

New York Solicitor General Pushes To Validate Statewide Ethics Panel as Constitutional

New York Law Journal Online

May 13, 2024 Monday

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New York Law Journal

Length: 450 words

Body

The state Solicitor General's office wants New York's top court to declare the ethics watchdog a lawful body.

On Monday, the Solicitor General's office filed a motion to leave to appeal the Appellate Division, Third Department's unanimous determination on May 9 that the New York State Commission on Ethics and Lobbying in Government was created unlawfully, after only being in existence since July 2022.

The appellate court had agreed with state Supreme Court Justice Thomas Marcelle's ruling the watchdog's structure violates the separation of powers doctrine by granting too much power to an independent review committee of 15 unelected law school deans who select the commission's 11 members.

The state's appeal effort has support from the New York City Bar Association, which joined six good-government organizations in filing an amicus brief.

It states that the governor acquiesced to the legislation that created the commission as part of an agreement with lawmakers on how to address corruption that had plagued the prior ethics commission.

The amicus brief, which was prepared by attorney Richard J. Davis, a private practitioner with an extensive resume in government, also states that the trial court judge erred by equating the governor's powers to that of the president of the United States.

Marcelle's error, according to Davis, made the judge's reliance on federal cases erroneous and tainted his analysis of the extent to which the COELIG statute's appointment provisions intruded on the governor's

The brief also states that the New York Constitution disperses the responsibility for enforcing state laws to several entities that the governor does not control, including the AG and comptroller.

This is dissimilar to the federal government, where all of those powers are exercised by departments whose heads report to the president, the group's brief stated.

The groups said the appellate court's "alarming logic" stands to "create an imperial Governor who cannot be held accountable for defying the law-short of impeachment or the ballot box."

The case arose from an investigation by COELIG's predecessor agency into whether former New York Gov. Andrew Cuomo violated the Public Officers Law by publishing a book about the state's response to the COVID-19 pandemic while he was in office.

The new ethics watchdog completed the investigation and charged Cuomo with violations.

Cuomo's attorneys from Holwell Shuster & Goldberg LLP convinced the two lower courts that the replacement ethics panel needed to be tied to the government structure.

The commission continues to operate via a stay of the trial court's order granted by the Third Department in September.

Classification

Language: ENGLISH

Publication-Type: Newspaper

Subject: ETHICS (93%); APPEALS (90%); APPEALS COURTS (90%); APPELLATE DECISIONS (90%); GOVERNMENT BODIES & OFFICES (90%); JUDGES (90%); LAWYERS (90%); US STATE GOVERNMENT (90%); GOVERNORS (89%); INVESTIGATIONS (89%);

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New York Law Journal

May 15, 2024 Wednesday

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New York Law Journal

Section: IN BRIEF; Pg. p.1, col.1; Vol. 271; No. 94

Length: 445 words

Byline: Brian Lee

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