

SAMUEL S. YASGUR, being duly sworn, deposes and says:

1. I am an attorney duly admitted to practice before the courts of this State and am a member of the firm of HALL, DICKLER, LAWLER, KENT & FRIEDMAN, counsel for the Respondent-Respondent Albert J. Emanuelli (hereinafter "Respondent").

2. I am fully familiar with all of the facts set forth herein. With respect to such facts as identified as based upon information and belief, I have reviewed the applicable documents, have conferred with our client and others and reasonably believe such facts to be true.

3. I submit this Affidavit in Opposition to that portion of Petitioner-Appellants' (hereinafter "Appellants") motion seeking the convening of a "special session and/or term of the Court" and seeking to have this matter heard and determined in a crises manner rather than in an orderly and proper fashion.

4. Appellants' moving papers are replete with conclusory allegations attempting to make it appear that this matter involves singularly important issues that must be decided immediately. That is not the case. The key facts, which Appellants choose not to set forth, are otherwise and show that Appellants have been sitting on this case for well over a year. Those facts are as follows:

A. Appellants' suit is based on their objections to two resolutions, one passed by the Executive Committee of the Westchester County Republican Committee and one passed by the Executive Committee of the Westchester County Democratic Committee. THOSE TWO RESOLUTIONS WERE PASSED AND MADE PUBLIC IN AUGUST, 1989, MORE THAN FOURTEEN MONTHS AGO. Appellants' waited more than one year prior to commencing an action challenging those resolutions. The fact that this matter was not decided many, many months ago is solely due to the fact that Appellants sat on their hands.

B. Upon information and belief, Appellants' co-counsel, in November, 1989, almost one year ago, filed a complaint with the New York State Board of Elections challenging the two aforesaid resolutions and the judicial elections which were held in 1989. The New York State Board of Elections, by letter, dismissed the aforesaid complaint in May, 1990 (a copy of that letter is annexed hereto as Exhibit "A" hereof). Appellants neglected to bring that fact to the attention of this Honorable Court and attempted to make it appear that only Justice Kahn

had dealt with the issue and that the only reviewable determination in this matter had not occurred until October 16, 1990.

- D. Upon information and belief, Appellants never instituted an Article 78 proceeding seeking judicial review of the dismissal of the aforesaid complaint by the New York State Board of Elections. They are now time-barred from doing so. Appellants neglected to bring that fact to the attention of this Honorable Court. By such omission, Appellants seek to make it appear that only by putting this Honorable Court, the Respondents and Respondents' counsel to the burden of a "special session and/or term" can the issues raised by Appellants be resolved prior to the 1990 elections. In fact, it was Appellants own failure to pursue the remedies available to them months ago that puts this case in its present posture.
- E. Appellants also neglected to advise this Honorable Court that the two aforesaid resolutions of the two Executive Committees were only statements of intent of those two Committees, not binding on the Judicial Conventions or the potential nominees referred to therein or on anyone else who might

have sought nomination. More importantly, Appellants neglected to note that those resolutions not only referred to Respondents Nicolai and Emanuelli, they also referred to the potential nominations of a number of other persons, some of whom were in fact nominated in the summer of 1989 and who were in fact elected in November, 1989. Appellants, for reasons I cannot devine, did not name those other persons listed in the resolutions as parties to the action. Therefore, the contention by Appellants, that the nomination and election of persons referenced in the aforesaid resolutions was tainted, would affect and prejudice persons who are not parties to this action, including persons who were elected in 1989 and who are now sitting judges. Aside from the impact of that fact on the merits, it shows that Appellants' claim, that the appeal could not be effective if heard after the 1990 elections, is disingenuous. It will, in any event, most certainly be heard after the 1989 elections of other persons referenced in the aforesaid resolutions, and that because of Appellants' failure to act fourteen months ago.

- F. Appellants also neglected to inform this Honorable Court that, in 1990, the Judicial Conventions of the Republican and Democratic parties in the Ninth Judicial District also nominated other persons, not named as Respondents, who are presently running for office. Appellants contend the two Judicial Conventions were defective. Appellants are, therefore, attempting to bring before this Court a claim prejudicial and damaging to other persons Appellants chose not to name as parties.
- G. Appellants also neglected to inform this Honorable Court that while they named the Board of Election of Westchester County as a party they did not name the boards of elections of other counties in the Ninth Judicial District, i.e., they did not name the boards of elections in Rockland, Orange, Dutchess and Putnam Counties. Accordingly, neither this Honorable Court nor the trial court has jurisdiction over such boards and could not issue an order enjoining such boards from proceeding with the election, as currently cast, in those counties. The confusion that would create, solely due to the failure of Appellants to proceed in an orderly and proper manner, needs no further elaboration.

4. In short, quite apart from Respondent Emanuelli's position that the action itself is without merit and baseless, a position we shall fully submit to this Honorable Court on the appeal, we have a situation in which Appellants' failure to proceed timely more than fourteen months ago, Appellants' failure to timely seek judicial review of the decision of the New York State Board of Elections and Appellants' failure to join indispensable and necessary parties has turned this action into such a state that it would, most respectfully, be inappropriate, unfair and prejudicial to this Honorable Court, to the Respondents and their counsel and to others not named as parties, to attempt to sort out the case and dispose of it in the hurried-up fashion requested by Appellants in the instant motion.

5. Finally, I would note that in one letter to this Honorable Court, Appellants' counsel stated that she would waive oral argument in order to expedite the appeal. Your affiant respectfully submits that, in this case, oral argument may be necessary and important to the members of this Honorable Court in order to address and sort out the procedural and other questions created by the manner in which this action was brought and maintained. Accordingly, your affiant does not waive oral argument.

6. For all of the foregoing reasons, it is respectfully submitted that Appellants' request that this Honorable Court convene a "special session and/or term" is, to say the least, inappropriate and should be denied. Your affiant respectfully submits that this matter should be scheduled in such a manner that the issues can be addressed in an orderly and deliberative fashion.

WHEREFORE, it is respectfully submitted that Appellants' motion that this Honorable Court convene a "special session and/or term" should in all respects be denied.

S. Yasgur

SAMUEL S. YASGUR

Sworn to before me this
25th day of October, 1990.

Dorothy Scarfone
Notary Public

DOROTHY SCARFONE
Notary Public, State of New York
No. 4896028
Qualified in Westchester County
Commission Expires June 1, 1991