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February 3, 2012

Honorable Dora L. Irizarry
United States District Court Judge
United States District Court, Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Favors, *et al.* v. Cuomo, *et al.*
1:11-cv-05632-DLI-RLM

Dear Judge Irizarry:

By letter dated January 17, 2012, Plaintiffs asserted that the motions to dismiss filed by Defendant Brian M. Kolb, Minority Leader of the Assembly of the State of New York ("Defendant Kolb") and Defendant Robert Oaks ("Defendant Oaks") be decided by a three-judge panel because they raise substantive issues. By Order issued January 27, 2012, your Honor directed Defendants Kolb and Oaks to respond to Plaintiffs' arguments by February 3, 2012. In the interests of efficiency, we submit the following response jointly with counsel for Defendant Oaks.

We have researched the law that pertains to this matter and determined that it is, at best, unsettled. For this reason, and in the interests of having the motion to dismiss decided expeditiously, we have decided to withdraw without prejudice that portion of our motions which assert that Plaintiffs' Complaint fails to state a claim for violation of the Equal Protection and Due Process Clauses of the United States Constitution. Attached hereto is a Notice of Partial Withdrawal of Motions, submitted on behalf of Defendants Kolb and Oaks, to effectuate this action. We discussed this matter with Plaintiffs' counsel, and they authorized us to advise the Court that they have no objection to this action.

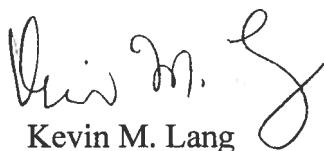
Because our motions to dismiss are now limited to the issues of standing, justiciability, and ripeness, the issues raised by Plaintiffs in their January 17 letter are now moot. Accordingly, there is no reason to transfer consideration of the motions to dismiss to a three-judge panel, and your Honor may proceed with disposition of the motions to dismiss in their entirety.

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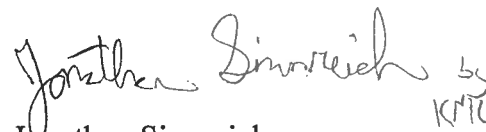
We thank the Court for its consideration of Defendants Kolb's and Oaks' position on this matter.

Respectfully submitted,

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Enclosure

cc: All Counsel (via ECF)