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THE ASSEMBLY
STATE OF NEW YORK
ALBANY

CHARLES D. HENDERSON
P. O. BOX G
HORNELL, N. Y. 14843

MAY 18 REC'D

COMMITTEES
RULES
WAYS & MEANS
REAL PROPERTY TAXATION
ELECTION LAW

May 10, 1978

Re: Senate Intro 10014

My dear Governor:

There are many significant reasons why I am constrained to respectfully request, as urgently and forcibly as I know how, that you veto the above legislation.

First, by approving this legislation it is my sincere opinion that in the end we will inflict grievious harm to the people of this state and their last resort in this Democracy, our court system. I believe we owe to the people the opportunity to have all of the fact s, the true facts, behind this legislation rather than the myths of the plush hundred-thousand dollar campaign by David Garth which persuaded about 20% of the total registered voters in this state to surrender their elective franchise.

Paranthetically, this is the second time in the history of free people of this world that any group of citizens voluntarily surrendered their vote. The first time was in Germany in April of 1933 and I need not remind you of the disastrous results of that experiment which should be a warning to New York State.

This bill, which exceeds and distorts the intent of the amendments to the Constitution, enacts the most fundamental changes in our system of government since the Civil War. No public hearings were held on this bill and its final form was only available to legislators a few days before the debate and vote. Hardly appropriate or proper procedure in considering an issue of such grave significance to future generations and our system of government. After giving the people all the facts and soliciting their thoughts and opinions, let us reconsider the legislation to minimize the damage already done.

Examination of the bill discloses portions that are diametrically opposed to the principles and basic concepts of our democracy based on a majority of votes. When we deviate from the principle of the majority, as we do in requiring accord of two-thirds of the Commission of Judicial Nominations, we are creating a dictatorship by placing the veto in the hands of the appointees of the Governor or Chief Judge of the Court of Appeals. With a quorum of ten, as the

Exhibit D-1

bill provides, three appointees would have veto power over any proposed nominee.

Secondly, I contend that the bill violates the Constitution by limiting the number of names which the Chief Executive of this state may consider for appointment as justices or appointment to any office. The bill further flies in the face of propriety by setting different limits for nominees for judgeships on the same court.

When you combine the two - two-thirds vote plus limitation in number of nominees to be considered, you have created a dictatorship of the elite, the classic definition of fascism.

Considering the constitutionality of the proposal, the amendment calls for well qualified. How then can you establish or limit the well qualified to a fixed number? What happens if one hundred applicants are interviewed and the nominators find that fifty are well qualified? Where in the amendment or bill does it say how the further elimination will take place in order to reduce the fifty well qualified to nine, or seven or three well qualified? When we fix the number we are saying nine or seven or three "best qualified". The Constitutional Amendment clearly says well qualified and makes no mention of best qualified.

We therefore find ourselves in the incongruous position of picking out of fifty well qualified candidates a specific number of the most well qualified because that is what the proposed statute states. Can you or anyone define a set of standards or criteria for the most well qualified? Perhaps we could say those born under the sign of Sagittarius, had blue eyes and were less than five-foot-ten would be "best qualified" of the "well qualified", most likely a choice of the Wall Street board room.

May I further submit that it is an invasion of the appointive pwers of the Governor, your power, to limit the number of well qualified from which to make an appointment. How can the Governor be held accountable to the people if his powers are circumscribed and limited as this bill does? The limitation imposed by this bill is contrary to other constitutional provisions for appointment.

It is provided in Article VI, Section 21 of the Constitution that the Governor appoints judges to fill unexpired terms in Supreme Court, County Court, Surrogate Court, Family Court and others. The principle of appointment is the same in this section as in the new amendment to the Constitution. Nowhere in that section will you find a limitation on the number of names to be considered by the Governor in filling such vacancies.

The Governor presently names or appoints judges to the Court of Claims by power contained in Article VI, Section 9 of the Constitution. Nowhere will you find a limitation upon the number of names which the Governor may consider in naming a judge to the Court of Claims.

Further, the position of the Chief Judge of the Court of Appeals combines the responsibilities of a judge of the Court of Appeals with some administrative duties. However, with the new amendment the powers of court administration are so expanded that the administrative duties of the Chief Judge have become so diminished that in seeking a well qualified Chief Judge, the requirements would concomitant to those of a well qualified associate judge.

