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5 Minutes Requested for
Oral Argument to argued
By John Ciampoli, Esq.

SUPREME COURT STATE OF NEW YORK
COUNTY OF ALBANY

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In the Matter of the Application of
MARIO M. CASTRACAN and VINCENT F. BONELLI,

Petitioners,

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

-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,

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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Respondent New York State
Board of Elections's
Brief

John Ciampoli, Esq.
NY State Board of Elections
P.O. Box 4, One Commerce Plaza
Albany, NY 12260
Tel. 518-474-6367

Preliminary Statement

Petitioner/Appellants have brought a litigation challenging an allegedly illegal "contract" between the Westchester Democratic County Committee and the Westchester Republican County Committee for the cross-endorsement of candidates for a number of judicial offices including Justice of the Supreme Court.

The nominations for Supreme Court Justice were made by delegates to the Democratic and Republican Nominating Conventions as required by statute. Accordingly, the alleged contract has no effect and the Supreme Court below properly dismissed the petition for failure to state a cause of action recognized by law.

Additionally, the petition herein is replete with other fatal defects of a procedural nature which would support its dismissal.

For these reasons, the decision below should be affirmed.

Statement of Facts

This matter comes before the court on an appeal taken from an order of the Supreme Court, Albany County issued by Justice Lawrence E. Kahn.

The Supreme Court determined that Petitioner/Appellants had failed to state a cause of action in their petition alleging a host of illegalities in 1989 and 1990 nominations for various judicial offices within the Ninth Judicial District.

The crux of petitioners' claims seems to center upon the adoption of identical resolutions by the Westchester Democratic County Committee and the Westchester Republican County Committee prior to the 1989 general election (Record on Appeal p. 52). No dispute exists as to the adoption of these resolutions by the two county committees.

Subsequent to the 1989 general election, the New York State Board of Elections received a complaint from Eli Vigliano, Esq. (co-counsel for petitioner/appellants) regarding the aforesaid resolutions and the conduct of the Judicial Nomination Conventions in the Ninth Judicial District (Exhibit A attached hereto). In May 25, 1990, the Board determined that no criminal wrongdoing had occurred and that the proper vehicle for challenging the irregularities alleged was via objections to nominations and, if permitted by statute, proceedings before the Supreme Court.

It remains undisputed that both the Democratic and Republican parties held judicial nominating conventions in the Ninth Judicial

District and that certificates purporting to nominate several of the respondents were prepared and properly filed with the New York State Board of Elections (Record on Appeal p. 26 et. seq. and p. 28 et. seq.). We note that petitioner/appellants' papers allege various improprieties occurring at the two subject nominating conventions, however, the court below concluded that ".... there is no proof that the judicial conventions at issue were not legally organized, with a quorum present, and that a majority of that quorum duly voted for the candidates [named in the certificates of nomination]", Record on Appeal, p. 7, emphasis added.

After the 1990 nominating conventions, petitioner/appellants filed objections to the certificates of nomination filed for Democratic and Republican candidates for the office of Justice of the Supreme Court of the State of New York. The New York State Board of Elections validated said certificates.

Subsequently, petitioners initiated the instant litigation by order to show cause signed by Justice Louis C. Palella of the Supreme Court, Westchester County, and made returnable before a special term of the court to be held in Albany County seeking not only to void the nominations made by the 1990 Ninth Judicial District nominating conventions, but also retroactively invalidate "all actions taken in the performance and implementation of the ... contract" embodied in the resolutions adopted by the two county committees (Record on Appeal p. 9).

The decision below concluded that the resolutions adopted by two county committee out of the several counties comprising the

Ninth Judicial District and the proceedings of judicial district convention pursuant to law, together with the actions taken by duly elected delegates to said conventions, the decision below concluded that the resolutions adopted by two county committee out of the several counties comprising the Ninth Judicial district and the proceedings were mutually exclusive. Accordingly, the court found that a petition to invalidate a "contract" embodied by county committee resolutions did not constitute a cause of action. The petition was dismissed.

POINT I

PETITIONERS/APPELLANTS' CLAIM IS WITHOUT MERIT AND IS NOT A CAUSE OF ACTION RECOGNIZED BY LAW

Petitioner/appellants (hereinafter appellants) in their moving papers before the court below make it quite clear that they seek to have invalidated a "... contract embodying the "Three Year Plan", also known as "Cross-Endorsements ..." declared illegal, null and void, Record on Appeal, p. 9. It is appellants' contention that the nominations of various candidates for judicial office made by judicial nominating conventions are merely "... actions taken in the performance and implementation of the aforesaid contract ..." and should be invalidated because they spring from an invalid contract. This evidences a complete lack of familiarity with the nominating process for judicial offices, the power and duties of political party's county committees and the statutes governing them. It goes without saying that an appeal based upon such shoddy foundation is without merit and should be dismissed. This court should affirm the decision of Justice Kahn below.

The Election Law of the State of New York states:

> "Party nominations for the office of justice of the supreme court shall be made by the judicial district convention." Election Law §6-106.

This clearly establishes an entity and mechanism other than the county committees, state committees, primaries, caucuses or other committees created by party rules to effectuate nominations

for judicial offices, Election Law §§6-148(3), 6-104(2), 6-110, 6-108, 6-117, respectively. That mechanism is detailed in §6-124 of the Election Law and procedures are established in §6-126 of said law. The judicial district nominating convention is, therefore, established by statute as the exclusive method for making nominations for the office of Justice of the Supreme Court.

Appellants would have us believe that a resolution adopted by the county committees of two of the five political parties, in one of the five counties that comprise the Ninth Judicial District was in some way binding upon the delegates elected to the Democratic and Republican judicial nominating conventions. Further, appellants contend that these resolutions have disenfranchised the electors of the Ninth Judicial District despite the fact that other political parties could (and did) nominate candidates for the several supreme court vacancies in 1989 and 1990, creating contested elections.

