APPENDIX TO CONSTITUTIONAL REFERENCES IN THE RECORD[1]

PETITION: Paragraphs 16, 17, 18, 33, 34 (R 16-17, 22-23)

"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, implementing 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 the 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.

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[1] The references herein are to Appellants' previously-filed papers, copies of which are transmitted herewith. Underlined quoted passages reflect emphasis added to highlight the raising of constitutional arguments by Appellants.

Exhibit "A"

...

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 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."

AFFIDAVIT OF ELI VIGLIANO IN SUPPORT OF THE PETITION, (R. 64)

"1. I am an attorney licensed to practise law in the State of New York since 1950. I am currently Chairman of the Ninth Judicial Committee, a group organized in Westchester County in 1989, comprised of lawyers and non-lawyers working to assure that the most qualified judges are chosen, that politics and politicians are removed as far as possible from the judicial arena and, in particular, to assure that the election of Judges in the Ninth Judicial District is accomplished in accordance with the legal requirements of the Election Law and Constitution of the State of New York."

APPELLANTS' APPELLATE BRIEF:

pp. 3-4: QUESTIONS PRESENTED

"2. Is a cause of action stated by a Petition alleging that:

(A) Respondents, two major political parties, their leadership, their judicial nominees, and others, entered into an agreement...

(C) effectively disenfranchised the voting public of rights guaranteed under the Constitution of the State of New York and the New York State Election Law."

pp. 10-19: POINT I (see the entire point)

"THE CROSS-ENDORSEMENTS CONTRACT IN ISSUE IS AN INVIDIOUS VIOLATION OF THE NEW YORK STATE CONSTITUTION, THE ELECTION LAW OF NEW YORK STATE, AND THE CODE OF JUDICIAL CONDUCT AND COURT RULES RELATIVE THERETO. AS SUCH, IT IS ILLEGAL, VOID, AND AGAINST PUBLIC POLICY"

pp. 22: POINT II

"Justice Kahn erroneously held that as long as there is a properly convened convention, following mandated procedures of the Election Law, any agreement adopted at the Convention is unassailable, even if it violates the New York State Constitution, the Election Law, the Rules of Judicial Conduct, and this State's public policy."

pp. 27-29: POINT VI

"The remedies sought in this proceeding are clearly not equitable. The relief sought in this Order to Show Cause was to have the cross-endorsement contract (1) declared illegal and void as violative of the New York State Constitution, New York statutory law, and the public policy of this State; (2) to have vacated the nominations of the respondent nominees pursuant to New York Election Law Sec. 16-102 for all the reasons stated in Point I herein;..."

"Moreover, the Petition asserts a transcendent public interest in invalidating judicial nominations arising out of an illegal political contract, which violates the New York State Constitution, New York State Election Law, Sec. 17-158, the Code of Judicial Conduct and Court Rules relative thereto, and New York State public policy..."

APPELLANTS' PREFERENCE APPLICATION:

ORDER TO SHOW CAUSE: at p. 2

"LET Respondent-Respondents show Cause...why an Order should not be made and entered herein:

1. Granting a preference to the instant appeal pursuant to Supreme Court Rules, Third Dept., Article 3, Part 800, Section 800.16, Article 1, Sections 6, 9, and 11 of the Constitution of the State of New York, and the Fourteenth Amendment to the Constitution of the United States of America..."

SUPPORTING AFFIRMATION OF DORIS L. SASSOWER:

"2. It is respectfully submitted that Petitioners are further entitled to such preference as a matter of right pursuant to Section 800.16 of the published Rules of this Court, as well as under applicable provisions of the Federal and State Constitutions, as detailed in the Order to Show Cause annexed hereto." (at p. 2)

...

"4. For the summary judicial relief provided under Article 16 to be meaningful, it must be afforded with the six weeks prior to Election Day, since the prime purpose of the Election Law is to protect the constitutionally guaranteed rights of the voters, not to defeat them. Otherwise, candidates would claim that their illegally or fraudulently gained 'rights' had vested by virtue of their election." (at p. 3)

"5. The legislative timetable clearly necessitates the mandatory preference granted to Election Law cases by this Court when it adopted Rules, Sec. 800.16, since the Court is cognizant that absent the granting of the omnibus relief, hereinafter described, the Decision-Order of Special Term would not only be the first word, but the last word. This would then lead to the legislatively-proscribed and unintended consequence that illegally and fraudulently nominated candidates would be elected, without any appellate review, and without Petitioners having had their 'day in Court'--all in violation of the Constitutions of the State of New York and the Constitution of the United States." (at p. 3)

...

"7. This special proceeding, under the Election Law, to enforce constitutionally-guaranteed voting rights, was commenced by Order to Show Cause, dated September 26, 1990..." (at p. 3)

...

"14. In addition, the Petition alleges that the judicial nominees in question are the result of an illegal contract, violative of penal provisions of the Election Law, Sec, 17-158, expressing a public policy of the State of New York prohibiting practices corruptive of the democratic process and which impair constitutionally-guaranteed voting rights..." (at pp. 6-7)

...

