

Two Parties Agree to Endorse One Slate of Judicial Candidates

By TESSA MELVIN

WHILE PLAINS voters in the county will face no significant judicial choices in the next three general elections, in the wake of decisions made by the two major political parties.

In an unprecedented step, the Republicans and Democrats have agreed to cross-endorse a group of judicial candidates from both parties for positions that will become available in the next three years. It is an arrangement that the party leaders are hailing as "historic" and that critics are calling a "mockery of the election process."

Leaders of the county's Conservative Party, who said they were unhappy about the arrangement, had initially threatened to nominate a separate slate, but they have not done so. The only opposition the three judicial candidates on this November's ballot will face are two candidates on the Right to Life Party line, a party that normally receives about 3 percent of the vote.

After nearly a year of negotiations, the terms of the agreement were endorsed at party conventions late last month. Candidates for the State Supreme Court and for the County, Family and Surrogate Courts through 1991 have all been cross-endorsed, virtually insuring them of judgeships.

A Look at the Procedure

On the November ballot this year, three seats are available on the Ninth

Judicial District bench of the State Supreme Court. Two Republicans — a White Plains lawyer, Albert J. Emanuelli, and a Supreme Court Justice, Joseph Giudice of Poughkeepsie — and one Democrat — Justice Samuel G. Fredman of White Plains, appointed to the Supreme Court last year — have been cross-endorsed. Mr. Emanuelli and Mr. Giudice have also won Conservative Party endorsement.

The agreement calls for Mr. Emanuelli to resign from the Supreme Court in time to run for the Surrogate Court in November next year, a position for which he is again to be cross-endorsed. Mr. Emanuelli's then-vacant Supreme Court seat is to be filled by a County Court Judge, Francis Nicolai, a Democrat, who will run with bipartisan support.

On the November 1991 ballot, a Republican, Judge Adrienne Hofmann Scancarelli of Family Court, is to be cross-endorsed for re-election and a Yonkers City Court Judge, J. Emmet Murphy, a Democrat, is to receive bipartisan support to run for Judge Nicolai's seat on the county bench.

The Decision Affirmed

Republican and the Democratic party leaders in the county affirmed their decision in a joint resolution as the "furtherance of a mutual interest to promote a nonpartisan judiciary populated by lawyers with universally acclaimed litigation skills, unblemished reputations for character and judicial temperament and distinguished civic careers."

Richard L. Weingarten, chairman of the County Democratic Commit-

tee, said last week that "the public has no interest in the judicial process; although the people on the bench have more impact on peoples' lives than legislators do."

Because the public's only role in judicial elections is to "rubber stamp leaders' choices," Mr. Weingarten said, cross-endorsement is a good idea "when uniquely qualified individuals are available, as they are now."

Cost of Election Cited

Anthony J. Colavita, chairman of the County Republican Committee, described the agreement as a major step toward a nonpartisan judiciary. And he added that it removes the need for a contested election that he said was "terribly costly" to the candidates. The agreement, he said, is "in the best interest of the people because of the exceptionally qualified candidates available."

Janet A. Johnson, the former dean of the Pace University Law School in White Plains, is one of several legal scholars in Westchester critical of cross-endorsement.

"I'm not questioning the competency of the judicial candidates involved," Ms. Johnson said. "But this arrangement really brings out the worst of both systems, electoral and appointive. There's no way for the voters to express their choice and there's no screening process. We're talking about a substantial loss of judicial prerogatives."

Lawyers Call for a Challenge

A group of lawyers are attempting to mount a legal challenge to the arrangement, which one lawyer, Doris L. Sassower, described as a "distortion of the democratic process."

The party leaders say the agreement will promote a nonpartisan judiciary.

In a letter mailed last week to more than 100 political scientists and lawyers in the county, the informal proposition group has called for the establishment of a pre-nominating screening committee to review the credentials of all those interested in seeking judicial office in the county.

"Under this arrangement, the public has no choice on Election Day but to choose lever A or lever A," said Eli Vigliano, a White Plains lawyer who is coordinating the group. Most lawyers in the county are "not in a position to challenge this outrage," he said, because "they must appear before these judges."

After his 39 years in practice, Mr. Vigliano said, "I've reached the stage where I am sufficiently secure economically that I can mount a campaign."

Appointive Plan Backed

A spokesman for the Westchester Bar Association said last week that the organization could not comment on the cross-endorsement arrangement because its president, Gloria C. Markison, was out of town. Marianne L. Sussman, president of the Westchester Women's Bar Association, also had no comment and added that

the group would conduct its usual judicial screening process.

Advocates of court reform in the state have long sought to replace the state's method of electing judges with an appointive plan, an effort state legislators have repeatedly rejected, arguing that an appointive system would deprive voters of their right to a choice.

But the leader of the effort to appoint judges, Sol Wachtler, Chief Judge of the Court of Appeals, the state's highest court, said the legislators were wrong. "The reason no appointive process has gotten through the Legislature is that the political parties want to have the final say about who is going to be the judge," he said.

Under the present elective system, voters do not focus on a judicial candidate's credentials, Judge Wachtler said. Once political leaders admit that voters in judicial elections have no choice, as he said political leaders in Westchester had done, "then they should go to the appointive process."

Although an appointive system would still not give voters a choice, Judge Wachtler said, the process would provide a bipartisan screening

panel to identify the candidates with the best credentials.

The appointive process is now used to identify candidates for the Court of Appeals, a measure approved by state voters in 1978. Judge Wachtler said he was optimistic that one day all the state's judges would be appointed. "If you think the voters want to retain the present system, then put it on the ballot and let's see," he said.

Profiles of the Candidates

Mr. Giudice has been a judge since 1961, when he was elected as a Children's Court Judge in Dutchess County. He then served four years as a Family Court Judge and 11 years as County Court Judge before being elected to the Supreme Court in 1976. He is a graduate of the New York

University School of Law.

Mr. Fredman was appointed to the Supreme Court bench this year by Gov. Mario M. Cuomo to fill a vacancy. He is a former partner in the White Plains firm of Fink, Weinger, Fredman, Berman, Lowell & Fensterheim, and a graduate of the St. Johns University Law School. For four years, ending in 1979, Mr. Fred-

man served as chairman of the Westchester County Democratic Committee.

Mr. Emanuelli has been a trial lawyer in White Plains for 23 years, specializing in matrimonial law. A graduate of the St. Johns University Law School, Mr. Emanuelli is making his first bid for judicial office.

The Right to Life Party candidates

include Terrence J. Dwyer, a Valhalla resident and lawyer with offices in Bronxville, who also has the endorsement of the Conservative Party. For 21 years, he served as a trial lawyer for the Aetna Casualty Company. Mr. Dwyer graduated from Fordham University, and received his law degree from the St. John's University Law School.

August C. Nimphius Jr. is also running on the Right to Life Party line. A lawyer with a practice in Pelham, Mr. Nimphius is the leader of the Conservative Party in Pelham, but he is running without that party's endorsement. A graduate of the Columbia School of General Studies, Mr. Nimphius attended the Columbia University Law School for two years. ■

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EXHIBIT 3E