

STATE OF NEW YORK : COURT OF APPEALS

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

Petitioners-Appellants,

for an order, pursuant to Sections
16-100, 16-101, 16-104, 16-106 and
16-116 of the Election Law,

Index No. 6056/90
Albany County
Appeal No. 62134
(Third Department)

-against-

ANTHONY J. COLAVITA, ESQ., Chairman,
WESTCHESTER REPUBLICAN COUNTY
COMMITTEE, GUY T. PARISI, Esq., DENNIS
MEHIEL, Esq., Chairman, WESTCHESTER
DEMOCRATIC PARTY 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,

AFFIRMATION IN SUPPORT
OF MOTION TO DISMISS
NOTICE OF APPEAL

Respondents-Respondents.

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STATE OF NEW YORK

COUNTY OF ROCKLAND

SANFORD S. DRANOFF, ESQ., an attorney duly admitted to
practice in the courts of the State of New York, affirms the
following to be true under penalties of perjury.

1. I am the attorney for respondent-respondent HON. HOWARD
MILLER and make this affirmation in support of the motion by
respondent-respondent BOARD OF ELECTIONS to dismiss the Notice of
Appeal filed by petitioners-appellants (hereinafter "appellants")

in this proceeding, and for sanctions and costs.

2. I concur with the statements contained in the affirmation of John Ciampoli, Esq., attorney for the Board of Elections, dated August 2, 1991, in support of this motion that no constitutional issue is involved and am attaching respondent-respondent HOWARD MILLER'S Third Department brief to this affirmation.

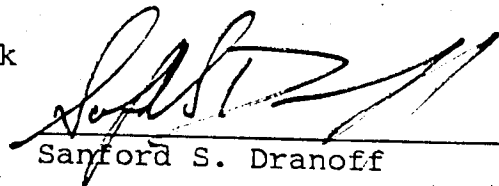
3. The order sought to be appealed, annexed to the moving papers, involves issues other than the constitutionality of a statute, and no constitutional question is directly involved. What appellants seek is to have this court leap-frog over two lower court decisions dismissing the proceeding on statutory and substantive grounds, and assume the legislative function of enacting a law against cross-endorsements of judicial candidates by political parties. Appellants are not challenging the constitutionality of a statute - rather they are urging that there should be a statute prohibiting cross-endorsements. It is respectfully submitted that this is an issue that must be addressed by the legislature, and not by the courts.

4. The merits of the proceeding are not relevant at this juncture. What is relevant is the appealability and reviewability of the lower court orders. Appellants (whose standing was "gravely" doubted by the Appellate Division), having failed to comply with the Civil Practice Law and Rules, in order to bring this appeal before this court, are constrained to find some constitutional issue. Simply saying one exists is not enough. In urging a violation of the voters' right to elect judges, appellants totally ignore the number of ways candidates may be nominated under

the Election Law and demand that each political party field a separate candidate. As there is no statute prohibiting cross-endorsement, neither is there any statute requiring a political party to nominate a separate candidate. Appellants are insisting that voters have a "constitutional right" to require political parties to nominate separate candidates for judicial office. There is, however, no such provision in the constitution and, therefore, nothing for this court to review.

WHEREFORE, it is respectfully requested that the Notice of Appeal be dismissed, and that costs and sanctions, as requested in the Notice of Motion of the Board of Elections, be assessed for the reasons cited in the affirmation of John Ciampoli, Esq.

Dated: August 8, 1991
Pearl River, New York


Sanford S. Dranoff

COPY OF RESPONDENT-RESPONDENT
HOWARD MILLER'S APPELLATE
BRIEF PREVIOUSLY SERVED

6056/90
DEC 14, 1990
18 pages