



July 27, 2006

Honorable George E. Pataki
Governor of the State of New York
Executive Chamber, State Capital
Albany, New York 12224

Re: Appointment to the New York Court of Appeals

Dear Governor Pataki:

On behalf of the Fund for Modern Courts, we write to urge you to be mindful of diversity in the Court of Appeals. The Fund has long held the view that a judiciary which reflects the broad diversity of the state enhances public confidence in the administration of justice.

As a private, not for profit, non partisan organization, Modern Courts is dedicated to improving the administration of justice and advocating for reform of New York's judicial selection process. For more than fifty years, Modern Courts has participated in every significant judicial reform effort in New York State.

The most significant reform of the judicial selection process was the 1977 Constitutional amendment establishing a commission-based appointive system for the selection of judges of the Court of Appeals. The bipartisan support of the amendment and subsequent legislation derived from the belief that this system would eliminate the role of money, reduce the influence of politics, provide for the most highly qualified judges and, finally, promote diversity. You may recall that part of the impetus for this reform was the defeat in the early nineteen-seventies of the late and beloved Judge Harold Stevens, the first African-American to serve on the New York Court of Appeals, by an extremely well-financed campaign by an attorney with no prior judicial experience.

Modern Courts has long believed that the best opportunity for an appropriately diverse judiciary was through a commissioned-based appointive system, especially where the appointing authority was the Governor, who represents all the people of our state. In your 2006 State of the State Address, you recognized the importance of diversity when you said to the members of New York's legislature,

"The array of faces reflects the source of New York's distinctive greatness – men and women from every corner of our geographically diverse state; Americans whose

families came from every corner of the globe; individuals whose respective ethnic traditions, cultures and religions combine to form the most vibrant glorious people in the world... We all bring something unique to this chamber – the products of our own individual backgrounds and experience: our own outlook, our own value system, our own inspirations that led us here.”

In the same way that a diverse legislature serves the people of the State of New York well, so does a diverse judiciary. Where the judiciary does not reflect the diversity of the community it serves, public confidence in the judiciary is undermined. For example, in a survey sponsored by the Commission to Promote Public Confidence in Judicial Elections and conducted by the Marist Institute for Public Opinion, registered voters were asked how fair and impartial New York State judges were. Seventy-one percent (71%) of registered voters throughout the state agreed that New York State judges as a whole are fair and impartial. However, there was a racial divide, with only fifty-one percent (51%) of African-American voters agreeing that judges are fair and impartial.

Concern has been publicly expressed about the very limited diversity in your appointments to the four departments of the Appellate Division. Because appellate justices often become candidates for the Court of Appeals, a lack of diversity in those appointments may well impact on the pool of candidates recommended by the Commission on Judicial Nomination. Indeed, that is the current case – six of the seven excellent candidates for the Court of Appeal vacancy are Appellate Division justices; none would maintain the diversity now found in our Court of Appeals.

Modern Courts calls upon you as our Governor and as the appointing authority for the Court of Appeals, to ensure that our highest court maintains its diversity, as well as its excellence and independence.

Respectfully yours,

Victor A. Kovner
Chair

Milton L. Williams, Jr.
Chair, Executive Committee