

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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.

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,

AFFIRMATION IN  
OPPOSITION BY  
RESPONDENT  
NICOLAI

Index No.  
6056/90

THOMAS J. ABINANTI, ESQ. affirms the following is  
true under penalty of perjury:

1. I am an attorney duly admitted to practice law  
before the Courts of the State of New York. I have an office  
at Six Chester Avenue, White Plains, New York 10601. I am  
attorney for Respondent HON. FRANCIS A. NICOLAI.

2. I submit this Affirmation in Opposition to the relief requested by Petitioners as set forth in the Order to Show Cause signed on October 22, 1990 and returnable on October 29, 1990. I submit this Affirmation on personal knowledge except where indicated otherwise.

3. Petitioners request that this Court call a Special Session to hear and expeditiously determine their appeal of an adverse decision rendered by the Supreme Court (Albany County). They also seek a possible Stay of the General Election in Five (5) counties. Petitioners argue that they deserve the requested relief due to the nature of the matters being considered (Election Law) and due to the statewide importance of this matter.

4. Respondent NICOLAI respectfully disagrees. This Court should not entertain Petitioners' request for special treatment. Neither the preference legally required for Election matters nor the subject matter of this proceeding require the extraordinary relief sought by Petitioners. Ultimately, this Court ought to dismiss and/or deny the appeal. Petitioners' Proceeding was procedurally flawed and totally devoid of merit.

### LIMITED JURISDICTION

5. Petitioners' papers couch their complaints in terms of an alleged long-term illegal conspiracy affecting several different elections (last year, this year and next year). However, New York State Election Law Article 16 restricts the Courts to hearing only Petitioners' challenge to events which occurred since September 1990 relevant to the November 1990 election. Thus, the only issues properly before the Supreme Court and this Court are those related to the conduct of judicial conventions for Supreme Court (Ninth Judicial District) and the papers filed with the New York State Board of Elections evidencing the occurrences at these conventions.

### NO STANDING

6. Election Law Section 16-102 confers standing to challenge nominations for public office only on party chairmen, aggrieved candidates and those who properly file objections.

7. None of the Petitioners are aggrieved candidates or party chairmen. Petitioners claim standing as Objectors. Generally, with respect to convention nominees, Objectors have standing to challenge only candidates' qualifications and documents filed evidencing the nominations at conventions. Objectors who are delegates/alternates to any of the conventions may also attack the procedures employed at the conventions. With respect to party committee actions, Objectors who are members of the respective party Executive committees may be heard to attack the actions of their respective committees.

8. It is respectfully submitted that Petitioners lack standing to assert the challenges they have made. Petitioners do not attack the candidates' qualifications nor the filed documents. Petitioners attempt to challenge the procedures of the subject judicial conventions and an alleged "contract" between Democratic and Republican party committees. However, they were not delegates to the conventions and thus do not have standing to challenge the convention procedures. Nor are they Committee members and thus do not have standing to challenge the alleged "contracts" made by the party committees.

MISSING NECESSARY PARTIES

9. Petitioners failed to name and serve all of the necessary parties. Petitioners overlooked the officers of the challenged conventions -- necessary parties who must be in Court as the only parties who may defend the actions of the conventions and make any possible relief effective. Petitioners overlook the other candidates nominated at the challenged conventions for the same Judicial positions as the named Judge respondents. (Note that Petitioners' request for an overturning and a stay of the General Election highlights the need for these other candidates to be before the Court.)

NO MERIT

10. Petitioners' claims fail to state a cause of action and/or are wholly without merit.

11. First, Petitioners fail to set forth a legal basis for their theory that the complained-of conduct by the major political parties is illegal.

12. Petitioners fail to cite any statutory enactment or judicial precedent banning political leaders from agreeing to support identical candidates. Further, the delegates and alternates who acted to make the contested nominations were elected at primary elections and acted through lawfully constituted conventions. The resolutions adopted by the political leaders of the major parties served only as a recommendation to the independently elected judicial convention delegates and was not binding on the delegates. Anyone could have sought nomination at either judicial convention.

13. Second, Petitioners fail to demonstrate any harm from the alleged "conspiracy" or procedural irregularities.

(a) All of the challenged candidates are or were sitting full-time or part-time Judges and are well-qualified.

(b) There will still be an election for Supreme Court Justice. The major political parties have both cross-endorsed only two candidates. Each party has nominated a different additional candidate. A minor party has nominated another

candidate. Therefore, there will be five (5) candidates seeking three (3) vacancies - thus insuring that there will be an election and the voters will have a choice.

(c) Further, the voters have the opportunity to write in the names of any candidates they choose.

(d) Finally, any other would-be candidate could have filed for an independent line on the ballot pursuant to New York State Election Law Section 6-138 as the dictates of Section 6-106 requiring judicial nominating conventions apply only to party nominations.

#### CONCLUSION

14. It is respectfully suggested that Petitioners lack the requisite standing to pursue their complaints, have failed to join all necessary parties and have not alleged a meritorious cause of action. Therefore, this Court ought not grant Petitioners the special treatment and extraordinary relief which they request.

Dated: White Plains, New York

October 25, 1990

---

THOMAS J. ABINANTI

Index No. 6056/90

Year 19 90

ALL STATE LEGAL SUPPLY CO.  
ONE COMMERCE DRIVE, CRANFORD, N. J. 07016  
87101-BF • 87102-BL • 87103-GY • 87104-WH

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

MARIO M. CASTRACAN et. al.

Petitioners

vs

ANTHONY J. COLAVITA et. al.

Respondents

AFFIRMATION IN OPPOSITION

THOMAS J. ABINANTI  
Attorney for Respondent Nicolai

SIX CHESTER AVENUE  
WHITE PLAINS, N. Y. 10601  
(914) 328-9000

To:

Attorney(s) for

Service of a copy of the within

Dated:

is hereby admitted.

.....  
Attorney(s) for

PLEASE TAKE NOTICE

Check Applicable Box

NOTICE OF ENTRY

that the within is a (certified) true copy of a  
entered in the office of the clerk of the within named Court on

19

NOTICE OF SETTLEMENT

that an Order of which the within is a true copy will be presented for settlement to the Hon.  
one of the judges of the within named Court,  
at  
on

19

, at

M.

Dated:

Attorney for

THOMAS J. ABINANTI

SIX CHESTER AVENUE  
WHITE PLAINS, N. Y. 10601

To: