

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,

Petitioners,

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

-vs-

NOTICE OF
CROSS MOTION
Index No.

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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PLEASE TAKE NOTICE that upon the affirmation of John Ciampoli,
Esq. dated 25, October 1990, and all of the papers and proceedings
previously had herein, Respondent State Board of Elections and the
Commissioners thereof will move this court at the Court House
thereof in the Justice Building, Empire State Plaza, Albany, New
York, on the 29th day of October 1990 at 9:30 A.M., or as soon

thereafter as counsel may be heard, for an order of the court issued pursuant to CPLR §5528 and §800.16 of the Rules of the Appellate Division, Third Department dismissing the motion of appellants herein, together with such other and further relief as this court may deem just and proper.

Date: October 25, 1990
Albany, New York

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

To:
Doris L. Sassower, P.C.
Attorney for Petitioners
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White Plains, NY 10606

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Attorney: Sam Yasgur, Esq.
Attorneys for Respondent Albert J. Emanuelli, Esq.
11 Martine Avenue
White Plains, NY 10606

Marilyn J. Slaaten, Esq.
Westchester County Department of Law
Attorneys for Respondents Antonia R. D'Apice, Marion B. Oldi,
Commissioners constituting the Westchester County Board of
Elections
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Sanford S. Branoff, Esq.
Attorney for Respondent Howard Miller, Esq.
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Pearl River, NY 10965

Aldo V. Vitaglilano, Esq.
Attorney for respondent Guy T. Parisi, Esq.
150 Purchase Street
Rye, NY 10580

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Attorneys for respondents Dennis Mehiel and Richard L. Weingarten
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White Plains, NY 10605

Thomas J. Abinanti, Esq.
Attorney for respondent Nicolai
6 Chester Avenue
White Plains, NY 10601

Scolari, Brevetti, Goldsmith & Weiss, P.C.
Attorneys for respondent Brevetti
230 Park Avenue
New York, NY 10169

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-vs-

AFFIRMATION

Index No.

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WESTCHESTER REPUBLICAN COUNTY COMMITTEE,
GUY T. PARISI, Esq., DENNIS MEHIEL, Esq.,
Chairman, WESTCHESTER DEMOCRATIC COUNTY
COMMITTEE, RICHARD L. WEINGARTEN, Esq.,
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the general election of November 6, 1990.

-----X
State of New York)
County of Albany) s.ss:

John Ciampoli, an attorney duly admitted to the practice of
law before the courts of the State of New York, does hereby affirm
under the penalties of perjury:

1. Your affirmant is counsel for the Respondent New York State
Board of Elections and the Commissioners thereof in this matter.

2. This affirmation is offered in support of Respondent's cross motion and in opposition to the motion of Appellants for the granting of a preference and the immediate reconvening of this court.

3. This matter was decided on October 17, 1990 and your affirmant has been served with Appellant's brief and "Record on Appeal" (actually an appendix).

4. Subsequent thereto your affirmant made inquiry with the Clerk of the Court (Appellate Division) regarding the disposition of this matter for argument and filing of briefs.

5. Your affirmant was advised that the matter had been referred to the Justices of the Appellate Division who would rule thereon.

6. On or about October 19, 1990, your affirmant received via electronic transmission (FAX) a letter from counsel for Appellants (annexed hereto as Exhibit A).

7. Subsequent thereto your affirmant made further inquiry with the Clerk of the Court, who advised your affirmant that the Justice of the Appellate division had declined to grant an immediate hearing of this matter and that the October 19, 1990 letter of Doris Sassower, Esq. was being referred to the presiding Justice for review.

8. Thereafter the Clerk of the Court advised your affirmant of the presiding Justice's determination of this matter and transmitted electronically (FAX) his communication to Ms. Sassower (annexed hereto as Exhibit B).

9. Ms. Sassower quotes a portion of §800.16 of the Rules of

this Court only to the extent that the rules indicate that elections matters shall be given preference.

10. The entirety of the rule states:

§800.16 Appeals in Election Cases

Appeals in proceedings brought pursuant to any provision of the Election Law shall be prosecuted upon a single-copy record and seven copies of a brief and appendix pursuant to the method specified in section 800.4(b) of this Part. Such appeal shall be given preference and shall be brought on for argument on such terms and conditions as the presiding justice may direct upon application of any party to the proceeding (emphasis added).

11. It is the position of your affirmant that counsel for Appellants has made her application to this court for a preference and immediate hearing of this matter by her letter of October 19, 1990, and that the directives of the presiding Justice issued pursuant to §800.16 of the Rules of this Court were communicated to Ms. Sassower by the Clerk of the Court.

12. The decision of the Court is quite clear in that an immediate hearing of the matter will not be granted.

13. The relief requested by Appellants is essentially that requested in her letter of October 19, 1990 and Appellants should be barred from receiving the relief requested for a second time under the theory of res judicata, and pursuant to the Rules of this Court.

14. The decision of Justice Kahn below is quite clear in indicating that the motion of Respondent Parisi is granted for Petitioner-Appellants' failure to state a cause of action.

15. A cursory review of Appellants' "Table of Contents" in the "Record on Appeal" (Appendix) indicates that the answer and motion of Respondent Parisi which the court below chose to base its

decision upon is not included for this Court's consideration (Exhibit C annexed hereto).

16. Upon information and belief Appellants' "Record on Appeal" (Appendix) is incomplete and/or fails to conform to the CPLR or Court Rules in other essential elements including but not limited to the answering papers of several respondents, and certain certificates and documents which are part of the record.

17. This court is empowered by CPLR §5528 to dismiss the appeal and/or impose sanctions.

18. Appellants have essentially requested that the voters of the Ninth Judicial District be denied the opportunity to vote for judicial candidates in what is a contested election (Exhibit D annexed hereto), which would necessarily result in the election of the remaining candidates whose names would not be removed from the ballot.

19. The Appellants have failed to include all of the county boards of elections who are necessary parties in this proceeding which may result in the removal of the names of certain candidates from only some of the ballots in the Ninth Judicial District.

20. Such temporary interim relief enjoining an election from proceeding is unprecedented and would infringe upon the rights of the various political parties, candidates and, indeed, the fundamental rights of the voters of the Ninth Judicial District.

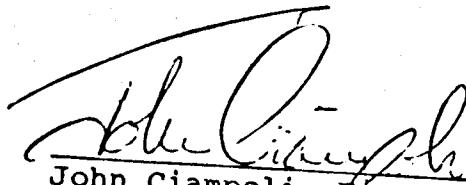
WHEREFORE, it is respectfully requested that this Court deny Appellants' motion for an immediate hearing of this matter and it is

FURTHER respectfully requested that this Court deny Appellant's motion for a preference in this matter and it is

FURTHER respectfully requested that this Court deny the temporary and interim relief requested by Appellants and it is

FURTHER respectfully requested that this Court dismiss the appeal herein together with sanctions against Appellants' counsel as this Court may deem proper and such other and further relief as this court may deem just and proper.

Dated: October 25, 1990



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