



Office of the New York State
Attorney General

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December 4, 2024

Hon. Heather Davis
Clerk of Court
New York State Court of Appeals
20 Eagle Street
Albany, New York 12207

Re: *Matter of Center for Judicial Accountability*
APL-2024-00150
Index No. 904235-22

Dear Ms. Davis:

Respondents submit this letter in response to this Court's November 6, 2024 letter inquiring whether the Court has subject matter jurisdiction to review as of right two orders entered by the Appellate Division, Third Department: (1) the memorandum and order entered June 20, 2024, affirming the judgment of Supreme Court, Albany County (Gandin, J.), which dismissed appellants' complaint; and (2) the order entered October, 10, 2024, denying appellants' motion for reargument. This Court should dismiss the appeal for the following reasons.

First, insofar as appellants seek review of the Appellate Division's order denying reargument, the Appellate Division's order is not final. *See Caran v. Hilton Hotels Corp.*, 3 N.Y.3d 693 (2004).

Second, insofar as appellants seek review of the Appellate Division's memorandum and order affirming Supreme Court's judgment, no substantial constitutional question is directly involved to support an appeal as of right under C.P.L.R. 5601(b)(1). Preliminarily, we note that appellants did not raise their constitutional claims on appeal in the Appellate Division, and thus that court did not address those claims.

As Supreme Court held, appellants' sixth, seventh, eighth, and ninth causes of action—challenging the constitutionality of the 2022-2023 budget and the Ethics Commission Reform Act, *see* L. 2022, ch. 56, part QQQ—rely on conclusory allegations of procedural violations, fraud, and larceny. These causes of action state no constitutional claim, let alone a substantial constitutional question warranting this Court's review. Notably, unlike *Cuomo v. New York State Commission on Ethics and Lobbying in Government* (APL-2024-0076), this appeal raises no separation-of-powers challenge to the Ethics Commission Reform Act.

Finally, appellants' tenth cause of action—challenging Public Officers Law § 108(2)(b)—also raises no substantial constitutional question. The Constitution requires sessions of the Legislature to be open to the public, “except when the public welfare shall require secrecy.” N.Y. Const. Art. III, § 10. Public Officers Law § 108(2)(b) does not contravene this provision; it merely exempts “private meeting[s]” of legislators from the Open Meetings Law. Such private discussions plainly do not constitute legislative sessions within the meaning of the Constitution. Thus, appellants' challenge to Public Officers Law § 108(2)(b) raises no substantial constitutional question warranting this Court's review.

For these reasons, the appeal should be dismissed *sua sponte* for lack of jurisdiction.

Respectfully submitted,

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