



Perspective

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In voting for judges this year, 5 + 6 equals zero and so does 10

By Eli Vigliano

On Election Day next week, almost a million voters in Westchester, Putnam, Dutchess, Rockland and Orange counties (the Ninth Judicial District) will find they have been effectively disenfranchised from exercising voting rights guaranteed by the Constitution. The same names, Francis Nicolai and Howard Miller, appear as candidates for the Supreme Court in Columns 5 and 6 on the major party lines of the ballot. Thus, two of the three Supreme Court vacancies have already been filled by the Republican and Democratic County leaders by the



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GUEST COLUMN

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back-room "cross-endorsements" deal (the "Three Year Plan") they negotiated last year.

In Westchester, voters will see the same name, Albert Emanuelli, for surrogate throughout column 10. Does the name sound familiar? It should. Last year, as part of the same cross-endorsements deal, Republican Emanuelli ran, unopposed, for Supreme Court judge, a 14-year term. The deal required him to resign this year to create a vacancy for Democrat Nicolai to fill. He kept his word to the party leaders and resigned after eight months in office, to run, as scheduled, for the Westchester surrogate vacancy. The leaders trusted Emanuelli to keep his word. As one of the conditions of the nomi-

nation, he, along with the other judicial nominees, also had to pledge to divvy up their patronage appointments, so that the faithful in both parties would be equally rewarded.

The purpose of this political deal was to ensure Republican control of the Westchester surrogate's office, which offers the greatest opportunity for political patronage. By 1987, Westchester's changing party affiliation already showed that registered Democrats had become the numerical majority, and the Republicans needed a deal. The Democrats were ripe for it. Registered Republicans still far outnumbered Democrats in the four other counties comprising the judicial district. Without a deal, Democratic candidates to the Supreme Court (elected by the judicial district) had little hope of election.

The leaders proclaimed the political deal they struck, purely for party considerations, as a "historic" event "in furtherance of good government."

The Gannett Westchester Newspapers fell for this "window dressing" and publicized it as good for the people.

What's good about politicians bartering three judgeships last year, two this year, and two next year? Should this kind of barter become an acceptable exchange, the leaders' "Three-Year Plan" of 1989 may in 1992 become a "Five Year Plan" or a "Plan for the Decade." Under the Election Law, it is a felony to procure a public office or nomination thereto for "valuable consideration."

The party leaders' definition of "merit selection" is party loyalty, first and foremost. The party leaders and the judicial nominees made a deal that violates not only the Election Law prohibiting corrupt political practices, like trading judgeships, but also ethical rules prohibiting acts compromising the independence of the judiciary.

The Ninth Judicial Committee is

a grass-roots group of citizens, lawyers and non-lawyers, opposed to political leaders secretly deciding who our judges will be and using the public as a mere rubber-stamp.

Our committee came into being to take action against the insidious perversion of our democratic process, represented by the Three Year Plan, as well as the flagrant Election Law abuses that occurred in the conduct of the judicial nominating conventions of both parties in 1989 and 1990. These violations, as well as the cross-endorsements contract, are contrary to law and public policy and should disqualify the nominees from the offices they seek.

The far-reaching case of *Castrocan v. Colavita*, now pending in the Appellate Division in Albany, is our legal challenge to these illegal nominations, which we are seeking to invalidate. The judicial nominees fought bitterly against the court's

giving the case the normal preference accorded Election Law cases so as to prevent its being heard and decided before Election Day. They have won that reprieve — despite an urgent plea from the New York State League of Women Voters that such preference be given and the issues addressed squarely on the merits.

Because of the cross-endorsements deal, the judicial nominees of columns 5 and 6, and, in Westchester, column 10, will become judges even without your vote. Your vote means zero. Therefore, the only choice voters have in those columns is not to vote. Just skip over columns 5 and 6 — and, in Westchester, skip Column 10. Register your protest by not voting for these judges. The more abstentions, the louder and clearer the public's voice — a voice that says "No Deals" — so that the Court of Appeals and the state Legislature will listen.