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October 2, 2019

Hon. John P. Asiello  
Chief Clerk  
State of New York  
Court of Appeals  
20 Eagle St.  
Albany, New York 12207-1095

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NEW YORK STATE  
COURT OF APPEALS

Re: *Delgado v. State of New York*

Dear Mr. Asiello:

This office represents respondents the State of New York and Thomas P. DiNapoli, Comptroller of the State of New York. Pending before the Court is a *sua sponte* inquiry into whether the Court has subject matter jurisdiction over plaintiffs' direct appeal under C.P.L.R. 5601(b)(2). The parties submitted comments on this inquiry by letters dated September 9, 2019.

As noted in respondents' September 9 letter, cross-appeals are pending in the Appellate Division, Third Department from Supreme Court's judgment. I am writing to inform the Court that the State of New York and the State Comptroller have asked the Appellate Division for permission to withdraw and discontinue their appeal. If this application is granted, there will remain pending in the Appellate Division plaintiffs' cross-appeal from Supreme Court's judgment.

*EX-2*

Respondents' application to withdraw their appeal does not change the analysis of whether there is jurisdiction over plaintiffs' direct appeal. As stated in respondents' September 9 letter, no direct appeal lies because (1) the appeal presents issues other than the constitutionality of a state statute; (2) plaintiffs' unlawful delegation claim is insubstantial; and (3) plaintiffs have simultaneously appealed from the judgment to this Court and the Appellate Division.

Respectfully submitted,

LETITIA JAMES  
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JEFFREY A. LANG  
Deputy Solicitor General

By: *Victor Paladino*  
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cc:

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