

October 23, 2026

Gregory L. Diskant
Of Counsel
(212) 336-2710
gldiskant@pbwt.com

Via E-Mail

Sean M. Morton, Esq.
Deputy Clerk of the Court
Office of the Legal Profession
State of New York Supreme Court
Appellate Division, Third Judicial Department
PO Box 7288, Capitol Station
Albany, NY 12224-0288
ad3-olp@nycourts.gov

Re: Matter of the Application of Campaign for Accountability

Dear Mr. Morton:

Petitioner, the Campaign for Accountability (“CfA”), respectfully submits this letter in opposition to Respondent John A. Sarcone III’s request for a stay of this Court’s October 22, 2026 Opinion & Order pending appeal (the “Email Motion”). *See* Email Correspondence dated October 22, 2026, attached hereto as Exhibit 1.

While determining whether to grant the requested stay is within this Court’s discretion, *see* N.Y. C.P.L.R. § 5519(c), a stay pending appeal should “not be granted . . . in cases where the appeal is meritless” *Herbert v. New York*, 126 A.D.2d 404, 407 (1st Dep’t 1987); *see also M.C. v. Diocese of Rockville Ctr.*, 2020 N.Y. Misc. LEXIS 12619, at *8 (Sup. Ct. Nassau Cnty. July 30, 2020) (explaining that “[t]he primary factor considered under various statutes permitting discretionary stays is whether the party seeking the stay has demonstrated that the appeal has merit” and denying stay “based on the finding that the [movant’s] appeal lacks merit”). “Thus, the proponent of the stay must demonstrate the merits of the appeal.” *Amerra Cap. Mgmt., LLC v. Berkshire Hathaway Specialty Ins. Co.*, 2026 N.Y. Misc. LEXIS 889, at *3 (Sup. Ct. N.Y. Cnty. Feb. 9, 2026) (cleaned up). “Similarly, a stay cannot be obtained absent a showing that prejudice or irreparable damage will result from a denial of the stay.” *Id.* at *3-4 (cleaned up). The Email Motion does not even attempt to make these required showings and should be denied.

First, the Email Motion fails to show that the proposed appeal is likely to succeed on the merits. Indeed, nothing in the Email Motion so much as suggests that this Court’s inherently discretionary finding of good cause was erroneous. Nor does the Email Motion challenge the Court’s thoughtful analysis of CfA’s presumptive First Amendment right of access to Mr. Sarcone’s adjudicatory disposition, which mirrors the Second Circuit’s exhaustive analysis of the same proposition set forth in *C.R. Corps. v LaSalle*, 184 F.4th 104 (2d Cir. 2026), let alone set

forth any basis on which the Court of Appeals would exercise its discretion and reverse these findings. Accordingly, respondent “has failed to demonstrate sufficient merit on its pending appeal to warrant the granting of a stay.” *Reinah Dev. Corp. v. G.A.P. Hotel Corp.*, 78 A.D.2d 924 (3d Dep’t 1980); see *Colt v. N.J. Tr. Corp.*, 2025 N.Y. Misc. LEXIS 7169, at *10 (Sup. Ct. N.Y. Cnty. Sept. 2, 2025) (where “defendants failed to address their likelihood of success on the appeal . . . as required under CPLR 5519 (c), and instead merely set forth the basis for their appeal - regurgitating the arguments they made in their original motion . . . the application . . . fail[s] under section 5519(c)”).

Second, the Email Motion insists that absent a stay, the pending appeal may be rendered moot. See Ex. 1. But courts have consistently held that the risk of mootness, standing alone, is not grounds for a stay. See, e.g., *Dellums v. Smith*, 577 F. Supp. 1456, 1458 (N.D. Cal. 1984) (“The possibility that defendants’ appeal might become moot absent a stay does not affect the considerations which obtain when the Court is asked to stay its order pending appeal.”) (citing *Breswick & Co. v. United States*, 100 L. Ed. 1510, 75 S. Ct. 912, 915 (1955)); *Gordon v. Aetna Life Ins. Co.*, 2026 U.S. Dist. LEXIS 107815, at *15-16 (D. Conn. May 15, 2026) (“[T]he majority of courts in this Circuit have found that the mooting of an appeal, without more, does not constitute irreparable injury.”) (collecting cases); cf. *Grisi v. Shainswit*, 119 A.D.2d 418, 421 (1st Dep’t 1986) (“Doubtless, there are instances . . . where the motion and the appeal from an adverse determination are calculated to delay and hinder the expeditious disposition of the case. We recognize that if the . . . disposition of cases were to be deferred routinely pending appellate review . . . the system would collapse of its own weight.”). Because the Email Motion “fail[s] to assert any exigency or hardship [Mr. Sarcone] may confront if a stay is not granted, and has failed to establish any undue prejudice if a stay is denied,” it “fails to demonstrate that a stay is warranted.” *Amerra Cap. Mgmt., LLC*, 2026 N.Y. Misc. LEXIS 889, at *13 (cleaned up).

