

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,
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,

Index No.

Petition

-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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TO THE SUPREME COURT OF THE STATE OF NEW YORK:

MARIO M. CASTRACAN and VINCENT F. BONELLI, acting Pro
Bono Publico, as and for their Petition, respectfully allege the
following, on information and belief:

1. Petitioner MARIO M. CASTRACAN ("CASTRACAN") is a duly registered voter enrolled in the Republican Party, residing in the Town of New Castle, Westchester County, New York, in the New Castle 14th Election District of the 89th Assembly District of the State of New York.

2. Petitioner VINCENT F. BONELLI ("BONELLI") is a duly registered voter enrolled in the Democratic Party, residing in the City of New Rochelle, Westchester County, New York, in the 31st Election District of the 85th Assembly District of the State of New York.

3. Respondents R. WELLS STOUT, HELENA DONAHUE, and EVELYN AQUILA constitute the Board of Elections of the State of New York (the "BOARD").

4. Respondents ANTONIA R. D'APICE and MARION B. OLDI, constitute the Board of Elections of Westchester County.

5. Respondent, ANTHONY J. COLAVITA, Esq. ("COLAVITA") is Chairman of Respondent Westchester Republican County Committee for Westchester County, State of New York ("REPUBLICAN C.C.").

6. Respondent DENNIS MEHIEL ("MEHIEL") is the Chairman of Respondent Westchester Democratic County Committee for Westchester County, State of New York ("DEMOCRATIC C.C.").

7. Respondent RICHARD L. WEINGARTEN, Esq. ("WEINGARTEN"), at all times hereinafter mentioned in 1989 and until December 31, 1989, was Chairman of the DEMOCRATIC C.C.

8. Respondent GUY T. PARISI, Esq. ("PARISI"), at all

times hereinafter mentioned, was legal counsel to the REPUBLICAN C.C.

9. Respondent LOUIS A. BREVETTI, Esq. ("BREVETTI"), at all times hereinafter mentioned, was legal counsel to the DEMOCRATIC C.C.

10. On September 18, 1990, a Judicial Convention, in and for the Ninth Judicial District of the State of New York, was convened by the REPUBLICAN C.C. at the Westchester Marriott Hotel at 670 White Plains Road, Tarrytown, County of Westchester, New York to nominate three (3) Republican candidates for election to the Office of Justice of the Supreme Court of the State of New York for said District.

11. On September 19, 1990, a Certificate purporting to nominate one GEORGE H. ROBERTS ("ROBERTS"), and Respondents Hon. FRANCIS A. NICOLAI ("NICOLAI") and HOWARD MILLER, Esq. ("MILLER") as the candidates of the Republican Party for election to said offices, was filed with Respondent, New York State Board of Elections at its office located in Albany, New York (the "Republican Certificate"; annexed hereto as Exhibit "A").

12. On September 24, 1990, a Judicial Convention in and for the Ninth Judicial District of the State of New York, was convened by the DEMOCRATIC C.C. at Days' Inn on Tarrytown Road, in the Town of Greenburgh, County of Westchester, New York to nominate three (3) Democratic candidates for election to the office of Justice of the Supreme Court of the State of New York for said District.

13. On September 25, 1990, a Certificate purporting to nominate one Joan LEFKOWITZ and Respondents NICOLAI and MILLER as the candidates of the Democratic Party for election to said offices was filed with Respondent, New York State Board of Elections at its office located in Albany, New York (the "Democratic Certificate"). Petitioners beg leave to submit a copy of said Certificate on the return date as Exhibit "B".

14. On September 24, 1990, Petitioners duly filed with Respondent New York State Board of Elections, at its office located in Albany, New York, Objections to said Republican Certificate filed on September 19, 1990 by said Republican Party, a copy of which is annexed hereto as Exhibit "C".

