BEFORE THE NEW YORK STATE SENATE
STANDING COMMITTEE ON THE JUDICIARY

PUBLIC HEARING:

TO CONSIDER THE NOMINATION OF MICHAEL J. GARCIA

FOR ASSOCIATE JUDGE OF THE NEW YORK STATE

COURT OF APPEALS

New York State Capitol Building
172 State Street - Room 124 CAP
Albany, New York 12247

February 8, 2016
12:30 p.m. to 1:30 p.m.

PRESIDING:

Senator John J. Bonacic
Chairman

COMMITTEE MEMBERS PRESENT:

Senator George A. Amedore, Jr.

Senator Philip M. Boyle

Senator Thomas D. Croci

Senator John A. DeFrancisco

Senator Ruben Diaz

Senator Kemp Hannon

Senator Ruth Hassell-Thompson (RM)

Senator Brad M. Hoylman

COMMITTEE MEMBERS PRESENT (Continued):

Senator Michael F. Nozzolio

Senator Thomas F. O'Mara

Senator Michael H. Ranzenhofer

Senator Diane J. Savino

Senator Susan J. Serino

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SENATOR BONACI: Okay. Can I have your attention.

My name is Senator Bonacic. I chair Senate Judiciary.

We're going to start the public hearing today.

We gave a notice, issued on January 29, 2016, pursuant to Section 104 of the Public Officers Law.

We're here today for the public hearing, pursuant to Governor Cuomo's nominee for associate judge of the Court of Appeals, Michael Garcia.

At this time, we're going to wait for Ruth, so I won't acknowledge her now.

This hearing is the sixth vacancy on the Court of Appeals that the Judiciary Committee has considered since 2013. The seat became vacant due to retirement of Judge Susan Read.

We thank Judge Read for her years of service to this bench.

Before I ask the witnesses to come up, who will testify, let me acknowledge the Senators that are here:

Senator Diaz, Senator Nozzolio, Senator Boyle, Senator Hoylman, Senator Serino, Senator Breslin.

I think we have enough for the public hearing.

We have two witnesses, the witnesses appearing for the Committee.

Number one, Vincent Doyle III, past president of the New York State Bar Association, and current chair of the association's committee to review judicial nominations.

Vincent, good afternoon.

VINCENT DOYLE III: Good afternoon, Senator Bonacic, members of the Senate Judiciary Committee, ladies and gentlemen.

As the Senator just indicated, my name is Vincent Doyle. I am a past president of the New York State Bar Association. I'm the current chair of the association's committee to review judicial nominations.

It is my privilege to appear before you today in support of the appointment of Michael J. Garcia as associate judge of the New York State Court of Appeals.

On behalf of the association, I thank you for the opportunity to testify concerning Mr. Garcia's qualifications for the Court of Appeals.

In testimony just last month on

Chief Judge Janet DiFiore's nomination, our state bar president, David P. Miranda, outlined the process by which our association evaluates Court of Appeals candidates.

In the interest of time, I will not repeat that testimony here. It is in my written testimony.

Following those procedures, however, after Mr. Garcia was selected as a candidate by the commission on judicial nominations, Mr. Garcia's qualifications were evaluated by our committee, in accordance with our procedures, and, he met with our full committee.

As a result of our investigation, and interview, it was the opinion of our committee that Mr. Garcia is "well qualified" for the position of associate judge of the Court of Appeals.

"Well qualified" is our highest rating.

Mr. Garcia possesses strong skills that we believe will serve him well as an associate judge.

Since 2008, he has been a partner at Kirkland & Ellis, LLP, where he established a pro bono criminal-defense program, and received awards from the Legal Aid Society for outstanding pro bono service.

Previously, he served as United States

Attorney for the Southern District of New York, a 250-lawyer office.

Earlier in his career, he served in several positions, within the U.S. Department of Justice, and the Department of Homeland Security, as well as nine years as an assistant U.S. attorney.

He was his law-school class valedictorian.

And I'm pleased to note that he served two years as law clerk to then-Associate Judge Judith S. Kaye.

And, of course, the association joins New York's legal community, and the state as a whole, in mourning Judge Kaye's recent passing.

Mr. Garcia has been active in the New York State Bar Association.

