



MEMORANDUM OF OPPOSITION – A.3866-A

March 13, 2009

A.3866-A – Lancman (Co-sponsors: Perry, Gordon, Skartados, Titone; Multi-sponsors: Brennan, John, Kellner, Lifton, Meng, Stirpe)

Summary

This bill amends §63.1(2) of the Judiciary Law regarding vacancies in the office of chief judge or associate judge to require the Commission on Judicial Nomination (Commission) to recommend to the governor all well qualified persons instead of a set number as currently prescribed by law. Such persons would only have to meet the criteria set for in subdivision 1 of the law, which describes qualified candidates as those who “by their character, temperament, professional aptitude and experience are well qualified to hold such judicial office.”

Statement of Opposition

Citizens Union opposes A.3886-A because it would eliminate from the responsibilities of the Commission’s core and essential function to serve as an independent nominating commission, limiting its role to that of a screening commission. Citizens Union would rather see improvements in the Commission’s rules that would ensure greater confidence in the diversity of its nominations.

The law currently requires the Commission to provide a list of seven candidates to the Governor for appointment to fill a vacancy for chief judge, and three to seven candidates to fill a vacancy for associate judge, of the Court of Appeals, which Citizens Union believes allows for the proper separation of powers between the executive and judicial branches as the Governor is appropriately prevented from making a direct political appointment to the Court of Appeals. Citizens Union supported the creation of the Commission via constitutional amendment in 1977, as this important reform changed the method of selection of Court of Appeals judges from partisan elections to the current nonpartisan, independent process. We continue to believe that the Commission has led to the creation of a more diverse court and a respected process that has worked efficiently and effectively to fill vacancies in the Court of Appeals. It is worth noting that prior to the 1977 amendment, the Court of Appeals was composed entirely of white men. Today’s Court is significantly more diverse with three females, one African-American and one Latino sitting among the seven judges.

While Citizens Union recognizes, and shares, the concerns raised that the current Commission could have done more to recommend a more diverse set of nominees for the position of Chief Judge, we do not believe that the Legislature should amend the law to change the nomination process to allow the Commission to forward all “well qualified candidates” to the Governor. Rather, the Legislature should encourage the Commission to consider other ways to improve its internal nominations process. We are concerned that altering the current process to allow the Governor to choose from an unlimited list of all qualified candidates would permit the Governor to select a predetermined candidate, who after applying to the Commission would only be vetted for minimum qualifications. In order to maintain

needed independence while ensuring greater diversity, Citizens Union recommends that the Commission:

- (1) engage in greater outreach to ensure that the pool of applicants is sufficiently large and representative of the state; and
- (2) change its rules to require consideration of diversity in its evaluation of candidates.

We urge the Legislature not to pass this legislation. Citizens Union appreciates the opportunity to share its views and would welcome the opportunity to work with the Legislature, the Commission and other interested parties to develop procedures and rules to achieve greater diversity in the Court of Appeals.