

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

ARGUMENT  
OF  
RESPONDENTS

-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

Argument

MR. PARISI: Thank you, your Honor.

My name is Guy Parisi and I represent respondent Mr. Colavita.

I am not going to address the merits of the petitioners' oral argument or their petition, because that's already been addressed by Judge Kahn of the Supreme Court, Albany County, and the Appellate Division Third Department. Both those courts have sustained the validity of the cross endorsement by the Republican parties of various judges.

What I do ask this Court, and the only thing I'm going to argue on is on the imposition of sanctions. I think this is a classic case that the Court should impose sanctions. And I'll give you an example.

Their petition, which was addressed by Judge Kahn, which was dismissed by Judge Kahn, and unanimously affirmed by the Third Department, paragraph twelve on September 24th, 1990, a judicial convention in and for the Fourth and Ninth Judicial Districts of the State of New York was convened by the Democratic County Committee in Days Inn, Tarrytown Road, Town of Greenburgh, County of

Argument

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2 Westchester, State of New York, to nominate three  
3 Democratic candidates to the election of the office  
4 of Justice of the Supreme Court of New York of  
5 said District.

6 Their current petition in support of  
7 the order to show cause, paragraph 18, on or about  
8 September 24th 1990, a judicial convention in  
9 and for the Ninth Judicial District of the State  
10 of New York was convened by the Democratic County  
11 Committee, in Days Inn, Tarrytown Road, Town of  
12 Greenburgh, County of Westchester, New York to  
13 nominate three Democratic candidates for election  
14 to the office of Justice of the Supreme Court,  
15 State of New York, and from there on in, every  
16 other paragraph verbatim tracks the petition of  
17 the earlier proceeding which was dismissed by  
18 the Supreme Court, and unanimously affirmed by  
19 the Appellate Division, that dismissal.

20 I would also like to inform the Court,  
21 that pending before the Appellate Division Third  
22 Department, is a motion made by the  
23 respondents -- by the petitioners herein for leave  
24 to reargue to the Court of Appeals. That motion  
25 is returnable I believe, at the Appellate Division,

Argument

1  
2 Division -- that motion is returnable I believe,  
3 on the 19th of August. And on the 9th of September  
4 there's a similiar motion before the Court of  
5 Appeals to request leave to appeal to the Court  
6 of Appeals. When is this going to stop?

7 I submit, that the -- not only the parties,  
8 but Mr. Vigliano as an attorney, should be sanctioned  
9 and Ms. Sassower in whatever she's -- her capacity  
10 is here. She claims she's here as director of  
11 the Ninth Judicial Committee on the Judiciary,  
12 which I find no filing for at the Board of Elections,  
13 either the State or the County.

14 I beg this Court to impose strict sanctions  
15 and attorney's fees in this case, because it's  
16 nothing more than abuse of this Court and the  
17 misuse of the Court's time and attorney's time.

18 Thank you very much.

19 THE COURT: Yes.

20 MR. SCHEINKMAN: Your Honor, I represent  
21 Judge Murphy, Mr. Weingarten, Mr. Mehiel.

22 Procedurally, your Honor, I would indicate  
23 that my answer in this matter was prepared on  
24 Friday. It was, in fact, served by mail on Friday.  
25 Had we been in court on Friday as originally been

Argument

1  
2 agreed, I would have handed it to counsel. Because  
3 we were not and I didn't have a FAX number, I  
4 was not able to send it out to him any other way.

5 When I saw him this morning, as soon  
6 as he walked in the door, I handed a copy to him.  
7 I would like the record to reflect that. And  
8 I would like to put my answer on file.

9 In addition, I would call to the Court's  
10 attention essentially the arguments and positions  
11 that I take are in the same vein as what has been  
12 asserted by Mr. Parisi on behalf of Mr. Colavita.

13 I fully subscribe to and join in the  
14 arguments that have been advanced by Mr. Parisi,  
15 and rather than burden the Court with additional  
16 time, there are only a few points I would like  
17 to make in supplementation.

18 First your Honor, the relief requested  
19 in the present petition in paragraph 1 thereof,  
20 is precisely the same as the relief that was  
21 requested in paragraph 1 of the petition that  
22 was before Judge Kahn. Specifically, a declaration  
23 that the so-called three year plan is illegal,  
24 void, unenforceable, et cetera, et cetera.

25 Now, Judge Kahn found this matter on

1 Argument

2 the merits that there was no cause of action --

3 THE COURT: You said paragraph 1.

4 MR. SCHEINKMAN: In the wherefore clause,  
5 I believe.

6 THE COURT: All right.

7 MR. SCHEINKMAN: Judge Kahn found no  
8 cause of action. The Appellate Division found  
9 even before you got to that issue there was a  
10 host of procedural defects. I would -- one of  
11 which in the Appellate Division's view is the  
12 failure to join additional people.

13 Now this Court is asked to take the  
14 allegations and the wherefore clause, paragraph  
15 1 of the present petition seriously. Presumably,  
16 that would require this Court to make a determination  
17 that the elections that were held in 1989 and  
18 the three Supreme Court candidates elected thereof,  
19 and the elections held in 1990 with the Supreme  
20 Court candidates and Surrogate elected thereat,  
21 along with the prospective election to be held  
22 in 1991, are of an illegal nature, and that these  
23 judges who have been duly elected are in fact,  
24 not elected, I think is far too much to ask from  
25 any Court, particularly in view of the fact that

1 Argument

2 this matter has been adjudicated previously.

3 Secondly, I would point out that there  
4 is in fact, a candidate other than Judge Murphy  
5 for the present seat. There is a Right-To-Life  
6 candidate by the name of Robert K. Wallingford.  
7 So that this is not in any sense an uncontested  
8 election. People will have the opportunity to  
9 vote for either candidate that they choose.

10 Thirdly, I would point out your Honor,  
11 that of all the races that have been alluded to  
12 by counsel for plaintiffs, this is the one where  
13 any member of the public had the easiest route  
14 to seek. There was always a right to petition  
15 at a primary. There is always a right to file  
16 as entirely as an independent candidate.

17 As petitioners point out in their own  
18 petition, they say that the written agreement  
19 was made in 1989, your Honor. Well, here we are  
20 in 1991. They certainly had two years or more  
21 to prepare for this election. There is no secret  
22 about it. They say so themselves.

23 And in fact, any adjudication that would  
24 come from this Court would only frustrate the  
25 electoral process, because what they are asking



1 Argument

2 for is that you declare all the petitions that  
3 have been filed on behalf of Judge Murphy, be  
4 stricken. Presumably, that would leave us with  
5 the candidate Wallingford, running without any  
6 opposition from any other political party, and  
7 at this late date, with probably no other recourse.

8 So it seems to me that if what petitioners  
9 are standing up for is the right to have a contested  
10 election for a judgeship, it would seem to me  
11 that the very relief they ask from this Court  
12 is antithetical to that.

13 I would join in the comments made by  
14 Mr. Parisi with respect to the similarity of the  
15 petitions. I would point out to the Court that  
16 the papers that were served on my clients were  
17 done apparently, in haste. There was a cut and  
18 paste job. Pasting pieces of paper containing  
19 allegations were missing entirely. It looked  
20 like this thing was put together in a hurry --

21 THE COURT: In connection with that,  
22 I would point out to counsel for the  
23 petitioners --

24 MR. VIGLIANO: Yes, your Honor.

25 THE COURT: -- that this agreement that

Argument

1  
2 you allege, has two pages 1 and no page 2, although  
3 one of the pages is marked 2, but is really page  
4 1. Do you have a second page for that agreement?

5 MR. VIGLIANO: Yes, of course, your Honor.

6 THE COURT: May I have it? Sorry to  
7 interrupt.

8 MR. SCHEINKMAN: That's okay.

9 THE COURT: Since we were on that point.

10 MR. SCHEINKMAN: I had the same problem.

11 MR. VIGLIANO: You will forgive me,  
12 I sometimes rely upon these duplicating services.

13 THE COURT: You really should check it  
14 out before you send it out.

15 MR. VIGLIANO: Your Honor, I would just  
16 in mitigation say --

17 THE COURT: It happens.

18 MR. VIGLIANO: -- was signed on the 2nd  
19 and I came to your Chambers 4:00 o'clock, because  
20 of the lateness on Friday, and the proceeding  
21 must be commenced by the Monday, and so I  
22 therefore --

23 MR. PARISI: Your Honor, while counsel  
24 is looking for the pages, I would point out to  
25 the Court, attached to my answer is Judge Kahn's

Argument

1  
2 decision and the affirmance by the Appellate  
3 Division.

4 THE COURT: Yes. You may continue, counsel

5 MR. VIGLIANO: Here, your Honor. Here  
6 we are.

7 THE COURT: All right, let me have page  
8 2. Here is page 2. Only two pages, right?

9 MR. VIGLIANO: Yes.

10 THE COURT: Okay, fine.

11 MR. SCHEINKMAN: I would point out to  
12 the Court that the petition in the first matter,  
13 in specifically, in paragraph 22 thereof reads  
14 as follows:

15 "Respondents Colavita and Weingarten  
16 in addition bound themselves in their perspective  
17 political party to a contract whereby in the general  
18 election to be held in the year 1991. The vacancy  
19 created by the resignation of respondent Nicolai  
20 in Westchester County Court as a County Judge  
21 would be filled by J. Emmett Murphy, a Judge of  
22 the City Court of the City of Yonkers, Democratic  
23 party member and further, that the Republican  
24 party and Democratic party would cross endorse  
25 Scancarelli for Republican re-election Westchester

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County Family Court Judge.

I would call that to the Court's attention for the precise purpose of demonstrating to the Court that the very allegation that was made here was made in the prior proceeding before Judge Kahn.


With respect to the issue of that matter, your Honor, I also would draw the Court's attention to the fact that counsel have elected to file this year's case in this Court, and that it would appear to me at least, that the potential is there that this venue was selected for reasons indicating that had it been filed in Albany the same result that Judge Kahn reached would have been applied there.

I would hope that the Court would not allow the different venue that has been selected for this year to deviate from the law that has been established in this matter previously, and I thank the Court for its time.

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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.



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Elizabeth A. Kent

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