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NEW YORK STATE  
COURT OF APPEALS

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DIVISION OF APPEALS & OPINIONS

August 16, 2024

Hon. Lisa LeCours  
Chief Clerk and Legal Counsel to the Court  
New York State Court of Appeals  
20 Eagle Street  
Albany, NY 12207

Re: *Cuomo v. NYS Commission on Ethics and Lobbying in Government*, APL-2024-00076

Dear Ms. LeCours:

The Office of the Attorney General represents respondent-appellant New York State Commission on Ethics and Lobbying in Government ("Commission"). The Commission perfected its appeal on August 14, 2024. In accordance with 22 N.Y.C.R.R. § 500.17(b), we write to request that the Court grant a calendar preference that schedules this appeal for argument during the January 2025 term. The order of the Appellate Division, Third Department, and the Supreme Court order it affirmed, have created a lack of clarity concerning the Commission's authority to carry out various aspects of its important statutory mission while this appeal is pending. A January argument date would facilitate an earlier resolution of this lack of clarity.

The Commission is responsible for administering, enforcing, and interpreting the State's ethics and lobbying laws. See Executive Law § 94(1), (7)-(10). Plaintiff-respondent Andrew M. Cuomo filed this suit to enjoin the Commission's administrative proceeding against him that is based on ethics violations he is alleged to have committed while

Governor. In September 2023, Supreme Court entered an order that declared unconstitutional Executive Law § 94 (10), (14), as well as any power that is “derived from or ancillary or incidental” to those provisions, and enjoined the Commission from doing any act inconsistent with the court’s declaration. (Record on Appeal [“R.”] 28-29.) Sections 94(10) and (14) address the Commission’s powers to investigate and pursue enforcement proceedings with respect to violations of the State’s ethics and lobbying laws.

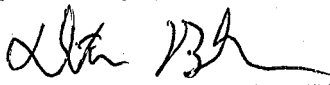
The Commission appealed, and the Third Department stayed Supreme Court’s order except insofar as it enjoined the administrative proceeding against plaintiff. *Cuomo v. New York State Commn. on Ethics & Lobbying in Govt.*, 2023 N.Y. Slip. Op. 75090(U) (3d Dept. 2023). The Third Department subsequently affirmed Supreme Court’s order. (R.947-952.)

The Third Department then granted the Commission’s motion for leave to appeal, thereby continuing the court’s partial stay pending this appeal. See C.P.L.R. 5519(e). Notwithstanding this stay, however, Supreme Court’s order, which was issued nearly a year ago, and the Third Department’s affirmance order have created a lack of clarity concerning the Commission’s operations that has impacted the Commission’s interactions with the communities and persons it regulates and, thus, the performance of its vital mission. This Court should grant the requested calendar preference to allow this appeal to be promptly resolved.

Given the complexity and importance of the issues raised in this appeal, submission without argument would not be warranted.

Plaintiff’s counsel has advised us that they do not consent to scheduling oral argument for the January 2025 term.

Respectfully submitted,

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