In 2010, he co-chaired our association's task force on government ethics, which published a report containing a number of recommendations to help restore public confidence in governmental institutions.

On behalf of the New York State Bar Association, I am pleased to endorse Michael Garcia's appointment to the Court of Appeals, and urge confirmation of his appointment.

Thank you for your attention, and for

inviting participation by the New York State Bar Association in this important process.

SENATOR BONACI: Thank you very much, Mr. Doyle.

We've been joined by Senator Croci, Senator DeFrancisco.

Does anyone have any questions of Mr. Doyle?

Hearing none, I think you're finished, and thank you very much for your report.

VINCENT DOYLE III: Thank you, Senator.

SENATOR BONACI: Before I call up our second witness, I circulated the resume of Mr. Garcia to the Judiciary Committee on Monday, February 5th, to provide an overview of the nominee.

Based on my review of the candidate prior to this hearing, I think Governor Cuomo has nominated an outstanding, impressive judicial nominee, with extensive experience in criminal and regulatory laws, as you will hear today.

Not to repeat some of the things that Mr. Doyle said, but, I just would like to point out some of the highlights that struck me.

As been said, he has served as a clerk to the late-Judge Judith Kaye.

He was nine years as a federal prosecutor in the U.S. Attorney's Office in Manhattan, from 1992 to 2001.

There, he personally prosecuted a number of high-profile cases involving national security, including the 1993 terrorist bombing of the World Trade Center, and the 1998 bombings of the U.S. embassies in East Africa.

For his work on these cases, he was twice awarded the Department of Justice's "Exceptional Service Award," the DOJ's highest honor.

He led various executive-branch enforcement agencies, including Secretary for "ICE," which stands for "Immigration and Customs the Enforcement," within the Department of Homeland Security, where he oversaw 20,000 employees, from 2001 to 2005.

He served as the United States Attorney from 2005 to 2008, where he supervised numerous public-corruption matters involving state, local, officials, fraud, and chaired the Attorney General's Advisory Committee on Terrorism and National Security.

He currently works as a partner in Kirkland & Ellis, LLP, in New York, where he has

been for the past 6 1/2 years.

Interestingly, he served as independent chair of the investigatory chamber of the Ethics Committee of FIFA, investigating corruption in World Soccer, from 2012 to 2014.

He served as vice president of the Americas for Interpol, the international police organization.

I mean, what a varied background; very diversified, and experienced.

That said, we're charged with the duty of doing our due diligence.

And, at this time, let me call up Evan Goldberg, on behalf of the New York State Trial Lawyers Association.

Evan, good afternoon.

VINCENT DOYLE III: Good afternoon, Mr. Chairman.

Esteemed members of the Senate Judiciary Committee, good afternoon, all.

My name is Evan Goldberg. I'm the president of the New York State Trial Lawyers Association, and I appear here today on behalf of the NYSTLA Board of Directors, and our 3500 attorney members who have -- who practice in trial and appellate courts

throughout New York State.

Thank you, Chairman Bonacic, for inviting us to participate today, and for this opportunity to speak in support of Governor Cuomo's nomination of Michael Garcia for associate judge of New York State Court of Appeals.

For 60 years, NYSTLA has fought to protect equal access to the civil justice system for all New Yorkers.

The constitutional right to a trial by jury is the foundation of that equal access.

The appointment of a new judge to the Court of Appeals is of great significance to NYSTLA.

The legal rights of hundreds of thousands of ordinary New Yorkers that NYSTLA members represents depend on judicial restraints, and careful application of the law, by each member of the court.

NYSTLA's judiciary committee had the honor of interviewing all the candidates recommended by the New York State Commission on Judicial Nomination, to fill the vacancy created by the retirement of Judge Susan Read.

The panel was impressed by Michael Garcia's commitment to ethics, and the fair interpretation of the law.

The committee rated him as "qualified" and "recommended."

Mr. Garcia has a distinguished legal record.

His CV, as the Chairman noted, is too full of noteworthy and diverse acts and accomplishments to go through in my testimony, but I would like to focus on a few important aspects.

Michael Garcia has proved himself to be a national and international expert on the law.

He has served on the President's Corporate-Fraud Task Force, and the Attorney General's Advisory Committee on White-Collar Crime, and chaired the Attorney General's Advisory Committee on Terrorism and National Security.

