

SUPREME COURT: STATE OF NEW YORK
APPELLATE DIVISION: THIRD DEPARTMENT

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In the Matter of the Application of
MARIO M. CASTRACAN and VINCENT F. BONELLI,
acting Pro Bono Publico,

Petitioner-Appellants,

Index No. 6056/90

for an Order, pursuant to Sections
16-100, 16-102, 16-104, 16-106 and
16-116 of the Election Law,

Order to
Show Cause
for a Preference
of Appeal pursuant
to Supreme Court
Rules, 3rd Dept.,
Section 800.16

-vs-

ANTHONY J. COLAVITA, Esq., Chairman,
WESTCHESTER REPUBLICAN COUNTY COMMITTEE,
GUY T. PARISI, Esq., DENNIS MEHIEL, Esq.,
Chairman, WESTCHESTER DEMOCRATIC COUNTY
COMMITTEE, RICHARD L. WEINGARTEN, Esq.,
LOUIS A. BREVETTI, Esq., Hon. FRANCIS A.
NICOLAI, HOWARD MILLER, Esq., ALBERT J.
EMANUELLI, Esq., R. WELLS STOUT,
HELENA DONAHUE, EVELYN AQUILA, Commissioners
constituting the NEW YORK STATE BOARD
OF ELECTIONS, ANTONIA R. D'APICE,
MARION B. OLDI, Commissioners constituting
the WESTCHESTER COUNTY BOARD OF ELECTIONS,

Respondent-Respondents,

for an Order declaring invalid the Certificates
purporting to designate Respondents Hon. FRANCIS A.
NICOLAI and HOWARD MILLER, Esq. as candidates for
the office of Justice of the Supreme Court of the
State of New York, Ninth Judicial District, and
the Petitions purporting to designate ALBERT J.
EMANUELLI, Esq.. a candidate for the office of
Surrogate of Westchester County to be held in
the general election of November 6, 1990.

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Upon reading and filing the annexed Affirmation,
affirmed October 21, 1990, of DORIS L. SASSOWER, Esq., of DORIS

L. SASSOWER, P.C., attorney for Petitioner-Appellants, the Exhibits annexed thereto, the Decision and Order of Hon. Lawrence E. Kahn of the Albany County Supreme Court, the Petition herein and other supporting papers referred to in the annexed Affirmation, incorporated by reference from the Record on Appeal heretofore filed with the Court, and the Appellant s' Brief in support thereof heretofore filed with this Court together with the Record on Appeal; and the prior papers and proceedings heretofore had herein;

LET Respondent-Respondents show Cause before this Court at the Courthouse, at the Justice Building, South Mall, Albany, New York 12223, , on the 29 day of October 1990, at 9:30 a.m., or as soon thereafter as counsel can be heard, why an Order should not be made and entered herein:

1. Granting a preference to the instant appeal pursuant to Supreme Court Rules, Third Dept., Article 3, Part Section 800.16, Article 7, Sections 6, 9, and 11 of the Constitution of the State of New York, and the Fourteenth Amendment to the Constitution of the United States of America, for all the reasons set forth in the annexed moving papers and exhibits thereto, in that this is an Election Law case pertaining to the upcoming November 6, 1990 Election of Justices of the Supreme Court in the Ninth Judicial District and of the Surrogate's Court of Westchester County;

2. Calling a special session and/or term of the Court to hear and expeditiously determine this Appeal before the

aforesaid November 6, 1990 elections;

3. Granting Petitioner-Appellants such other, further, and different relief as this Court may deem just and proper, including that, in the event there is insufficient time for this Court to render such determination prior to Election Day, or having made such determination by granting the petitioned relief to invalidate the Certificates of Nomination and the Designation of the judicial nominees, there is insufficient time to reconvene the Judicial Nominating Conventions to consider and duly nominate judicial candidates to fill the vacancies in the aforesaid judicial offices prior to the date of the scheduled election, that a stay thereof be granted to enjoin, restrain, and prohibit Respondent New York State Board of Elections from permitting the names of the Respondent candidates for election, Hon. FRANCIS A. NICOLAI, HOWARD MILLER, Esq., and ALBERT J. EMANUELLI, Esq., to appear on the ballots for election of Justices of the Supreme Court for the Ninth Judicial District and Surrogate's Court of Westchester County, for such General Election to be held on November 6, 1990, and thereafter directing such further election proceedings as may be called for under the Election Law, including the reconvening of the Judicial Nominating Conventions and the calling of a Special Election, if required, to implement the decision of this Court; and, it is further

ORDERED, that sufficient cause appearing therefor, let service of a copy of this Order and annexed moving papers in

support thereof, made on or before October ²³ 1990 upon the attorneys for Respondents by telefax and mail to their respective offices, at the telefax numbers and addresses set forth on the annexed schedule, be deemed good and sufficient service; and it is further

ORDERED, that Answering Papers, if any, be served upon counsel for Petitioner-Appellants, DORIS L. SASSOWER, P.C. at its office at 283 Soundview Avenue, White Plains, New York 10606, by overnight mail and by telefaxing same to said counsel's fax number 914/684-6554 no later than ~~one (1) day after telefaxed~~ ^{Thursday, October 26, 1990} service upon Respondents of a copy of this Order To Show Cause and supporting papers. Reply Papers, if any, to be filed on the return date hereof.

Dated: Buffalo, New York
October 22, 1990

Ann T. Mikoll

HON. ANN T. MIKOLL
J. S. C
Appellate Division, 3rd Dept.