

Bipartisan deal judged to be in trouble

Janet Johnson, retiring dean of Pace University School of Law, recently wrote a guest column criticizing a proposed arrangement revealed last month in this column — she called it “deal” — in which the Westchester Democrats and Republicans would cross-endorse specific judicial candidates.

She said the cross-endorsement of judiciary candidates gives us the worst of both systems. Although she personally prefers the appointive system over the election system for judges — and so do I — she wrote, “there is no contest when both major parties agree on a candidate for judicial office. Voters simply have to rubber-stamp the parties’ pre-selected choice.”

Johnson had no quarrel with the particular people selected for judicial offices, all with fine reputations. She didn’t like it because candidates were being picked during private negotiations by the “bosses” of the two political parties, and the public was excluded.

Her views may prevail after all. The proposal began to come apart even before her piece was published.

For one, the “bosses” are not the king-makers she wrote about. Republican Chairman Anthony Colavita and Democratic Chairman Richard Weingarten have been unable to dictate terms to other party officials. Problems have arisen in both parties and, in some cases, among the proposed judges themselves.

To summarize the proposal: This year, Republicans would cross-endorse Democratic Supreme Court Justice Samuel Fredman of Westchester, serving by appointment, for election to a full term, and in return the Democrats would endorse Republican Supreme Court Justice Joseph Giudice of Dutchess County, who is completing his first 14-year term, and also would endorse a so-called player to be named later — a Republican for the seat being vacated by Republican Justice Harold Wood of Westchester, who is reaching retirement age this year.

Next year, Democrats would cross-endorse Republican Supreme Court Justice Nicholas Colabella of Westchester for surrogate to succeed Republican Surrogate Evans Brewster, who reaches the retirement age at the end of 1990. Colabella would have to resign his present post in September and remain off the bench for four months.

Westchester County Judge Francis Nicolai,



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a Democrat, would then be cross-endorsed by Republicans to run for Colabella’s vacated seat on the state Supreme Court. The next year, 1991, according to the scenario, Democrat Emmet Murphy, chief city judge in Yonkers, would be cross-endorsed by both parties to run for Nicolai’s vacant seat on the county bench.

From a political point of view, the arrangement makes lots of sense. Republicans have controlled the surrogate position since the Ice Age — except in 1957 when Democratic Gov. Averell Harriman appointed the late George Brenner to fill a vacancy. The surrogate court has been a huge patronage plum for Republican lawyers — although Brewster has greatly cleaned up the system, reaching out to award some special guardianships to Democrats, women and minority lawyers, as well as to the dominant Republicans.

Republicans value the surrogate position so highly that in 1983 they did the unthinkable — cross-endorsing Democrat Lawrence Martin, a county judge, for Supreme Court, in return for Democratic endorsement for Brewster. Republicans are worried that in 1990, a gubernatorial year, anything can happen, and that includes losing surrogate.

Democrats also have reasons for pursuing the arrangement so vigorously. That’s because of Fredman, a former Democratic chairman who has done so much for his party for about three decades, not to mention accomplishments in civic life and the legal profession. The outpouring of people of all political persuasions at Fredman’s induction was unmatched by any court induction in memory.

Why then is the proposal coming apart? For one, Colabella doesn’t like the idea of quitting the bench for four months next year to create a vacancy for Nicolai while Colabella runs for Supreme Court. Republican want to accommodate Colabella by suggesting that

Nicolai not run for Supreme Court next year but wait until Colabella’s vacancy occurs Jan. 1, 1991.

At that time, the Republicans say, Gov. Cuomo can appoint his fellow Democrat Nicolai to fill the vacancy, and both parties can endorse Nicolai for election in November of 1991.

Nicolai, understandably, has reservations, too. For one, there is no guarantee Cuomo would still be governor in 1991, or for that matter whether he would appoint Nicolai to the vacancy. Cuomo does have his own judicial screening committee.

Some other Democrats have their own reservations, contending that they won’t have a voice in selecting the Republican who will be chosen by GOP leaders to succeed Wood, the player to be named later. Also, they point out that Fredman, who is 65, could serve only five more years as an elected justice, and that Republicans could gain back the seat in the election of 1994.

The whole thing might look capricious to Janet Johnson and perhaps others, but the fact is that there really isn’t a true election system for judges now. The political leaders control the nominators and the nominations. At least, under the arrangement (or deal), good and experienced judges wouldn’t have to undergo the indignity of running for re-election by leaving the non-partisan arena for the political arena. They wouldn’t have to solicit campaign funds from the very lawyers who appear in the courts because few other people contribute to judicial campaigns.

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I was in error Wednesday in saying that Mount Pleasant Town Clerk Kathryn Fries and Highway Superintendent John Maxwell filed disputed Conservative party authorization certificates with the Board of Elections. Only Supervisor Michael Rovello and three other members of his Republican team filed the certificates for Conservative nomination after Conservative County Chairman Vincent Natrella wrote and said the authorizations were issued in error.

Milton Hoffman is senior editor and politics writer.

EXHIBIT 3B