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BY HAND

November 1, 1989

The Honorable Mario M. Cuomo
Governor of New York
Two World Trade Center
New York, New York

RE: Election Fraud
Ninth Judicial District

Dear Governor Cuomo:

On behalf of the Ninth Judicial Committee convened on October 5, 1989, we implore you to invoke your authority as Governor of this State to prevent the perpetration of an election fraud on the voters living in the Ninth Judicial District.

Enclosed herewith are the pertinent documents, prefaced by an index, to support our conclusion that your immediate intervention is required.

On August 23, 1989, I attended a meeting of the Executive Committee of the Westchester County Democratic Committee ("WCDC"). To its credit, meetings of the WCDC Executive Committee are open to enrolled Democrats. A resolution was adopted unanimously, with but one abstention, in the form annexed (Exhibit 1), on the express condition that the Executive Committee of the Westchester County Republican Committee ("WCRC") scheduled to meet the following evening adopted the identical resolution, except for employing the name "Republican" rather than "Democratic".

According to a press report Exhibit 2, WCRC Executive Committee did adopt the counterpart resolution at its meeting the following evening. We were told, prior to the meeting, that it was open only to members of the Executive Committee, and hence were unable to observe the proceedings.

The news stories relating to this subject which preceded and followed the meetings are enclosed as Exhibits 3A, B, C, D, E, and F.

On September 19, 1989, I attended the Democratic Judicial Convention for the Ninth Judicial District accompanied by two members of our Committee. At about 8:30 P.M. the people who had been socializing at the bar in the rear of the room were asked to be seated. Louis Brevetti, Esq., Chairman of the WCDC Law Committee called the meeting to order, stated that he observed a quorum was present, and that the convention could then proceed to conduct its business. All that followed was performed in accordance with a prepared script (the very words used by the Chairman) in an attempt to comply with the specific provisions found in the Election Law, §6-126.

We contend that the certification of the candidates purportedly duly nominated was, and is, fatally defective for the following reasons:

- 1) The call to order was made after 8:30 P.M., more than one (1) hour after the time fixed in the call.
- 2) The number of seats available for delegates and alternates was insufficient in number, but 112, when 218 were required.
- 3) Mr. Brevetti failed to perform initially his only, and most important function, namely calling the roll.
- 4) It is extremely doubtful, based on a superficial headcount, that 55 elected delegates and/or alternates were present to constitute the required legal quorum. The failure to call the roll renders the work of the convention, as reflected in the minutes, void and unenforceable.
- 5) The failure to call the roll when the vote for the Temporary Chairman occurred likewise renders the work of the convention, as reflected in the minutes, void and unenforceable.
- 6) The roll of the convention certified by the Executive Director, Exhibit 4 shows on its face that the requirement for proportional representation found in Election Law §6-124 was violated. Votes were undoubtedly cast for you in the election held in 1986, in the 92 and 93 Assembly Districts of New York State. Parenthetically, the same fatal defects appear to affect the rolls filed for the Republican Party, Conservative Party and Right to Life Party in the Ninth Judicial District.

Based on the foregoing recitals which we can support with affidavits, clearly the Certificates of the a) Minutes and b) Nominations filed on September 25, 1989, Exhibit 5 and 6 were, and are, false and fraudulent, and constitute a violation of Election Law §17-120, a felony.

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The actions of the Executive Committee, the Judicial Convention and the filing of the false and fraudulent certificates collectively, are in violation of Election Law §17-154 and 156 -- See also People v. Hochberg, 1976, 87 Misc. 2d 1024, 386 N.Y.S. 2d 740.

As you may surmise, we were not permitted to observe the workings of the Republican Convention, Ninth Judicial District held on September 22, 1989. Although repeatedly requested, we were told that it would be closed to all but Delegates, Alternates and Party officials. However, we believe that violations of the Election Law probably also occurred.

