

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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In the Matter of the Application of
Rachel Sady and Mario M. Castracan,
Petitioners,

DECISION

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

-against-

HON. J. EMMETT MURPHY, Administrative
Judge of the City Court of the City of
Yonkers, State of New York, ANTHONY J.
COLAVITA, ESQ., individually and as
Chairman Westchester Republican County
Committee, Dennis Mehiel, individually
and as Chairman Westchester Democratic
County Committee, Richard L. Weingarten,
Esq., individually and as former
Chairman Westchester Democratic County
Committee, Vincent Natrella, individually
and as Chairman Westchester Conservative
County Committee, Lloyd King, Jr., and
Hon. Carolee Sunderland, Commissioners
constituting the Westchester County
Board of Elections of the State of New
York,

Respondents,

For an Order (1) declaring invalid the
three petitions purporting respondent
Hon. J. Emmett Murphy as candidate for
nomination by the Democratic party,
Republican party and Conservative party
for the public office of Judge of the
County Court of the County of Westchester,
State of New York, in the primary
election to be held on September 12, 1991
and as the nominee for such office of
said three political parties, in the
general election to be held on November 5,
1991 and (2) striking his name from the
respective ballots to be used in the
primary election and in the general
election to be held on said respective
dates.

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Westchester County Courthouse
111 Grove Street
White Plains, New York 10601
August 12, 1991

B E F O R E:

**HON. VINCENT GURAHIAN,
Supreme Court Justice**

APPEARANCES:

For the Petitioners:

**ELI VIGLIANO, ESQ.,
Central Park Professional Building
1250 Central Park Avenue
Yonkers, New York 10704**

For the Respondent, Colavita:

**GUY T. PARISI, ESQ.,
112 Woods End Road
Chappaqua, New York 10514**

**For the Respondents, Murphy,
Weingarten, Mehiel:**

**ALAN D. SCHEINKMAN, ESQ.,
3 Barker Avenue
White Plains, New York 10601**

ALSO PRESENT:

Doris Sassower

**DONNA MINORT,
Court Clerk**

**ELIZABETH A. KENT
Senior Court Reporter**

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THE COURT: I'm prepared to render a decision.

The petitioners seek to be declared invalid an agreement between the major political parties in this County who cross endorsed various candidates claiming it is in violation of the Election Law.

I have before me a copy of that agreement and it simply says that for the general election of 1990 -- I'm sorry, for the general election of 1991, I am ignoring the clauses pertaining to the general elections of 1989 and 1990, "We hereby pledge our support, endorse and nominate Judge J. Emmett Murphy, Administrative Judge of the City Court of Yonkers for election to the County Court of Westchester County to fill the vacancy and participate -- created by the seat of Francis A. Nicolai to the Supreme Court," et cetera.

There is nothing in this agreement which compels Judge Murphy to accept a cross endorsement. It is simply an agreement accepted by both parties which indicate that each party is prepared to endorse a candidate for nomination. There's nothing

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2 illegal about it. There's nothing unconstitutional
3 about it. If it is to be prohibited it is for
4 the Legislature to prohibit it. The public is
5 not damaged in any way. They have their rights.
6 The public's rights have not been abridged. For
7 Supreme Court nominations you have a right to
8 enter a primary for the election of candidates
9 for the judicial convention. For County Court
10 positions you have a right to submit petitions,
11 to enter a primary for a nomination by a political
12 party. In addition to the right to file petitions
13 as independent candidates.

14 There is nothing in this agreement which
15 is illegal. There's nothing unconstitutional
16 about it.

17 I am not addressing myself to the other
18 defenses that were raised, but I will point out
19 that the relief sought is to declare illegal,
20 invalid, void and against public policy the contract,
21 and I quote, "The contract embodying the three
22 year plan of the party leaders also known as cross
23 endorsements," et cetera, close quote. And that
24 quote, "Respondent Hon. J. Emmett Murphy be declared
25 inelligible to serve as a Judge of the County

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Court and disqualified of being a candidate for any party for election to such office." That's the second relief sought that the designating petition or petitions filed (I'm not quoting directly now) of the Westchester County Board of Elections, purporting to designate respondent Murphy as a candidate for the Republican and Conservative nominations for County Court Judge be declared invalid. And, that the Board of Elections be enjoined from printing and placing the name of respondent Hon. J. Emmett Murphy as a candidate. I find this petition is totally without merit, that there is no legal basis for me to grant any of the relief.

I deny the petition. I find that this agreement was not in violation of the Election Law. It is not unconstitutional. And anyone has a right to endorse anyone they wish for nomination to public office. It is when the nomination is paid for, when there is a consideration given for nomination that the agreement is illegal. That is not the situation here.

Accordingly, the petition is dismissed in its entirety. The foregoing constitutes the

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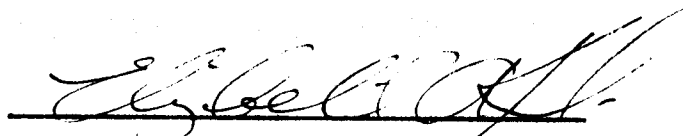
Decision

Order and decision of this Court.

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CERTIFICATION

I, Elizabeth A. Kent, Senior Court Reporter, do hereby certify the foregoing to be true and accurate, as taken by me on August 12, 1991, before the Hon. Vincent Gurahian, Justice of the Supreme Court.



Elizabeth A. Kent

So ORDERED

Dated: August 13, 1991

S/ HON. VINCENT GURAHIAN
J. S. C.