judicial Committee. Instead, it ducked the issues raised as to the legality of the deal and of the conduct by the judicial nominat-

ing conventions that implemented it by pretending that the disenfranchisement of voters and the fraud at the conventions did not raise a constitutional question. By refusing to take the appeals, the Court of Appeals "rubber-stamped" the politically motivated lower court decisions, which were nothing but a calculated cover-up for the judges and would-be judges who had participated in the deal and the fraudulent, Election Law-violating conventions.

Mr. Weingarten, one of the 12 defendants in the first lawsuit attacking the deal, appears satisfied that Judge Emanuelli kept his part of the bargain, requiring as a pre-condition to his cross-endorsed nomination that he share judicial patronage equally along party lines between Republican and Democratic lawyers to maintain the immoral system inherent in the Surrogate Court

"gold mine" — the traditional bedrock of political power.

Rest assured that the new cross-endorsement deal in the works for the Westchester surrogate office is doomed to failure, apart from any ensuing legal challenges. This is not a five-county judicial position like a Supreme Court judgeship, requiring a lawyer to be nominated at a nominating convention controlled by party bosses. This is a countywide election in a Democrat-controlled county, with a history of vigorous legal challenge to judicial cross-endorsement deals. Why would the Democrats in a Democratic county in a presidential year — bound to bring out a large Democratic vote — agree to a GOP surrogate, especially when two well-regarded, experienced Supreme Court justices — Anthony A. Scarpino Jr. and Joan Lefkowitz — are prepared to go into a primary against each other to win the Democratic nomination? Good

government in a democratic, free marketplace demands open elections with a competition of the best candidates each party has to offer — and not retention of a judge who sold his soul in 1989 to the political bosses.

This is not 1989. Now, with the aid of the Internet and the Center for Judicial Accountability Inc., which has expanded the work of the Ninth Judicial Committee in its arduous efforts to bring forth qualified lawyers for the bench, we can keep history from repeating itself in another travesty of the democratic process. Supported by aroused citizenry and the media, we can expose for what they are Mr. Weingarten's hypocritical current concern that the surrogate office reflect "merit," not "political considerations."

Unfortunately for the so-called "bipartisan committee," the publicized Brooklyn "mess" involving political judicial patronage has

finally caused an official probe to be ordered by Chief Judge Judith Kaye. Call her to demand that this investigation be extended into Westchester County.

Of course, one might wonder how Chief Judge Kaye can expect impartial supervision of Surrogate Court patronage appointments when the administrative judge of the Ninth Judicial District, Justice Francis Nicolai, himself a party to the three-year deal, owes his Supreme Court judgeship to Surrogate Emanuelli. Then-Supreme Court Justice Emanuelli created the vacancy by resigning from that post after serving but eight months of his 14-year term. This permitted then-County Court Judge Nicolai to move up into that deal-created vacancy. Can the fox be trusted to guard the chicken coop?

The writer is founder and chairman of the Ninth Judicial Committee, White Plains.