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SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION - THIRD JUDICIAL 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,

Index No.  
6056/90

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,

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RESPONDENT NICOLAI'S BRIEF

THOMAS J. ABINANTI, ESQ.

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TABLE OF CONTENTS

PRELIMINARY STATEMENT ..... Page 1

TRIAL COURT'S JURISDICTION WAS LIMITED  
TO 1990 JUDICIAL CONVENTIONS ..... Page 2

PETITIONERS LACK STANDING TO  
ASSERT THEIR CLAIMS ..... Page 3

PETITIONERS FAILED TO JOIN  
NECESSARY PARTIES ..... Page 5

PETITIONERS FAILED TO ALLEGE A VALID  
AND MERITORIOUS CAUSE OF ACTION ..... Page 6

CONCLUSION ..... Page 8

PRELIMINARY STATEMENT

This Court ought to dismiss and/or deny the Appeal by Petitioners.

Petitioners' Proceeding was procedurally flawed and totally devoid of merit.

Petitioners lack the requisite standing to pursue their complaints, have failed to join all necessary parties and have not alleged a valid and meritorious cause of action.

TRIAL COURT'S JURISDICTION  
WAS LIMITED TO  
1990 JUDICIAL CONVENTIONS

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).

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. Section 16-102 sets statutes of limitations for actions challenging nominations at ten (10) and fourteen (14) days from the occurrence of the nominating events.

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.

PETITIONERS LACK STANDING  
TO ASSERT THEIR CLAIMS

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.

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.

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.

Petitioners were not "aggrieved" or wronged by either the convention procedures or the actions of the party committees. They have no standing to make their challenges.

PETITIONERS FAILED TO  
JOIN NECESSARY PARTIES

Petitioners failed to name and serve all of the parties necessary to the Proceeding.

Petitioners overlooked the officers of the challenged conventions -- necessary parties who must be in Court as the only proper parties to defend the actions of the conventions and make any possible relief effective.

Further, Petitioners overlooked 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 of the General Election highlights the need for these other candidates to be before the Court--especially since one of these overlooked candidates was elected.)

PETITIONERS FAILED TO ALLEGE  
A VALID AND MERITORIOUS  
CAUSE OF ACTION

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

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

Petitioners failed 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 independently 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.



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

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

(b) There was a contested election for Supreme Court Justice. The major political parties cross-endorsed only two candidates. Each party also nominated a different additional candidate (one of whom was elected). A minor party nominated another candidate. Therefore, there were five (5) candidates seeking three (3) vacancies. Thus, there was a contested election and the voters had a choice.

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

(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 since the dictates of Section 6-106 requiring judicial nominating conventions apply only to party nominations.

CONCLUSION

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 valid and meritorious cause of action.

This Court ought not grant Petitioners the special treatment and extraordinary relief which they request.

The Appeal ought to be dismissed.

Respectfully submitted,

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