SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

NEW YORK STATE SENATE, NEW YORK STATE ASSEMBLY, DEAN G. SKELOS and JEFFREY D. KLEIN, as members and as Temporary Presidents of the New York State Senate, and SHELDON SILVER, as member and as Speaker of the New York State Assembly,

Plaintiffs,

- against -

KATHLEEN RICE, WILLIAM J. FITZPATRICK and MILTON L. WILLIAMS, Jr. in their official capacities as Co-Chairs of the Moreland Commission on Public Corruption, and THE MORELAND COMMISSION TO INVESTIGATE PUBLIC CORRUPTION,

Defendants.

Index No. 160941/2013
I.A.S. Part: 16
Justice Schlesinger
Motion Seq. No. 003

PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO PROPOSED INTERVENOR'S MOTION FOR REARGUMENT, VACATUR, AND OTHER RELIEF

Michael J. Garcia
Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

Attorneys for Plaintiffs New York State Senate and Dean G. Skelos as Temporary President of the New York Senate and Member

Jay K. Musoff
Loeb & Loeb LLP
345 Park Avenue
New York, New York 10154
Telephone: (212) 407-4212
Facsimile: (646) 619-4169

Attorneys for Plaintiff Jeffrey D. Klein as Temporary President of the New York Senate and Member

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INTRODUCTION

The above-captioned action concerned a dispute regarding the propriety of subpoenas duces tecum (the "Subpoenas") issued by the Commission to Investigate Public Corruption (the "Commission") to the employers of certain members of the New York State Senate and New York State Assembly. However, based on public statements that the Commission has been disbanded, and on the Commission's subsequent withdrawal of the contested Subpoenas, all parties jointly filed a Stipulation of Discontinuance on April 24, 2014 to be so ordered by the Court, stating that "the motions in the above-captioned action/proceedings have been rendered moot by the withdrawal of the Subpoenas."

Notwithstanding the Commission's effective termination, on April 23, 2014, the proposed intervening plaintiff Elena Ruth Sassower (the "Proposed Intervenor") filed an Order to Show Cause seeking intervention and a TRO prohibiting the parties from filing a stipulation of discontinuance or otherwise seeking dismissal of the action. The Court heard oral argument on April 28, 2014 and, on April 30, 2014, declined to sign the Order to Show Cause, instead accepting the parties' Stipulation of Discontinuance.

The Proposed Intervenor then filed the instant motion for an order "granting reargument and renewal of the proposed intervening plaintiff's order to show cause with TRO," "vacating the Court's April 30, 2014 decision and the April 24, 2014 stipulation of discontinuance," "referring the parties and their attorneys to disciplinary and criminal authorities for investigation and prosecution of their litigation fraud and conflict of interest," and "for such other and further relief as may be just and proper, including $100 motions costs pursuant to CPLR § 8202." As the Court found, however, the Commission's disbandment and withdrawal of the contested Subpoenas rendered this action moot, and therefore no viable action exists in which the Proposed

Intervenor could intervene. The Proposed Intervenor's instant motion and requests should therefore be denied in full.

ARGUMENT

I. NO VIABLE ACTION EXISTS IN WHICH TO INTERVENE.

The Proposed Intervenor first seeks an order "granting reargument and renewal of the proposed intervening plaintiff's order to show cause with TRO" and "vacating the Court's April 30, 2014 decision and the April 24, 2014 stipulation of discontinuance." (Dkt. 120, Notice of Motion, at 1.) As noted by the Court, however, "every fact seems to point to the conclusion that the Commission is no more," thereby rendering the action moot. (Apr. 28, 2014 Tr. at 12:13-14.) For the reasons stated by the Court, the controversy in which intervention is sought has been mooted and the Proposed Intervenor's motion should be denied.

The Court properly found that because "all motions have been withdrawn and counsel have stipulated to discontinue all proceedings, no viable action exists in which this petitioner can intervene." (Dkt. 57, Decision and Order, at 1.) Indeed, courts are ordinarily "preclude[d] from considering questions which, although once live, have become moot by passage of time or change in circumstances." *Hearst Corp. v. Clyne*, 50 N.Y.2d 707, 714 (1980); *Bruckner v. Bruckner*, 209 N.Y.S.2d 347, 349 (Sup. Ct. 1960). Here, "based on statements made by the Governor and widely reported by the press," "the work of the Commission is ended," rendering moot the disputed Subpoenas and the subsequent motions to quash. (Apr. 28, 2014 Tr. at 4:13-5:2.) Moreover, "[a]s the situation here is unique and not likely to recur in precisely the same manner, no exception to the doctrine of mootness exits." Dkt. 57, Decision and Order, at 1; *see also The Herald Co. v. O'Brien*, 149 A.D.2d 781, 782 (3d Dep't 1989) (noting that "three common factors must exist" for an exception to the mootness doctrine to apply: "(1) a likelihood of repetition, either between the parties or among other members of the public; (2) a

phenomenon typically evading review; and (3) a showing of significant or important questions not previously passed on, i.e., substantial and novel issues").

The argument that "a discontinuance can be denied where it is to avoid an adverse determination" (Affirmation of Elena Ruth Sassower dated June 17, 2014 ("Sassower Aff."), Ex. 17 at 2) is inapposite. That exception is plainly inapt where, as here, *all* parties to the proceedings jointly stipulated to discontinue the action. (*See* Dkt. 54, Stipulation of Discontinuance (noting that "petitioners/proposed intervenors/plaintiffs agree to discontinue the action/proceedings" and that "[t]he Commission agrees to discontinue as moot its cross-motions in the above-captioned proceedings").) The Proposed Intervenor's motion to vacate and reargue should be denied.

II. NO GROUNDS EXIST TO REFER THE PARTIES OR THEIR ATTORNEYS TO DISCIPLINARY OR CRIMINAL AUTHORITIES.

The Proposed Intervenor's request for an order "pursuant to § 100.3D(2) of the Chief Administrator's Rules Governing Judicial Conduct, referring the parties and their attorneys to disciplinary and criminal authorities for investigation and prosecution of their litigation fraud and conflict of interest" (Dkt. 120, Notice of Motion, at 1-2), is meritless. The Proposed Intervenor does not and cannot offer any support for its suggestion, which the Court properly denounced during the April 28 hearing. (*See* Apr. 28, 2014 Tr. at 34:18, 34:21-22). No grounds exist to support the Proposed Intervenor's request, which should be denied.

CONCLUSION

Plaintiffs respectfully request that this Court deny the Proposed Intervenor's motion in all respects and grant any other and further relief as it deems just and proper.

Dated: July 22, 2014
New York, New York

Michael J. Garcia
Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

Attorneys for Plaintiffs New York State Senate and Dean Skelos as Temporary President of the New York Senate and Member

Jay K. Musoff
Loeb & Loeb LLP
345 Park Avenue
New York, New York 10154
Telephone: (212) 407-4212
Facsimile: (646) 619-4169

Attorneys for Plaintiff Jeffrey D. Klein as Temporary President of the New York Senate and Member