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Wider Selection Urged for Governor

To the Editor:

Governor-elect Cuomo's reservations regarding the names submitted to him for appointment to the Court of Appeals is well taken. State Constitution Article 6, Section 2, Sub. (c) empowers the commission "... to evaluate the qualifications of candidates for appointment to the court of appeals and to prepare a written report and recommend to the governor those persons who by their character, temperament, professional aptitude and experience are well qualified to hold such judicial office. The legislature shall provide by law for the organization and procedure of the judicial nominating commission."

The Constitutional provision directs only that the commission "report and recommend to the Governor those persons" etc. Should the commission be presented with an embarrassment of riches, it might well recommend a score of names and leave the political, geographic, ethnic and sexual decisions to the Executive, where the Constitution has vested them, and where they legitimately belong. What the Legislature has done, by the device of limiting the recommendation to "at least three persons and not more than five persons," is to turn a screening commission into a nominating commission.

Moreover, in an area where "sunshine" should be the rule, the Legislature has made confidentiality a central aspect of commission procedure. We are not told why the anointed were preferred over others. What we have is twelve commission members accountable only to each other, capable of maneuvering their own predilections before an Executive. The Governor, under the Constitution, is entitled to greater scope than the Legislature has granted him.

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EXHIBIT E-1