Finally, the Email Motion is simply wrong that there would be no prejudice to CfA from the contemplated stay, which would significantly delay the disclosure of the adjudicative disposition in violation of CfA’s constitutional rights under the First Amendment and this Court’s Order. See *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (“The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.”); *We the Patriots USA, Inc. v. Hochul*, 17 F.4th 266, 294 (2d Cir. 2021) (“[A] presumption of irreparable injury flows from a violation of constitutional rights.”) (cleaned up).

* * *

For the foregoing reasons, Petitioner CfA respectfully requests that the Email Motion seeking a stay pending appeal be denied.

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Respectfully submitted,



Gregory L. Diskant
Patterson Belknap Webb & Tyler LLP
(212) 336-2710
gldiskant@pbwt.com

cc: Faust P. Petkovich, Esq.
Attorney for Petitioner
(VIA EMail: fpetkovich@pbwt.com)

Alison M. Coan, Esq.
Attorney for Respondent Grievance Committee for the
Third Judicial Department
(VIA EMail: ad3agc@nycourts.gov)

Michael J. Hutter, Esq.
Attorney for Respondent John A. Sarcone, III, Esq.
(VIA EMail: mhutter@powers-santola.com)

Paul J. DerOhannesian, II, Esq.
Attorney for Respondent John A. Sarcone, III, Esq.
(VIA EMail: paul@derolaw.com)

Exhibit 1

Petkovich, Faust (x2306)

From: Michael J. Hutter <MHutter@powers-santola.com>
Sent: Thursday, October 22, 2026 11:32 PM
To: AD3_Office_of_the_Legal_Profession
Cc: AD3AGC; Diskant, Gregory L. (x2710); Petkovich, Faust (x2306); Paul DerOhannesian
Subject: PM-238-26 - Matter of Campaign for Accountability

External: Think before you click.

I represent with Paul DerOhannesian II respondent John Sarcone in the above referenced matter. I write with respect to this Court's Opinion and Order, filed today, which directed the Attorney Grievance Committee to divulge to petitioner the admonition which it imposed upon Mr. Sarcone by notice dated April 1, 2026. The Committee has advised me that it will comply with this directive on Friday, October 23, 2026 at 4pm, unless it is in receipt of a stay or other directive from this Court, or the Court of Appeals.

By this letter, in lieu of a formal motion, Mr. Sarcone is asking this Court to stay its directive for a reasonable period as determined by the Court to allow Mr. Sarcone to pursue an appeal to the Court of Appeals. This request is made as any appeal will be rendered moot by a disclosure tomorrow. This application is being made by letter as there is insufficient time to prepare a formal motion for a stay to either this Court or the Court of Appeals by 4pm tomorrow. Alternatively, if this letter is insufficient, Mr. Sarcone asks this Court to issue such a stay pursuant to its inherent discretion to issue an order sua sponte concerning an appeal before the Court. There would be no prejudice to petitioner to so order.

As backdrop for this request, two avenues of appeal are being explored. First, an appeal to the Court as a matter of right pursuant to CPLR 5601 (b)(1) as this Court's order is final and the part of the order respondent seeks to appeal is required this Court to decide the constitutional issue raised, namely the First Amendment's application to the admonition, which respondent believes is a substantial constitutional question. In this connection, a Notice of Appeal will be filed tomorrow. Alternatively, as the Court of Appeals jurisprudence applicable to this appeal basis indicates that the Court of Appeals has broad discretion to determine whether the issue is substantial, respondent will also seek leave to appeal to the Court of Appeals pursuant to CPLR 5602 (a)(1) by filing an application with this Court for an order granting permission to appeal to the Court of Appeals. Pursuing both avenues of appeal simultaneously is permissible.

I am currently away from my office and out of town since 2pm today and will be tomorrow as well due to a previously scheduled CLE lecture. If your office needs to contact me, please call my cell 518-810-5564. Internet access for emails is spotty. Alternatively, please contact Mr. DerOhanessian at his above email.

MICHAEL J. HUTTER
Powers & Santola, LLP