Clearly, these arguments strain credibility. County committees were designed to assure that party affairs were managed on a representative basis, Haynes v. McGrath, 16 Misc.2d 76. The Legislature provided for these committees in §2-104 of the Election Law. While the county committee of a political party may exercise any number of statutory powers and duties, the statutes are devoid of any language charging county committees with the duty of nominating candidates for the office of justice of the supreme court. As detailed hereinabove, this power is exclusively assigned to the judicial district nominating convention.

Appellants' attempt to void resolutions adopted by county committees, which have no effect under the election law, should be rejected by this court. Further, the acts of the judicial district conventions for the Democratic and Republican parties resulting in the nomination of "cross-endorsed candidates" is, as observed by Justice Kahn," not presently prohibited by the Election Law", Record on Appeal p. 6, and any challenge to a cross-endorsement should be rejected for that reason alone.

If appellants are distressed with the state of the law, they may lobby the Legislature for statutory amendments. If appellants were dissatisfied with the candidates nominated by the various parties for judicial office, their remedy is at the ballot box, either by voting for candidates running without "cross-endorsement" or by setting aside the time and energy to participate in the process of designating and electing candidates for the position of judicial district delegate. It would seem that criminal complaints to the Board of Elections and court actions are not appropriate means for airing gripes and certainly not a substitute for a participation in the political process.

In conclusion, the determination of the Supreme Court below should be affirmed because no evidence was adduced which would lead one to conclude that the two judicial conventions were not properly convened, quorums present, and the candidates duly nominated. The resolutions of the county committees had no binding effect upon the delegates thereto, and the nominations of the said conventions were valid, Hobson v. Lomenzo, 30 A.D.2d 981; Kaplan v. Cohen, 260 A.D.

396, aff'd 284 N.Y. 633. The petition was, therefore, properly dismissed for failure to state a valid cause of action by Justice Kahn.

POINT II

PETITIONER/APPELLANTS LACK STANDING

Petitioner/Appellants were not delegates to either the Republican or the Democratic Judicial District Nominating conventions, and as such lack standing to challenge the proceedings of these conventions.

Section 6-154 of the Election Law states in its relevant part:

> "(2) Written objections to any certificate of designation or nomination ... may be filed by any voter registered to vote for such public office ...", Election Law §6-154(2), emphasis supplied.

Section 16-102(1) of the Election Law states:

> "the nomination ... of any candidate for any public office may be contested in a proceeding instituted in the Supreme court ... by a person who shall have filed objection as provided in this chapter ...", Election Law §16-102(1), emphasis added.

The later section of law requires a reference to the former which limits appellants to a contest only upon the face of the certificates of nomination. In fact, such a review upon objection was done by the New York State Board of Elections. The Board declared both the Democratic and Republican Certificates of Nomination to be valid.

Any attempt to go beyond the face of the documents is precluded by a strict construction of these statutes. In order to challenge the procedures of each of the conventions, petitioners would have to surmount the general rule espoused by the Court of Appeals in the case of Wydler v. Cristenfeld, 35 N.Y.2d 719 in

which the court held that the internal workings and affairs of a political party are "of no interest to others", Wydler, supra at 720. The courts should only intervene in political parties' internal affairs "as a last resort", Bachman v. Coyne, 99 A.D.2d 742. Accordingly, this Court should determine that the internal workings and affairs of a judicial district nominating convention should also be of no interest to those who were not party to the convention. For this reason, the Court should deny the appeal herein.

POINT III

THE PETITION HEREIN IS DEFECTIVE AND COULD BE DISMISSED BY THE SUPREME COURT FOR THAT REASON

The petition put before the Supreme Court contained any number of fatal jurisdictional defects. Among them was the failure to join indispensable parties in a timely fashion. This defect is fatal to the petition, Buhlmann v. LeFever, 83 A.D.2d 895, aff'd. 54 N.Y.2d 775; Radda v. Acito, 54 A.D.2d 531.

Petitioners in some way seek to attack 1989 and 1990 judicial district nominations. Additionally, they seek to attack certain nominations accomplished other than by judicial district convention. It is obvious that all of these candidates have not been named and/or named and served in a timely fashion. For example, two candidates nominated by the 1990 Republican Judicial District Convention were not named (Joan Lefkowitz and George Roberts). The nomination of Judge Emanuelli was accomplished by designating petition and primary election - a fact never properly dealt with by petitioner/appellants. Of course, none of the 1989 candidates for justice of the supreme court are named in the petition. Because the other candidates interests are directly affected, they must be named as parties, as well as timely and properly served, Martin v. Board of Elections, 67 N.Y.2d 634. The 1989 elections are over. The time within which to challenge petitions has lapsed. It is certainly too late to join other cross-endorsed candidates at this point of the litigation.

Accordingly, this petition should not have survived at special term and should not be given new life by this Court.

Among the other necessary parties which petitioner/appellants have failed to name were the County Boards of Elections in Rockland, Orange, Putnam and Dutchess Counties. These Boards are as necessary as the Westchester County Board of Elections in order to gain jurisdiction over the ballots being printed and distributed int he entire judicial district.

Other parties to this litigation will emphasize the particular defects that are most revelant to them. It is most clear, however, that the petition presented to the Supreme Court was fatally flawed and the decision to dismiss below can stand, if only for this reason. For this reason, this Court should dismiss the appeal herein.

CONCLUSIONS

The appeal herein should be denied as appellants failed to present a cause of action to the Supreme Court below and, further, because petitioners lack standing to assert their claim.