He led critical national-security agencies, working domestically and abroad, to ensure the safety of our country.

Court of Appeals judges must rule on a wide breadth of legal matters.

In his tenure as a United States attorney, Michael Garcia supervised not only criminal cases, but a 50-lawyer civil division.

His law-enforcement experience ranges from

prosecuting terrorists, to international fraud investigations, and serving as vice president of the Americas for Interpol.

His broad range of public and private-sector experience will give him important insight into the variety of cases that will be decided by the court.

In conclusion, Governor Cuomo has made a worthy choice in his nomination for associate judge.

We welcome Michael Garcia's commitment to justice and ethics, and look forward to his confirmation as an associate judge of the New York State Court of Appeals.

And thank you, all, for the opportunity again to testify today.

SENATOR BONACI: Thank you, Mr. Goldberg.

Senator DeFrancisco.

SENATOR DeFRANCISCO: I -- I've got a letter, indicating a group of judges, whether they were qualified/highly qualified; recommended/highly recommended.

And --

EVAN GOLDBERG: Our letter?

SENATOR DeFRANCISCO: -- you know the letter I'm talking about?

EVAN GOLDBERG: Yes, our letter.

I can see it.

SENATOR DeFRANCISCO: Okay, you -- okay.

What's the difference between "recommended" and "highly recommended"? What's the criteria?

EVAN GOLDBERG: Well, what I can tell you is that, in Mr. Garcia's case, he'd appeared before us, seeking nomination as chief judge to the New York State Court of Appeals.

Mr. Garcia had never been a judge before.

We interviewed him; we found him to be "qualified," and recommended him to be appointed as chief judge of the state of New York.

After that decision was made, when the screening panel once again reconvened to interview candidates for the vacancy created by Judge Read's departure, Mr. Garcia was given the opportunity to come back again, and to revisit his recommendation.

But Mr. Garcia was happy with the recommendation, and elected to maintain it.

SENATOR DeFRANCISCO: Okay, but, just -- I don't want to beat the -- a dead horse, but, are there certain -- are there certain guidelines which would make someone; for example, Erin Perada (ph.) -- Peradido (ph.) --

EVAN GOLDBERG: Paradato.

SENATOR DeFRANCISCO: -- Paradato, "highly qualified" and "highly recommended," what -- what factors made her "highly qualified"?

EVAN GOLDBERG: Well, I can't go into --

SENATOR DeFRANCISCO: Or "highly recommended," (unintelligible) to this record --

EVAN GOLDBERG: There's no -- there's no checklist, Senator, as to what makes one "highly qualified," what makes one "qualified."

I will point out that Justice Erin Paradato was a sitting justice of the Appellate Division, with extensive appellate-court experience, and that is something that weighed heavily into the committee's consideration.

SENATOR DeFRANCISCO: Okay.

Thank you.

SENATOR BONACI: Anybody have any other questions of Mr. Goldberg?

Senator Diaz.

SENATOR DIAZ: Yeah, I just -- I just wanted to follow up on (unintelligible) question.

When you say "qualified," or "recommended," so that -- you mean that you are the one to pick -- the trial lawyer are the one to pick, you are the one to pick Michael Garcia?

EVAN GOLDBERG: We -- we are -- unfortunately, we're not the ones to pick.

All we do is --

SENATOR DIAZ: No, no. (Unintelligible) you all the one to pick --

EVAN GOLDBERG: All we do is give ratings.

SENATOR DIAZ: -- you all are the one to pick.

So when you say "highly qualified" or "highly recommended," against "qualified" and "recommended," that mean that you support -- you the one in charge of picking, you will not choose Michael Garcia?

EVAN GOLDBERG: For the chief judge position, during which Mr. Garcia received the "qualified" and "recommended" rating, there were other --

SENATOR DIAZ: That is not my question.

I am not a lawyer, but that is not my question.

My question is: "Qualified" -- "qualified" and "recommended," versus "highly qualified" and "highly recommended," you are the one to pick among those, who will you pick?

EVAN GOLDBERG: I would have -- I would have to look at all the factors, so -- Senator Diaz.

I -- it's not our position to make the pick.