15. Petitioners intend to duly file with Respondent New York State Board of Elections: (a) on or before September 28, 1990, Objections to said Democratic Certificate filed on September 25, 1990 by said Democratic Party, (b) on or before October 1, 1990, Specifications of their Objections to the Republican Certificate, and (c) on or before October 4, 1990, Specifications of their Objections to the Democratic Certificate. Petitioners beg leave to submit to the Court on the return date, a copy of their Objections to the Democratic Certificate and Specifications in support thereof to be filed, as well as of the Specifications in support of the Objections heretofore filed with respect to the Republican Certificate as their Exhibits "D", "E" and "F" respectively.

16. Pursuant to the provisions of Article 6, Section

6(c) of the Constitution of the State of New York, Justices of the Supreme Court for the State of New York, including the Ninth Judicial District "shall be chosen by the electors of the judicial district in which they are to serve".

17. The provisions contained in the Election Law of the State of New York, Article 6, and specifically Sections 6-124 and 6-126, implement the aforesaid State Constitutional provision by setting forth in detail the specific procedure for calling a Judicial Convention, electing the delegates and alternate delegates thereto, as well as the procedure to be followed in conducting and transacting the business of the Convention: the nomination of candidates for such judicial offices by political parties.

18. In late August and early September, 1989, Respondent COLAVITA, acting by his legal counsel, Respondent PARISI, and Respondent WEINGARTEN, acting by his legal counsel, Respondent BREVETTI, in concert with one another and as part and parcel of a common plan and design, conspired to violate the Constitution of the State of New York and the Election Law of the State of New York by entering into a plan, scheme and design, hereinafter referred to as "the Three Year Plan", whereby the electors of the Ninth Judicial District, duly registered to vote at the General Elections to be held in 1989, 1990, and 1991, were to be disenfranchised and deprived of their aforesaid constitutional right to choose Justices of the Supreme Court of the State of New York for the Ninth Judicial District.

19. The said "Three Year Plan", also referred to by the party leaders as "cross-endorsements", was to be effectuated by Respondents COLAVITA and WEINGARTEN's combining, conspiring, and contracting to endorse the identical three candidates for the three offices of Justice of the Supreme Court of the State of New York for the Ninth Judicial District, to be voted upon in the General Election held November, 1989, to wit, SAMUEL G. FREDMAN, JOSEPH JIUDICE, and Respondent ALBERT J. EMANUELLI ("EMANUELLI"), irrespective of their party affiliation.

20. Respondents COLAVITA and WEINGARTEN further contracted that in the General Election to be held in the calendar year 1990, the proposed nominees of both the Republican Party and Democratic Party for the office of Justice of the Supreme Court of the State of New York and for the office of Surrogate of Westchester County would likewise be identical.

21. Pursuant to the "Three Year Plan" contractually agreed upon by the said Respondent, Republican and Democratic Party leaders, vacancy in the office of Justice of the Supreme Court for the Ninth Judicial District was to be created by causing EMANUELLI, a Republican, (the 1989 cross-endorsed candidate of Respondents COLAVITA and WEINGARTEN for the 14-year term of office of Justice as the Supreme Court of the State of New York for the Ninth Judicial District) after having been elected thereto in 1989, to resign therefrom in 1990. Such contracted-for resignation by EMANUELLI would then permit him to be designated to fill the office of Surrogate of Westchester

County by the filing of Designating Petitions procured by both the Republican Party for Westchester County and Democratic Party for Westchester County, and, thus, permit the elevation of Respondent NICOLAI. NICOLAI at that time was, and is, a Westchester County Court Judge, and by the aforesaid contract was to be the candidate of both the Republican Party and Democratic Party to fill the vacancy in the office of Justice of the Supreme Court created by EMANUELLI's said contracted-for resignation.

22. Respondents COLAVITA and WEINGARTEN, in addition, bound themselves and their respective political party to a contract, whereby in the General Election to be held in the year 1991, the vacancy created by the resignation of Respondent NICOLAI, a Westchester County Court Judge, would be filled by T. EMMET MURPHY, a Judge of the City Court of the City of Yonkers and Democratic Party member, and further, that the Republican Party and Democratic Party would then cross-endorse Judge ADRIENNE H. SCANCARELLI, a Republican, for re-election as a Westchester County Family Court Judge.