"26. The importance of this case transcends this one election. A decision reversing the Lower Court is essential. Otherwise, the Lower Court decision will be cited as authority for future illegal cross-endorsement contracts between party bosses pre-ordaining our judges under Three-Year Plans, Five Year Plans or longer, and 'rigged' Judicial Nominating Conventions, acting as rubber stamps will be the rule. Voters will thus continue to be deprived of their constitutional right to 'elect' between judicial candidates of opposing parties..." (at p. 11)

DORIS L. SASSOWER'S AFFIRMATION IN REPLY:
(Preference Application)

"7. This Court's obligation to grant a preference is clear. With election time almost at hand, the Court has an even greater responsibility to safeguard the constitutionally-protected public interest at stake..." (at p. 5)

"13. The paramount issue in this case, involving the constitutionally-protected voting rights of nearly a million voters in the Ninth Judicial District, requires the most expeditious attention..." (at p. 8)

"26. It is thus imperative that the legality of the cross-endorsements contract in issue be speedily and dispositively resolved by this Court and/or the Court of Appeals. Until the issue is adjudicated, it is just and proper that the names of these judicial nominees be stricken from the ballot on Election Day. Unquestionably, the potential harm to the public by reason of their otherwise assured election is far outweighed by the injury to the public weal represented by the violation of voting rights, protected by the Federal and State Constitution as well as the Election Law of the State of New York." (at p. 16)

"55. It is respectfully submitted that the cost and inconvenience to the Boards of Election is insignificant where constitutional rights of the public are concerned and where it is clear that irreparable harm would be done to the democratic process by the inevitable election of Respondent judicial nominees." (at p. 31)

"56. Mr. Dranoff misrepresents the state of the law relative to the matter of cross-endorsements. He asserts that the Court of Appeals has repeatedly validated multi-party candidates particularly in judicial races, citing Rosenthal v. Harwood, 35 NY2d 469. In that case, the Court of Appeals held that a party by-law prohibiting a judicial candidate from accepting a cross-endorsement was invalid. However, the rationale of that decision, i.e., that such restriction would

improperly compromise the independence of the judicial nominee, applies with equal, if not more, force to invalidate the party resolution involved in the instant case. Rosenthal did not say, conversely, that a party can require a judicial candidate to accept a cross-endorsement and other conditions similarly impinging on the judicial nominee's independent judgment, such as exist in the illegal contract underlying this proceeding. Indeed, all of the reasoning expressed in Rosenthal to make such restriction void, exists, a fortiori, in the case at bar--where, not only were there a series of cross-endorsements over a three-year period, but contracted-for resignations by the judicial nominees, once elected, as well as a pledge to divide up patronage appointments equally between the two parties." (at pp. 31-32)

"57. Thus, Mr. Dranoff is seen to be reckless with the truth when he states, flatly and unequivocally, that this is 'an issue which has already been decided by the Court of Appeals'." (at p. 32)

"58. The instant proceeding is not a case where one major political party cross-endorses, without pre-conditions, a single judicial candidate of the other major political party in a single election. Contrary to Mr. Dranoff's broad statements, the far-reaching, ultimate, and unresolved question presented by the Petition is the legality of a particular cross-endorsements contract, running over a period of years, put in written resolution form, which required judicial nominees, as a condition to obtaining their nomination, to accept such cross-endorsements, to agree to contracted-for resignations so as to create new judicial vacancies, and to a provision that, once elected, they would divide patronage appointments equally, in accordance with the recommendations of their party leaders." (at pp. 32-33)

Exhibit "B" to Doris Sassower's Affirmation in Reply (Preference Application): Letter of Eli Vigliano, Esq., dated November 1, 1989, hand-delivered to the offices of Governor Mario Cuomo:

> "When not only the spirit of Article 6, Section 1, of the State Constitution mandating the election of Judges of the Supreme Court is violated, but the letter is arrogantly ignored, the citizens are entitled to have the wrong redressed." (at p. 3)

APPELLANTS' REPLY BRIEF:

pp. 14-26 POINT I: (see entire point)

> RESPONDENTS HAVE FAILED TO REFUTE CONTROLLING AUTHORITY THAT THE 'THREE YEAR PLAN' IS, AS A MATTER OF LAW, ILLEGAL, UNETHICAL AND PROHIBITED AS A MATTER OF PUBLIC POLICY"
>
> A. Rosenthal v. Harwood, 35 N.Y.2d 469, 363 NYS2d 937, 323 NE2d 179 (1974), Relied on By Respondents, Does Not Sustain the legality of the 'Three-Year Plan'.
>
> B. Respondents Have Failed to Refute Petitioners' Arguments that the 'Three Year Plan' Contravenes Law and Public Policy, As Reflected in Constitutional and Statutory History and Ethical Rules.

pp. 30-1: POINT III: (see entire point)

> "THE PUBLIC IMPORTANCE OF THIS CASE TRANSCENDS THE PARTIES TO THIS PROCEEDING"
>
> "This case is an opportunity to chart new waters in the definition of future limits of permissible activity by party officials and judicial candidates. As the historical background, hereinabove discussed, and the prior judicial interpretations thereof make manifest, the Legislature has spoken to the long-standing tradition of political abuse by clever party leaders and all-too-eager office-seekers. The Election Law is the vehicle, provided by the Legislature, to enforce mandated standards of political conduct so as to protect the public and

their right of election. Any deal effectively disenfranchising the electorate and diminishing the value of that vote is repugnant to the expressed legislative intent."