Why, then, are not the present sitting judges automatically well qualified? Any other posture creates the theatre of the absurd. Why a different number of nominees for an associate judge than a chief judge as the bill provides?

The disgraceful and repugnant method by which the amendments and implementing legislation was presented to the people and the Legislature has never been equalled, at least in this century. How, in good conscience, Governor could you, the Chief Judge of the Court of Appeals and legislative leaders who participated in this ignominious power grab form such an unholy alliance in the rape of the people?

Surely you are aware of how the shell game operated. In the 1976 Special Session called by you all three amendments were wrapped up in one bill, and over the protests by many members of both houses to separate the issues, passage in this form was accomplished. The proposed changes were advertised to the public as one amendment.

In 1977 a newly elected Legislature in one resolution adopted the proposed changes, but in a manner without precedent the questions were submitted to the people in three separate amendments with an effective date of April 1, 1978.

Careful examination of the records would have disclosed to the Court of Appeals that there were several violations of the people's Constitution, but it is obvious that little effort to establish the truth was exerted by the Chief Judge and architect of the despicable power grab under the guise of court reform.

It is ironic that this country has fought so many wars and so many of our young have made the supreme sacrifice of their lives to make the world safe for democracy and protect the right to vote while the people of New York are excluded by a conspiracy of power hungry, power mad elitists who make the state safe for Wall Street.

Obviously you, or at least you and the Chief Judge, are credited with forcing the Legislature again to vote on all three enabling bills plus additional non-relevant material in one bill, not in three separate parts as had been voted on by the people. Shame, what a reprehensible exertion of power and disregard for the people and their responsibilities.

While the people had an opportunity through public hearings to express themselves on the "concept" of so-called court reform amendments, you know Governor they never had an opportunity in any way to express themselves or be given the facts on the implementing legislation which you must veto or sign.

You have an opportunity to right some of the wrong by a veto of this measure so the people may be apprised of what is being proposed and given an opportunity to express their opinion to their representatives. Your veto message of the implementing legislation last year was very interesting. Perhaps the same ingenious treatment could be applied to this bill.

In still another matter, the extraordinary powers given the Administrative Judge is totally and utterly beyond comprehension unless it is designed to inhibit and impair the independence and integrity of the judiciary statewide. What is being created is a Czar over the entire court system under the semblance of court reform.

I predict that the unnecessary powers in this part of the bill will lead to abuse that will destroy the court system and come back to haunt those who contrived the scheme.

That portion of the bill dealing with the Commission on Judicial Conduct will result in political corruption the like of which this state has never seen before. No judge will be able to remain independent and unfettered in the discharge of his obligations. When we adopt a statute that provides virtually no due process guarantee for any member of the judiciary, as this bill does, we are granting greater protection to the murderer and rapist than to a judge.

It will be only a matter of time before the whole judicial system will be a shambles and tool of a fasciast few. Just imagine a power hungry administrator who wanted to pack all the courts with his political cronies. We have, with this bill, created the perfect vehicle with which to remove from the courts all judges that do not knuckle to or acquiesce to the desires of the hierarchy. It is simple; all the control is in the hands of those with the power to appoint.

In addition Governor, either you or those dealing for you did not wish to give our present Commission on Judicial Conduct, which is only two years old, a chance to see it if could ease whatever ailments affect the judiciary. Why? Because it did not provide enough power to dictate and rule absolute by the zealots?

You can give the system a chance to work and save the system from destruction by a veto of the bill before you and insist that the three parts of the judiciary amendments to the Constitution be considered separately. It is possible to accomplish court reform without destroying the Republic.

Your obligation and mine to our constituents, the people of this state, is to first listen to them, give them all the facts, and then exercise judgment to protect their rights, not to destroy them.

I regret to say that I do not think, at least from the viewpoint of giving the people all the facts, that our responsibility has been exercised in a judicious manner. The legislation before you was conceived in private, behind closed doors, no public hearings were held before the measure was presented to the Legislature with very little notice.

No doubt you will not see this communication, but it will be a matter of record and at least I will be able to face the voters and openly tell them I tried to protect their right of choice which I predict, with the signing of this legislation, will be on the way to annihilation.

Respectfully yours,

Charles D. Henderson

Honorable Hugh L. Carey
Governor, State of New York
Executive Chamber
The Capitol
Albany, New York