23. The Executive Committee of the Westchester Democratic County Committee at a meeting held on August 23, 1989, adopted a Resolution to implement the aforesaid contract entered into by Respondents COLAVITA and WEINGARTEN, on the express condition that the Executive Committee of the Westchester Republican County Committee would likewise adopt an identical Resolution at its meeting scheduled to be held the very next night, i.e., on August 24, 1989.

24. Said Republican Party Executive Committee, in fact, did adopt said identical Resolution the following night. A copy of said Resolution, embodying the foregoing contract provisions, is annexed hereto as Exhibit "G".

25. The respective Executive Committees of the Democratic Party and the Republican Party for the Counties of Rockland, Orange, Dutchess and Putnam in the State of New York thereafter, likewise, adopted the Resolution, hereinabove referred to in paragraphs 23 and 24 hereof, embodying the aforesaid contract provisions entered into by Respondents COLAVITA and WEINGARTEN, unanimously consenting to the nomination by the respective Judicial Conventions of the Democratic Party and Republican Party to be held in September, 1989 of the said SAMUEL G. FREDMAN, JOSEPH JIUDICE and Respondent EMANUELLI as the candidates of the Democratic and Republican Parties, thereby assuring and guaranteeing their election.

26. At the General Election, held in November, 1989, said three candidates, SAMUEL G. FREDMAN, JOSEPH JIUDICE and Respondent EMANUELLI, were, in fact, elected to the office of Justice of the Supreme Court for the State of New York, Ninth Judicial District.

27. Said three candidates elected, as aforesaid, were thereafter inducted into office, and respectively commenced their full fourteen-year terms in January, 1990.

28. Respondent EMANUELLI, thereafter, attended, at taxpayers' expense, numerous seminars, workshops, and lectures to

educate and indoctrinate him in the proper performance of his duties as Justice of the Supreme Court of the State of New York, Ninth Judicial District.

29. By virtue of said contract and in furtherance thereof, Respondent EMANUELLI was, nevertheless, compelled to, and did thereafter, resign his position of Justice of the Supreme Court of the State of New York, Ninth Judicial District eight (8) months later, i.e., in or about August 1990, to create the contracted-for vacancy which was intended to, and did, permit Respondent NICOLAI to move up from the County Court into his position as a Supreme Court Justice, and to permit Respondent EMANUELLI to become the candidate of both the Democratic and Republican Parties of Westchester County for the office of Surrogate of Westchester County by reason of Designating Petitions having been filed with the Westchester County Board of Elections by the Republican Party and the Democratic Party designating him as such candidate, and no petitions having been filed in opposition thereto. By reason thereof, Respondent EMANUELLI thus became, and is, the candidate of both the Republican and Democratic Parties for the office of Surrogate, of Westchester County the election for which is scheduled to be held on November 6, 1990, and is consequently guaranteed of election thereto.

30. Thereafter, on September 18, 1990, Respondent COLAVITA convened the Judicial Convention hereinabove referred to in Paragraph "10" hereof, and said Convention transacted its

judicial nominating business in violation of the mandates of the Election Law of the State of New York as set forth in the Objections (Exhibit "C"), annexed hereto and incorporated by reference, as if fully set forth herein.

31. Upon information and belief, Respondent MEHIEL, in January 1989, succeeded to the office of County Chairman of the Democratic Party of Westchester County and adopted and ratified the aforesaid contract, and in furtherance thereof, convened the Convention hereinabove referred to in paragraph "12" hereof.

32. The business of said Democratic Convention was not conducted in conformity with the mandatory requirements of the Election Law, as will be set forth in the Objections to be filed on or before September 28, 1990 by Petitioners herein (Exhibit "B").

33. By reason of the foregoing illegal contract entered into by Respondents COLAVITA and WEINGARTEN, adopted and ratified by Respondent MEHIEL, and the candidates who were, and are, the beneficiaries of the aforesaid patently illegal "three year plan", the electors of the Ninth Judicial District were, in 1989, and will be, in 1990 and 1991, deprived of their right of "election" between opposing candidates of the Democratic and Republican Parties to fill said judicial offices, all in flagrant violation of the provisions of the Constitution of the State of New York and the Election Law of the State of New York.

