

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: THIRD DEPARTMENT

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In the Matter of the Application of  
MARIO M. CASTRACAN and VINCENT F. BONELLI,  
acting Pro Bono Publico,

Petitioner-Appellants,

for an Order, pursuant to Sections  
16-100, 16-102, 16-104, 10-106 and  
16-116 of the Election Law,

-vs-

AFFIRMATION  
IN OPPOSITION  
TO ORDER TO  
SHOW CAUSE

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,

Index No.  
6056/90

Respondent-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.

-----X  
VINCENT M. CASCIO, an attorney duly admitted to  
practice law in the State of New York, hereby affirms under  
penalty of perjury that:

1. I am an Assistant County Attorney in the office of the Westchester County Attorney, Marilyn J. Slaatten, and represent Respondents Antonia R. D'Apice and Marion B. Oldi, Commissioners constituting the Westchester County Board of Elections, and am familiar with the facts and circumstances of this case. All matters stated in this affirmation are true and to my knowledge, except as to matters herein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

2. I make this affirmation in opposition to Petitioner-Appellants' application brought on by Order to Show Cause, returnable October 29, 1990, seeking (1) a preference of that instant appeal; (2) a special session and/or term of the Court to hear and expeditiously determine the instant appeal prior to the November 6, 1990 elections; (3) "granting such other, further and different relief that this Court may deem just proper including that, in the event there is insufficient time for this Court to render such determination prior to Election Day, or having made such determination by granting the petitioned relief to invalidate the Certificates of Nomination and the designation of the judicial nominees, there is insufficient time to reconvene the Judicial Nominating Conventions to consider and duly nominate judicial candidates to fill the vacancies in the aforesaid judicial offices prior to the date of the scheduled election, that a stay thereof be granted to enjoin, restrain, and prohibit Respondent New York State Board of Elections from permitting the names of the Respondent candidates for election, Hon. Francis A. Nicolai,

Howard Miller, Esq., and Albert J. Emanuelli, Esq., to appear on the ballots for election of Justices of the Supreme Court for the Ninth Judicial District and Surrogate's Court of Westchester County, for such General Election to be held on November 6, 1990, and thereafter directing such further election proceedings as may be called for under the Election Law, including the reconvening of the Judicial Nominating Conventions and the calling of a Special Election, if required, to implement the decision of this Court."

3. Petitioner-Appellants seek to appeal the "So-Ordered" decision of the Supreme Court of the County of Albany (KAHN, J.) dated October 17, 1990, dismissing their action commenced under Article 16 of the Election Law, by Order to Show Cause and petition. Petitioners sought to invalidate the Republican and Democratic Party Certificates of Nomination which cross-nominated Respondents Nicolai and Miller for two vacancies for the office of Supreme Court Justice in the Ninth Judicial District to be voted for in the general election on November 6, 1990. Petitioner-Appellants further seek to invalidate the nomination of Respondent Emanuelli to fill the vacancy to the office of Surrogate of Westchester, likewise to be voted in the aforementioned election.

4. The Supreme Court, Albany County (KAHN, J.) by order entered October 17, 1990 ruled that Petitioner-Appellants failed to state a cause of action and dismissed the petition.

5. On or about October 17, 1990, Petitioner-Appellants filed a Notice of Appeal to this Court seeking to have the aforementioned cross-endorsements set aside as being in

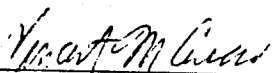
contravention of the United States and New York State Constitutions as well as New York State Law.

6. On or about October 18, 1990, Petitioner-Appellants made an informal application to this Court seeking a preference and oral argument of their appeal on October 19, 1990. Their application was denied by this Court on October 18, 1990.

7. It is submitted that a preference granted at this late date before the election (eight days after this Order to Show Cause is returnable) would constitute an undue burden and hardship on the Westchester County Board of Elections in that all the necessary ballots, paperwork and other such items have already been completed. Furthermore, a preference granted to this appeal could potentially expose the County of Westchester to great fiscal expense in the event ballots and other such items are needed to be changed as well as the possible rescheduling of the election.

WHEREFORE, Respondent prays for an Order denying Petitioner-Appellant's leave for (1) a preference of the instant appeal; (2) calling a special session and/or term of the Court to hear and expeditiously determine the instant appeal prior to the November 6, 1990 elections; (3) for the granting of such other, further and different relief as set forth in paragraph 2 of Petitioner-Appellant's affirmation; and for such other and further relief as may be just and equitable.

Dated: White Plains, New York  
October 25, 1990

  
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VINCENT M. CASCIO

Sir :— Please take notice that the within is a (certified)  
true copy of a  
duly entered in the office of the clerk of the within named  
court on 19

Dated.

Yours. etc.

MARILYN J. SLAATTEN  
County Attorney

Attorney for

MICHAELIAN OFFICE BUILDING  
148 MARTINE AVENUE  
WHITE PLAINS, N. Y. 10601

To

Attorney for

===== NOTICE OF SETTLEMENT =====

Sir :— Please take notice 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 the day of 19  
at M.  
Dated.

Yours. etc.

MARILYN J. SLAATTEN  
County Attorney

Attorney for

MICHAELIAN OFFICE BUILDING  
148 MARTINE AVENUE  
WHITE PLAINS, N. Y. 10601

To

Attorney for

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Respondent-Respondents.

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AFFIRMATION IN OPPOSITION TO  
ORDER TO SHOW CAUSE

=====

MARILYN J. SLAATTEN  
County Attorney

Attorney for Respondents D'Apice  
and Oldi  
MICHAELIAN OFFICE BUILDING  
148 MARTINE AVENUE  
WHITE PLAINS, N. Y. 10601  
(914) 285- 2525

VINCENT M. CASCIO, Assistant County  
Attorney, of Counsel

To

Attorney for

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Service of a copy of the within

is hereby admitted.

Dated.

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Attorney for

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