

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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

Index No.

Petitioners,

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

ANSWER OF ALBERT
J. EMANUELLI, ESQ.
RESPONDENT

-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,

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 Petitioners 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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TO THE SUPREME COURT OF THE STATE OF NEW YORK:

ALBERT J. EMANUELLI, ESQ., answering the aforesaid Petition,
dated the 26th day of September, 1990, the exhibits attached and
upon all the proceedings hereto, respectfully alleges as follows:

1. Denies knowledge and information sufficient to form a

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belief as to allegations contained in paragraphs numbered 1, 2, 9, 10, 11, 12, 13, 14, 15, 23, 24, 25, 31, 32, 35 and 36.

2. Denies the allegations set forth in paragraph (3), but admits that respondents R. Wells Stout, Helena Donahue and Evelyn Aquilla are Commissioners of the Board of Elections of the State of New York.

3. Denies the allegations set forth in paragraph (4), but admits that Antonia R. D'Apice and Marion B. Oldie are Commissioners of the Board of Elections of the County of Westchester.

4. Denies allegations in paragraph (16) except admits the existence of "the Constitution of the State of New York" which speaks for itself subject to court interpretation.

5. Denies allegations in paragraph (17) except admits the existence of "the Election Law" which speaks for itself subject to court interpretation.

6. Denies each and every allegation set forth in paragraph (18).

7. Denies each and every allegation set forth in paragraph (19) and alleges that in the Fall of 1989 the Republican and Democratic parties, in an open and well publicized manner, to enhance and de-politicize the process for the selection of judicial candidates, determined to pursue cross-endorsements for certain judicial positions. That determination and the subsequent actions taken by the two major political parties was neither conspiratorial nor illegal, but rather was in keeping with numerous suggestions by

persons concerned with the integrity and independence of the judiciary that the election of judges be removed, to the extent possible, from the usual partisan process.

8. Denies the allegation set forth in paragraph (20), but admits that Samuel G. Fredman, Joseph Giudice and Albert J. Emanuelli each received the cross-endorsement of both major political parties when they each ran for Justice of the Supreme Court in the Ninth Judicial District in November, 1989.

9. Denies the allegations set forth in paragraphs (21) and (22), but admits that, as part of an effort to de-politicize the process by which judicial candidates were nominated, the two major political parties each resolved to cross endorse certain candidates for certain judicial offices.

10. Admits the allegations set forth in paragraph (27), except denies, upon information and belief, that by operation of law, the terms of office of respondents Fredman and Giudice were fourteen years.

11. Denies the allegations set forth in paragraph (28), but admits that respondent Emanuelli was required to attend and did attend two judicial seminars; an orientation seminar for all new judges held in December, 1989, which was done on his own time while respondent Emanuelli was still a private attorney and at the loss of income, and a meeting in July, 1990 for all sitting judges.

12. Denies the allegations set forth in paragraph (29), but admits that the petitions of the Democratic, Republican and Conservative parties designating Albert J. Emanuelli as a candidate

for the Office of Surrogate of Westchester County were duly filed with the Westchester County Board of Elections, having been obtained through the normal open process of petition signature among qualified voters in Westchester County and affirmatively alleges that respondent Emanuelli's intention to seek the Office of Surrogate was well known and publicized long in advance, that any other qualified person could have challenged respondent on any of the three lines or otherwise, and further alleges that no other person sought a primary against respondent Emanuelli even though, in Westchester, such a primary against the party's named candidate for the Office of Surrogate had been successful in the past.

13. Denies the allegations set forth in paragraphs (30), (33) and (34).

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

14. In New York State, judges, including Supreme Court Justices and the Surrogates in each County, are elected to office.

15. The electoral process usually involves the support, nomination and other participation by and of political parties.

16. Unlike other elected positions, it is desirable, proper and required that judges be non-partisan and non-political.

17. The usual electoral process for judges creates an apparent conflict between the need for a candidate to seek the support of a political party, for nomination, financial and other material support in conducting a campaign, and the requirement that a judge be non-partisan.

18. Unlike other candidates, candidates for judicial office

are required to abstain from activities expected of political candidates. Candidates for judicial office are not allowed to contribute to political campaigns of other candidates, are not allowed to attack other candidates, are not allowed to endorse other candidates and are supposed to remain politically neutral, even at political meetings.

