

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

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

NOTICE OF ENTRY  
OF ORDER

Petitioners-Appellants,

Index No. 6056/90  
Appeal No. 62134

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

-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, Commis-  
sioners constituting the NEW YORK  
STATE BOARD OF ELECTIONS, ANTONIA R.  
D'APICE, MARION B. OLDI, Commissioners  
constituting the WESTCHESTER COUNTY  
BOARD OF ELECTIONS,

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.

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SIRS:

PLEASE TAKE NOTICE that the within is a true copy of an Order entered in the office of Clerk of the Supreme Court, Appellate Division-Third Department, on the 15th day of May, 1991.

Dated: White Plains, New York  
June 20, 1991

Yours truly,

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

TO: John Ciampoli, Esq.  
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Assistant Attorney General  
State of New York, Department of Law  
202 Mamaroneck Avenue  
White Plains, New York 10605

Supreme Court—Appellate Division  
Third Judicial Department

May 2, 1991

62134

In the Matter of MARIO M.  
CASTRACAN et al.,  
Appellants,

v

ANTHONY J. COLAVITA, as Chairman  
of the Westchester Republican  
County Committee, et al.,  
Respondents.

PER CURIAM.

Appeal from an order of the Supreme Court (Kahn, J.), entered October 17, 1990 in Albany County, which dismissed petitioners' application, in a proceeding pursuant to Election Law § 16-102, to, inter alia, declare invalid the certificates of nomination naming various respondents as candidates for the offices of Justice of the Supreme Court and Surrogate for the Ninth Judicial District in the November 6, 1990 general election.

Petitioners commenced this proceeding challenging the nominations of various candidates for judicial offices in the Ninth Judicial District who had been cross-endorsed by both the Republican and Democratic parties. According to petitioners, the cross endorsement of the judicial candidates violated the NY Constitution and Election Law in that it served to disenfranchise the voters of the Ninth Judicial District. In their petition, petitioners sought to void what they claimed to be an illegal three-year plan engineered by various Republican and Democratic Executive Committees of the counties in the Ninth Judicial District whereby it was apparently agreed upon in advance that certain candidates would be cross-endorsed by the political parties involved. Aside from requesting that the plan be declared void, petitioners also requested that the nominations and nominating certificates of certain of the involved candidates be voided and the judicial conventions be ordered reconvened.

In answering, respondents alleged various defenses, including lack of jurisdiction and standing, failure to join necessary parties and failure to state a cause of action. Two of the respondents moved to dismiss the petition. Supreme Court specifically decided not to address any procedural issues and chose to dismiss the petition on the merits. The court found that the cross endorsement of judicial candidates was not prohibited by the Election Law and, since the challenged candidates were properly nominated by the conventions, no relief could be granted. This appeal by petitioners followed.

While petitioners undoubtedly raise several interesting issues relating to the propriety and appropriateness of the practice of judicial cross endorsements, we cannot simply ignore the legitimate procedural objections raised by respondents<sup>1</sup> as did Supreme Court in order to more expeditiously explore the merits. Accordingly, a brief discussion of the pertinent points follows.

Initially, we must agree with respondents that petitioners have failed to join necessary parties in this proceeding. Notably, petitioners named as parties only three of the judicial candidates named on the challenged certificates of nomination and nominated at the 1990 conventions even though petitioners object in terms which indicate that they are challenging the certificates in their entirety and are requesting new judicial conventions. This court has said in the past that when a certificate of nomination that covered a number of candidates is challenged in a proceeding that sought to invalidate the certificate and require a new party caucus, all the nominees on the certificate must be joined since, if the petition is granted, they would all be disqualified as candidates and would run the risk of not being nominated at the new caucus (see, Matter of Sahler v Callahan, 92 AD2d 976, 977). Here, the rights of all the candidates nominated for Supreme Court Justice, and not just those specifically cross-endorsed, are "inextricably interwoven" and, therefore, they were necessary parties (see, Matter of McGoey v Black, 100 AD2d 635, 636; cf., Matter of Greenspan v O'Rourke, 27 NY2d 846).<sup>2</sup>

It should also be noted that, even though petitioners contend that the entire cross endorsement plan was allegedly agreed to by the executive committees of both parties in each county in the Ninth Judicial District, they did not name these committees as parties. Further, officers elected in the conventions that are requested to be

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<sup>1</sup> Petitioners incorrectly state that respondents' procedural arguments should not be addressed since those parties did not file notices of appeal from Supreme Court's decision. Since respondents were not aggrieved by Supreme Court's decision in their favor, it was not necessary for them to appeal (see, Lonstein, P.C. v Seeman, 112 AD2d 566).