We rate the candidates, based upon their experience --

SENATOR DIAZ: When you -- when we --

EVAN GOLDBERG: -- based upon their writings, based upon how they interview with us, and express their thoughts and viewpoints concerning legal processes, legal principles, and their willingness to --

SENATOR DIAZ: But you was -- you look into all those thing when you was interviewing, so before you make a recommendation?

EVAN GOLDBERG: Of course we do.

SENATOR DIAZ: Well, then -- then, answer my question.

EVAN GOLDBERG: This was the first time that Mr. Garcia had appeared before us.

Oftentimes, candidates start out at a certain rating, and then change their ratings upon repeat visits to our screening committee.

And in this case, Mr. Garcia had not returned.

SENATOR DIAZ: What were you -- why were you feeling -- let's go in the limbo here.

What would you say, what would you think, would the reason why, among, one, two, three four,

"highly qualified" and "highly recommended," they going to choose only one -- the one that says only "recommended"?

EVAN GOLDBERG: I'm certain, Senator Diaz, that you would have to ask the Governor that question, as to why he made his selection.

We weren't the only ones to issue --

SENATOR DIAZ: You said -- will you -- will you say because he's the only minority there?

EVAN GOLDBERG: I have no idea.

SENATOR DIAZ: Would you think that would -- that would carry its own weight, being the only Hispanic minority?

EVAN GOLDBERG: I -- I have no -- I'll tell you that that does not factor into our consideration, Senator, when we rate candidates for judicial appointments.

We rate them upon what's before us.

The interviewing, the writings, their legal philosophy; what comes before us.

SENATOR DIAZ: How many -- how many Hispanic?

EVAN GOLDBERG: I'm aware --

SENATOR DIAZ: And I would like to see Hispanic, but I don't like to see this thing here, like you say, four of them, "highly qualified" and

"highly recommended," and then the other Hispanics say "qualified" and "recommended," (unintelligible) one.

I don't -- you know, it doesn't feel right.

EVAN GOLDBERG: Senator, I'm going to tell you that my children are half Hispanic. My wife is from Ecuador.

And I would like nothing more than worthy Hispanic candidates to be on the bench.

My father was a Supreme Court justice in the state of New York.

I have tremendous respect for the judiciary.

And I can assure you that the process was fulfilled.

SENATOR DIAZ: How will you feel --

SENATOR BONACI: Last question, Senator.

SENATOR DIAZ: -- last question: How will you feel if you were one of those judges, one of the four that are "highly qualified," "highly recommended," and you were not the judge -- and you -- and you passed -- you have passed for one that is only "qualified" or "recommended"?

How would you feel if you were the one of the four?

EVAN GOLDBERG: Well, the New York State

Trial Lawyers, Senator, is not the ultimate arbiter as to who is "highly recommended" or "highly qualified."

We issued our recommendations.

And as to how candidates feel?

I'm sure that candidates, having put forth their candidacy, were disappointed in not receiving the nomination from the Governor.

But, I'm not answering that question.

SENATOR DIAZ: Aren't we always supposed to always to choose the best among everything?

Aren't we supposed to do the best qualified; the "highly qualified" and "highly recommended"?

EVAN GOLDBERG: I think, in this case, Senator, we were very fortunate to have a number of "bests," and we had many fine candidates to choose from.

And I think New York State is very lucky and fortunate that the Court of Appeals has been constituted with qualified members who are going to do justice for the people of the state of New York.

SENATOR BONACI: Okay. We would like to move on.

Anybody have any other questions of Mr. Goldberg?

Hearing none, thank you very much.

And we're joined by four other Senators:

Senator O'Mara, Senator Amedore, Senator Ranzenhofer, and our Ranking Member of Judiciary, Hassell-Thompson.

In addition to these two speakers, we've had quite a bit of written submissions, and let me just put them in the record.

Letter of support from Carol Robas -- Roman, president and CEO of the Women's Legal Defense and Education Fund, submitted February 4, 2016.

Submission by Carol Nowe (ph.), in opposition to the judicial system, in general, submitted February 5th of 2016.

Submission by James Brady, in opposition to the judicial system, and the nominee, submitted February 5, 2016.

Letter of support from Betty Lugo, president of the Puerto Rican Bar Association, submitted February 5, 2016.