19. Commentators, editorial writers, public interest groups and the courts have all encouraged the process of the cross-endorsement of judicial candidates as a method of de-politicizing the election of judges. The New York State Court of appeals has even struck down, as it applied to judicial candidates, a party requirement prohibiting its candidates from accepting cross-endorsements, stating that such a rule, while the internal business of the party with respect to other candidates, is not appropriate when applied to judicial candidates.

20. The cross-endorsement of judicial candidates, by operation, helps to insure the nomination of persons who each party believes are qualified for the position and who will perform in the office of judge in a non-partisan manner.

21. In the Ninth Judicial District there had been an ongoing attempt by the major political parties to pursue the cross-endorsement of judicial candidates and thus help to insure that such candidates were removed from the political process. That effort was well known and well publicized. It was commented on and supported in the media and supported by groups interested in the courts and in good government.

22. Every political party is, and in our system of government, should be, jealous of its position and its vitality and viability. It is the basic purpose of a political party to develop a political platform and philosophy and to seek to carry out that platform through the election of its own candidates wherever possible. Accordingly, the cross-endorsement of the candidates of a major opposition party, even judicial candidates, is contrary to the usual operation of a political party. The fact that, in the late summer of 1989, the two major political parties were able to agree openly, publicly and in writing on the initiation of a process for the cross-endorsement of certain judicial candidates in the Ninth Judicial District was a major and a positive step. It was publicized and applauded. It insured not only that the designated candidates could run for the named judgeships free of partisan considerations, it also had the additional benefit of advising all other persons, both within those parties and without, as to who the two parties intended to nominate in the future within the system. That fact gave such other parties, and any other persons who wished to challenge the named candidates, a full and fair opportunity to do so.

23. Petitioners herein recklessly and maliciously describe the cross-endorsement process in the Ninth Judicial District using words such as conspiracy, disenfranchise, scheme and illegal. Quite the contrary, the process of openly cross-endorsing candidates for judicial office is in the best interests of our court system and is to be favored. Petitioners style themselves,

in the caption of this proceeding, as acting "Pro Bono Publico".
In fact, petitioners' action is Contra Bono Publico.

24. Whatever unknown motivation has caused these two individuals to commence this action, the petition fails to state a cause of action. The petition is frivolous and baseless and a wasteful incursion on the time of the court and of the respondents and merits the imposition of sanctions pursuant to the Uniform Rules of the New York State Trial Court.

AS AND FOR RESPONDENT'S SECOND AFFIRMATIVE DEFENSE

25. Said Petition fails to state a cause of action

AS AND FOR RESPONDENT'S THIRD AFFIRMATIVE DEFENSE

26. Said Petition is jurisdictionally defective in that it fails to name necessary parties, including, but not limited to, the Board of Election of Putnam, Dutchess, Rockland and Orange Counties; the other persons who were alleged to have been involved in the alleged "Three Year Plan", the New York State Attorney General and others.

AS AND FOR RESPONDENT'S FOURTH AFFIRMATIVE DEFENSE

27. Petitioners lack standing to commence this proceeding.

AS AND FOR RESPONDENT'S FIFTH AFFIRMATIVE DEFENSE

28. This proceeding is barred by the Doctrine of Laches.

AS AND FOR RESPONDENT'S SIXTH AFFIRMATIVE DEFENSE

29. That petitioner's enter this Court of Equity with unclean hands.

AS AND FOR RESPONDENT'S SEVENTH AFFIRMATIVE DEFENSE

30. Petitioners have failed to exhaust their administrative remedies.

WHEREFORE, your respondent respectfully seeks a dismissal and denial of said Petition in its entirety; and for costs, disbursements, legal fees and Court imposed sanctions for such a tardy and frivolous election law proceeding designed to prejudice the already elected officials, candidates and electorate under the circumstances presented and for such other and further relief as to this Court may be just and proper.

Dated: White Plains, New York
October 10, 1990


ALBERT J. EMANELLI

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STATE OF ~~NEW YORK~~ ^{SC South Carolina}
~~Beaufort~~) SS.:
COUNTY OF WESTCHESTER

I, ALBERT J. EMANUELLI, being duly sworn, say: I am a Respondent in the within action; I have read the foregoing ANSWER OF ALBERT J. EMANUELLI, ESQ., RESPONDENT, and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

Albert J. Emanuelli
ALBERT J. EMANUELLI

Sworn to before me this
10th day of October, 1990

Lisa H. Kelle
NOTARY PUBLIC

My Commission Expires November 21, 1999

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