<sup>2</sup> Since petitioners challenge all aspects of the cross endorsement plan and request that it be declared void in its entirety, it should also be noted that 1989 candidates named in the cross endorsement plan were also not joined by petitioners in the proceeding nor is there any indication that objections against their nominations were timely filed.

voided and reconvened would also have had to be joined, since they might not be appointed at the requested reconvened conventions (cf., Matter of Sahler v Callahan, supra). In addition, to the extent that petitioners seek to prohibit certain nominees from running for office in the Ninth Judicial District, the Boards of Election of each county in the district are also apparently necessary parties since these Boards are responsible for the conduct of elections in those counties (see, Election Law § 3-506). The law is clear that failure to join necessary parties in a proceeding pursuant to the Election Law prior to the time prescribed for initiating such a proceeding requires dismissal of the petition (see, Matter of Marin v Board of Elections of State of N.Y., 67 NY2d 634). Since petitioners' failure to join necessary parties in this proceeding is apparent,<sup>3</sup> this proceeding is fatally defective.

Although we also have grave doubts about the standing of petitioners, it is unnecessary to explore this and other issues raised by the parties due to our resolution of the foregoing issue.

Order affirmed, without costs.

MAHONEY, P.J., MIKOLL, LEVINE, CREW III and HARVEY, JJ., concur.

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<sup>3</sup> Another basis for dismissal of this proceeding is petitioners' failure to serve the Attorney-General (see, 2A Weinstein-Korn-Miller, NY Civ Prac ¶ 2214.05). The State Board of Elections, named in the petition, is undoubtedly a State body (see, Election Law § 3-100). CPLR 2214 requires that an order to show cause served upon a State body or officer must also be served on the Attorney-General (CPLR 2214 [d]).

AFFIDAVIT OF SERVICE

STATE OF NEW YORK                    )  
  ) ss.:  
COUNTY OF NEW YORK                 )

Lauren A. Leslie, being duly sworn, deposes and says:  
deponent is not a party to the action, is over 18 years of age  
and resides in Bronx County.

On June 21, 1991 deponent served the Notice of Entry of  
Order within:

upon:

John Ciampoli, Esq.  
Attorney for N.Y. State Board of Elections  
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Albany, New York 12260

Thomas J. Abinanti, Esq.  
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County Attorney  
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County Committee & Weingarten  
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Stuart A. Rosenthal, Esq.  
Assistant Attorney General  
State of New York, Department of Law  
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by depositing true copies of same in post-paid properly addressed  
wrappers in an official depository under the exclusive care and  
custody of the United States Post Office within the State of New  
York directed to said attorneys at the address last furnished  
them or last known to your deponent.

  
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Sworn to before me this  
21st day of June 1991

  
Notary Public

**DAVID WILLIAM BARGMAN**  
Notary Public, State of New York  
No. 4964160  
Qualified in Westchester County  
Commission Expires March 26, 1992



NOTICE OF ENTRY

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.,

Attorney for

Office and Post Office Address

To Attorney(s) 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 at M. 19 Dated, Yours, etc.,

Attorney for

Office and Post Office Address

To Attorney(s) for

Index No. 6056 Year 1990 Appeal No. 62134 SUPREME COURT OF THE STATE OF NEW YORK APPELLATE DIVISION: THIRD DEPARTMENT

In the Matter of the Application of MARIO M. CASTRACAN and VINCENT F. BONELLI,

Petitioners-Appellants,

- against -

ANTHONY J. COLAVITA, Esq., Chairman, WESTCHESTER REPUBLICAN COUNTY COMMITTEE, et al.,

Respondents-Respondents.

NOTICE OF ENTRY OF ORDER

DORIS L. SASSOWER, P.C. Petitioners-Appellants Attorney for

Office and Post Office Address, Telephone 283 Soundview Avenue White Plains, New York 10606 (914)997-1677

To

Attorney(s) for

Service of a copy of the within is hereby admitted.

Dated,

Attorney(s) for