Letter of support from Kevin Gomez, submitted February 6, 2016.

And, letter of support from the El Museo del Barrio, submitted February 8, 2016.

We have a submission from the Center for

Judicial Accountability, in opposition to the judicial system, and the judicial pay raises, submitted February 8, 2016.

At this time, we welcome our ranker, Senator Ruth Hassell-Thompson, who will now address the Judiciary Committee.

SENATOR HASSELL-THOMPSON: Thank you, Mr. Chairman.

I won't take very long.

I will say to you that this is the last time I will take a constituent before any hearing that may come, which delayed me.

And I do apologize to all for that, but my constituents continue to be important as well.

Each time we've come to participate in the role of appointing, and hearing recommendations from the governor, on nominees to any of the courts; but, particularly, to our Court of Appeals, I would hope that all of us do so thoughtfully and with great care.

I have been branded with the term "social engineering," and it is one that I have no embarrassment for accepting that title, primarily because, until we get to the point that we no longer have the necessity to ensure that there is a balance

of diversity.

It's very interesting that when people of color talk about diversity, it becomes social engineering; but, yet, I've sat for -- my -- ancestrally, for hundreds of years, and watched this -- this bench, and others, not be reflective of the needs, and certainly of the ethnicity and culture, of the people who they are bound to serve.

So it gives me great pleasure to have been afforded the opportunity to sit on the State Senate at this time in my life, and in the life of the history of the state of New York, and be able to do what is necessary to ensure that our courts are as reflective of the people who live in this state.

And in that process, it allows us to be assured that the judgments that are handed down have the best possible chance to be just and centered.

I have had the opportunity to meet, as all of us -- as many of us have, with our nominee, Mr. Garcia.

There had been some concerns of -- in his -- in some decisions that he made in his past administrative responsibilities, that had questions.

I feel that, to the best of my knowledge, those questions have been satisfied, and my

questions today will be strictly about the role that he will play on the court, and what that will mean to the people of state of New York.

And, again, Mr. Chairman, I thank you for the opportunity to address this body.

And I, again, make no apologies for my role in determining that the state of New York must be reflected -- reflective of, particularly, when it comes to policies of this high caliber, by people who are qualified.

And everybody who knows me knows that quality and -- comes before quantity.

And so that I am pleased in the nomination that the Governor has made in this candidate, and I look forward to the opportunity, with you, to ask pertinent questions that would help us to ascertain, not his qualifications, but his -- what drives him to want to do this, and make sure that he is representative of who we want to be representing us on the Court of Appeals.

Thank you, Mr. Chairman.

SENATOR BONACI: Thank you, Senator Hassell-Thompson.

Yes, Senator Diaz.

SENATOR DIAZ: I'm Puerto Rican and Hispanic.

I have broken-English. I want people -- my people to be appointed. I want to see minority candidates there.

But it bothers me, it hurts me, it really hurts me, because I hear Senator Thompson say that she want -- she -- she -- whoever knows her, knows that she wants -- she preferred quality before quantity here. (Unintelligible) I don't know.

But, you know, when I -- I -- to me, as a Puerto Rican, as Hispanic, I would be very, very honored to have a Hispanic being appointed.

But when I see four member being nominated, being qualified as "highly qualified," and then the Hispanic being "qualified," and I said -- I would -- I'm willing to have a Hispanic there, but -- but -- but it's questionable.

It is not supposed to be Hispanic/Black, Hispanic/White, highly qualified/highly recommended.

It -- they always said, we got the best; not only because he's Hispanic, not only because he's Black, not only because a minority, but because the best.

But when they bring me -- when they bring here, a qualification of "highly qualified," four member of the Judiciary, highly -- "highly

qualified," and then the minority, only minority one, "qualified," and then we have to choose the one, I would choose that one, under protest.

But to me, to me, to me, hello!

To me, something is not right.

SENATOR BONACI: Okay. Let me jump in here.

I think we're going a little astray.

I think we're putting too much emphasis on "highly qualified" or "qualified," because, when an individual comes before us, we look at resumes, we question the nominee, we try to get to the essence of their experience, their character; what they're made of.

And it's the combination of all of those things where we make a judgment.