34. By reason of the foregoing, electors of the Ninth Judicial District entitled to vote in the General Election to be

held on November 6, 1990 to fill said judicial offices have suffered, and will suffer, a serious, substantial, and unprecedented violation of their voting rights, as guaranteed by the Constitution of the State of New York, which rights have been impaired, impeded, and prejudiced by the aforesaid Contract of Respondents COLAVITA and WEINGARTEN.

35. Petitioners are proceeding by Order to Show Cause to comply with the provisions of the Election Law of the State of New York, requiring the institution and initiation of this proceeding no later than ten (10) days subsequent to the date the Convention was held, and additionally, to ensure meaningful relief in view of the abbreviated period of time between now and the General Election to be held on November 6, 1990.

36. No previous application for the same or similar relief as requested herein has been made to this Court or any other Court.

WHEREFORE, Petitioners respectfully pray that the Contract embodying the "Three Year Plan" of the party leaders, also known as "Cross-Endorsements", entered into by Respondents COLAVITA and WEINGARTEN, and thereafter adopted and ratified by Respondent MEHIEL, be declared illegal, invalid, void and against public policy, that all actions taken thereunder in the performance and implementation thereof be declared illegal, invalid, void, and against public policy, that the purported nomination of Respondents MILLER, NICOLAI, and EMANUELLI, be vacated, annulled and set aside, that the Certificate of the

Republican Judicial Convention, held on September 18, 1990 and of the Democratic Judicial Convention, held on September 24, 1990, purporting to nominate said Respondents MILLER and NICOLAI be vacated, annulled and set aside, that an Order issue directing the reconvening of the Republican Judicial Convention and the Democratic Judicial Convention, and that Respondents NICOLAI and MILLER, as parties and accessories to the aforesaid Contract, be declared disqualified and barred from nomination as candidates to fill such judicial offices, and that Respondent EMANUELLI as a party and accessory to such Contract be likewise disqualified and barred from nomination as Surrogate of Westchester County, and that said Judicial Conventions thereafter proceed to the nominations of candidates for said judicial offices in strict compliance with the mandatory requirements of the Election Law, most specifically Sections 6-124 and 6-126, and for such other and further relief as this Court may deem just and proper.

Dated: White Plains, New York
September 26, 1990

Mario M. Castracan
MARIO M. CASTRACAN

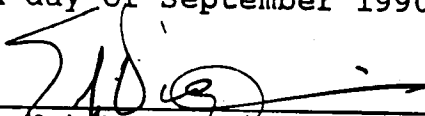
Vincent F. Bonelli
VINCENT F. BONELLI

State of New York)
County of Westchester)ss:

I, Mario M. Castracan, being duly sworn, say: I am one of the Petitioners in the within action; I have read the foregoing Petition and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be allege on information and belief, and as to those matters I believe it to be true.

Mario M. Castracan
MARIO M. CASTRACAN

Sworn to before me this
26th day of September 1990



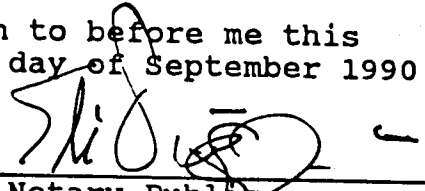
Notary Public
ELI VIGLIANO
Notary Public, State of New York
No. 4887388
Qualified in Westchester County
Commission Expires June 4, 1992

State of New York)
County of Westchester)ss:

I, Vincent F. Bonelli, being duly sworn, say: I am one of the Petitioners in the within action; I have read the foregoing Petition and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be allege on information and belief, and as to those matters I believe it to be true.

Vincent F. Bonelli
VINCENT F. BONELLI

Sworn to before me this
26th day of September 1990



Notary Public
ELI VIGLIANO
Notary Public, State of New York
No. 4887388
Qualified in Westchester County
Commission Expires June 4, 1992