We request your assistance because the District Attorney of Westchester County is currently engaged in a contested election for the office. Additionally, the political nature of our complaint, may call for your appointing a special prosecutor. When not only the spirit of Article 6, Section 1, of the State Constitution mandating the election of Justices of the Supreme Court, is violated, but the letter is arrogantly ignored, the citizens are entitled to have the wrong redressed. Or, Attorney-General Abrams should immediately investigate.

You must also note that reports indicate that Albert J. Emanuelli, Esq. has promised that he intends to resign the office of Supreme Court Justice after only eight months and become the cross-endorsed candidate for Surrogate of Westchester County (with election virtually guaranteed) and permit County Court Judge Francis A. Nicolai to become the cross-endorsed candidate for the vacancy thereby created (with election also virtually guaranteed). Note also the blatant arrangement engineered for 1991.

In our opinion, it constitutes an election fraud for Mr. Emanuelli to hold himself out to the voters as a candidate impliedly representing that he will serve the full term (14 years), in the meantime, full well knowing that he intends to "change trains at Jamaica" for the Surrogate's Court next November. Counsel at the State Board of Elections recently informed us that the 1974 law seeking to assure truth in advertising by political candidate was struck down by the Federal Courts, and probably justifiably so on First Amendment grounds. The Federal Courts were obviously relying in such cases, on the watchdog candidate in a contested election to protect the voting public. But here we have no such protection.

Incidentally, also note that Cocktail Parties, (\$150 a head), and Breakfasts (\$50 a head), still took place last month, giving the lie to the claim that cross-endorsements would obviate the need for judicial candidates soliciting contributions with a "tin cup", from the very lawyers who will appear before them. Exhibits 7A, B, C, and D.

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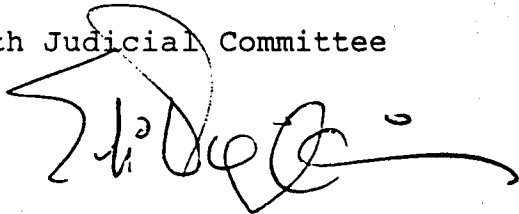
Our Committee has been formed to establish a Pre-Nomination Judicial Screening Panel patterned in the American Bar Association model and the procedure employed in New York County for 20 years. Perhaps, your Judicial Screening Panel can also furnish assistance to us. The Chairman of a New York County panel this year, Joel Bernstein, Esq. has volunteered to assist us in achieving our goal. We expect to solicit the support of the countless community service organizations vitally affected by this subject.

Based on the factual recital above outlined - which we can substantiate with evidentiary proof, oral and documentary - we respectfully request that you utilize your office of Governor of this great State, and also as a member of the Bar who took the oath of office seriously upon his admission, and acknowledged as a respected teacher of the law, to uphold its majesty, and grant us relief to which we are entitled and deserve.

Respectfully yours,

Ninth Judicial Committee

By:

A handwritten signature in black ink, appearing to read "Eli Vigliano", written over a faint circular stamp or mark.

INDEX OF EXHIBITS

EXHIBIT

- | | | |
|----|---|--------------------|
| 1 | Resolution of EXECUTIVE COMMITTEE, Westchester County Democratic Committee (WCDC) | |
| 2 | Herald-Statesman News report | 8/25/89 |
| 3 | <u>News Reports</u> | |
| A | Gannett | 6/29/89 |
| B | Gannett | 7/21/89 |
| C | Gannett | 8/23/89 |
| D | Gannett | 9/20/89 |
| E | New York Times | 10/1/89 |
| F | Gannett | 10/4/89 |
| 4 | Roll of Democratic Delegates - Certified | 9/14/89 |
| 5 | Minutes of Democratic Judicial Convention Ninth Judicial District - filed | 9/25/89 |
| 6 | Certificate of Democratic Nominations - filed | 9/25/89 |
| 7A | News Report - Political Ad
Gannett | 9/24/89 & 10/10/89 |
| B | Invitation to Cocktail Party | 10/26/89 |
| C | News Report - Gannett | 10/29/89 |
| D | Political Ad | 10/29/89 |