It's not going depend on whether a bar association or a trial association, with many members weighing in --

SENATOR DIAZ: Wait, wait, wait, one --

SENATOR BONACI: I want to finish.

We listened to you, Senator Diaz, so let me finish my remarks.

-- it's -- it's -- where they weigh in, that's just one factor of many factors that we make judgments on.

And, we have put people on the bench that were African-American, that were women, that were Hispanic.

We -- we do not care about the color of the skin or the sex of the person.

We care about competence, experience, qualifications; that's how each member makes their judgment, that's how they vote.

Now, do you want to say something else, Senator Thompson?

SENATOR HASSELL-THOMPSON: I think I really wanted to just asked the question:

I think that -- it has been my experience, that when each of the associations have come before this Committee, they have established what their criteria is.

And the criteria of this organization, is that there's no such thing as a "greatly qualified."

They either "qualified" or "not qualified."

It's like a school that gives you "a pass" or "a fail."

It's not an A, it's not a B, it's not a C.

If you pass, you pass.

And I think that that's been my experience.

If that's not correct, then I will stand

corrected.

There are some organizations who have a different criteria.

And my understanding is that, in the other organizations, he was "very qualified."

And so if that is the truth, then we're talking apples and apples.

But if we're not, then that's -- you know, that's -- that's open for discussion.

But my comments have to do with the fact that the person started out "very qualified."

Whatever the language that the organization used to determine it, he's "very qualified."

After he's qualified, then I begin to look at other issues.

And so I would not do social engineering before I look at the quality.

And that's -- that was what the nature of my discussions was about.

And I will stand on that, and I will repeat it every opportunity that I have.

SENATOR BONACI: Okay. We're joined by Senator Savino.

Senator Diaz, you have something to say?

SENATOR DIAZ: Yeah, Mr. Chairman, then we --

then, based on what you and the Madam Senator say, then we should get rid of these recommendations.

Why then we use these people to -- to send these people to -- to send these people to us, then, for a recommendation.

Why?

So we come -- we come -- we gonna come here and say, Oh, well, that's (unintelligible). I don't care (unintelligible).

But, then, don't use them, don't send (flailing arms around and hits microphone) --

SENATOR BONACI: Let's not do that.

SENATOR DIAZ: -- don't bring them to testify or to -- or require -- or to request a recommendation from them, because if that doesn't count, that doesn't count. Right?

Why you --

SENATOR BONACI: Okay, Senator Diaz. Thank you for your remarks.

That concludes the public hearing.

I'm now going to call --

SENATOR DeFRANCISCO: Excuse me, I have one quick question.

SENATOR BONACI: Oh, you do, Senator DeFrancisco?

SENATOR DeFRANCISCO: One quick comment.

SENATOR BONACI: Yes.

SENATOR DeFRANCISCO: Since I started all this --

SENATOR BONACI: I know you did.

SENATOR DIAZ: Yes, you did.

SENATOR HASSELL-THOMPSON: Yes, you did.

SENATOR DIAZ: Yes, you did.

SENATOR DeFRANCISCO: -- I wanted to explain what I was getting at.

SENATOR DIAZ: Oh, go ahead, the Governor is watching.

Go ahead, explain.

Go ahead.

SENATOR DeFRANCISCO: What I was getting at, was that we've had this kind of mincing of recommendations by this organization in the past.

And, I didn't understand then, and I don't understand now, why there's all these different permutations of their recommendations.

And it would be a lot simpler if they indicated "qualified" and "recommended," if they choose to, rather than all of these little qualifications that, really, they can't explain from one to the other.

That's why I was raising it.

This individual -- and whoever gives their opinion, like the trial lawyers did, can be taken, or it can be thrown out as totally not worth the mention.

The governor's gonna make the decision on who he's going to appoint, and we're going to make the decision on who we recommend.

And I don't think we should read anything more to this than that.

Thank you, Mr. Chair.

SENATOR BONACI: Thank you, Senator DeFrancisco.

And maybe that's a suggestion, that the bar association and the trial lawyers, as they move forward in the future, when the next Court of Appeals nominee comes, you may want to consider that classification.

The public hearing is closed, and now let's call our nominee.

(Whereupon, at approximately 1:02 p.m., the public hearing held before the New York State Senate Standing Committee on Judiciary concluded, and adjourned.)

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