914-~~997-16~~-7
684-6554

STATE OF NEW YORK COUNTY OF ALBANY

SUPREME COURT

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,

-against-

ANTHONY M. 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 Petitioners 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.

Supreme Court - Request for Judicial Intervention

October 12, 1990-Special Term RJI 0190 ST2747 Index No. 6056-90

JUSTICE LAWRENCE E. KAHN, Presiding

APPEARANCES:

Doris L. Sassower, P.C.
Attorney for petitioners
283 Soundview Avenue
White Plains, New York 10606
(914) 997-1677

APPEARANCES: (Continued)

Thomas J. Abinanti, Esq.
Attorney for NICOLAI
Six Chester Avenue
White Plains, New York 10601
(914) 328-9000

Marilyn J. Slaatten, Esq.
County Attorney
Attorney for D'APICE & OLDI
Michaelian Office Building
148 Martine Avenue
White Plains, New York 10601
(914) 285-2696

Scolari, Brevetti, Goldsmith & Weiss, P.C.
Attorneys for BREVETTI
230 Park Avenue
New York, New York 10169
(212) 370-1000

Guy T. Parisi, Esq.
112 Woods End Road
Chappaqua, New York 10514
(914) 238-5048

Hall, Dickler, Lawler, Kent & Friedman
Sam Yasgur, Esq.
Attorneys for EMANUELLI
11 Martine Avenue
White Plains, New York 10606
(914) 428-3232

Aldo V. Vitagliano, P.C.
150 Purchase Street
Rye, New York 10580
(914) 921-0333

Hashmall, Sheer, Bank & Geist
Attorneys for MEHIEL, WESTCHESTER DEMOCRATIC COUNTY COMMITTEE & WEINGARTEN
235 Mamaroneck Avenue
White Plains, New York 10605
(914) 761-9111

Sanford S. Dranoff, Esq.
Attorney for HOWARD MILLER
One Blue Hill Plaza
P.O. Box 1629
Pearl River, New York 10965-8629
(914) 735-6200

KAHN, J.

This proceeding seeks to review the nomination of three candidates for election to the office of Justice of the Supreme Court for the Ninth Judicial District of the State of New York. Specific reference is made to the September 18, 1990 Republican Judicial Convention and the September 24, 1990 Democratic Judicial Convention. The actions taken at the aforesaid conventions purport to be in furtherance of a written resolution of the Westchester County Republican and Democratic Committees, which adopted a three-year plan for the cross-endorsement of various judges for County Court, Family Court, Surrogate Court and Supreme Court. In this regard, there is no dispute that the resolution exists or that it even goes so far as to provide that once nominated, each individual will pledge to "provide equal access and consideration, if any, to the recommendations of the leaders of each major political party in conjunction with proposed judicial appointments." Thus, the agreement appears to even extend to the hiring of staff personnel.

Various defendants have moved to dismiss upon considerations of jurisdiction, failure to state cause of action, latches, statute of limitations, etc. Petitioners have also sought a directive from the court that certain respondents are in default for having failed to timely serve pleadings or defectively verified pleadings. However, in the

interests of judicial economy and with an acknowledgment that this decision must be rendered in an exceedingly expeditious manner, the court shall directly address the merits of the petition itself, in order that the inevitable appeal process may be commenced in a timely fashion.

Cross-endorsement of judicial candidates by the major political parties has long been the subject of substantial concern among various segments of the voting public. It has been the focus of study by the Commission on Government Integrity, The Fund for Modern Courts, and even the Chief Judge of the Court of Appeals. However, and most importantly in the context of this judicial proceeding, the practice of cross-endorsement of judicial candidates is not presently prohibited by the Election Law. Further, while the enforceability of the purported resolution would appear to be exceedingly questionable, the reality is that it does not result in the nomination or designation of a candidate for Supreme Court Justice. Only the delegates to a properly convened Judicial District convention can take such action (Election Law, section 6-106).

The Court of Appeals has reiterated that the Legislature of this State has "manifested an intent of general non-interference with the internal affairs of political parties." (**Bloom v Nataro**, 67 NY2d 1048, 1049). "[J]udicial intervention should only be undertaken as a last resort." (**Matter of Bachmann v Coyne**, 99 AD2d 742.) Certainly, any

rule of the Westchester County Republican or Democratic Committee which purports to select candidates for the office of Supreme Court Justice must be considered inconsistent with the Election Law, which leaves that selection to the delegates to a judicial convention. However, once having convened a proper convention, and having followed the mandates of the Election Law, any relief premised upon the invalidity of the so-called "Three Year Plan" is precluded. In the case at bar, 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 as respondents hereto. As such, the petition does not state grounds upon which relief may be granted (**Matter of Hobson v Lomenzo**, 30 AD2d 981).

The scenario, as presented by the submissions presently before the court, no doubt will continue to fuel the debate concerning the manner in which candidates for judicial office are selected. However, the proper forum must be the Legislature of the State of New York, which has the sole power to amend the process by which judicial candidates are chosen.

The motion of respondent Parisi for a judgment dismissing the proceeding upon the ground that the petition fails to state a cause of action shall be granted. As aforesaid, dismissal of the petition on the merits, renders moot questions of service, timely submission of pleadings and other procedural issues.

So Ordered!

DATED: October 16, 1990

Albany, New York

10/17/90

Entered 10/17/90