



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETTIA JAMES
ATTORNEY GENERAL

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SOLICITOR GENERAL
DIVISION OF APPEALS & OPINIONS

Telephone (518) 776-2012

October 2, 2019

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

RECEIVED

OCT - 2 2019

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.

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

Attorney General

JEFFREY A. LANG

Deputy Solicitor General

By: *Victor Paladino*

VICTOR PALADINO

Senior Assistant Solicitor General

cc:

Cameron J. Macdonald, Esq.
Government Justice Center, Inc.
PO Box 7113
Albany, New York 12224-0113

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)

) ss:

COUNTY OF ALBANY)

William Sportman, being duly sworn, deposes and says:

I am over eighteen years of age and an employee in the office of LETITIA JAMES, Attorney General of the State of New York, attorney for Respondent(s) herein.

On the 2nd day of October, 2019, I served the annexed Letter upon the attorney named below by depositing a true copy thereof, properly enclosed in a sealed, postpaid wrapper, in a letter box of the Capitol Station Post Office in the City of Albany, New York, a depository under the exclusive care and custody of the United States Post Office Department, directed to the said attorney at the address within the State and Respectively designated by him for that purpose as follows:

Cameron J. MacDonald, Esq.
Government Justice Center, Inc.
P.O. Box 7113
Albany, New York 12224-0113

Sworn to before me this

2nd day of October, 2019.

Cristal R. Gazelone

NOTARY PUBLIC

CRISTAL R. GAZELONE
Notary Public, State of New York
Reg. No. 01GA6259001
Qualified in Rensselaer County
Commission Expires April 2, 2020


