

COPY

STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

In the Matter of the Application of

EDWARD F. COX, individually and on
behalf of The NEW YORK STATE
REPUBLICAN COMMITTEE, and
MARC MOLINARO

Petitioners,

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

-against-

NEW YORK STATE JOINT COMMISSION
ON PUBLIC ETHICS,

Respondent.

TO THE SUPREME COURT OF THE STATE OF NEW YORK

The petition of Edward F. Cox ("Petitioner"), individually and on behalf of
petitioner New York State Republican Committee, and Marc Molinaro
(collectively "Petitioners"), respectfully allege:

The Parties

1. Petitioner Edward F. Cox is the Chairman of the New York Republican
State Committee, and maintains an office at 315 State Street, Albany, New York
12210.

VERIFIED PETITION

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2. Petitioner New York Republican State Committee is an unincorporated association with its principal office at 315 State Street, Albany, New York 12210.

3. Petitioner Marc Molinaro is the County Executive of Dutchess County, and resides at 75 Glen Ridge Road, Red Hook, New York 12571..

4. The New York State Joint Commission on Public Ethics (the "Commission") is a government agency created by the New York State Legislature, with its principal office at 540 Broadway, Albany, New York 12207.

THE COMMISSION

5. The New York State Joint Commission on Public Ethics was established in 2011 for the purpose of restoring and maintaining public faith in government and its elected officials. Established as part of the Public Integrity Reform Act of 2011, the Commission has oversight over both the Executive and Legislative Branches and is charged with investigating potential violations of, among other statutes, Public Officers Law §§73 and 74 as they apply to, among others, the four statewide elected officials, *e.g.*, Governor, Lieutenant Governor, Comptroller and Attorney General, candidates for those offices, and executive branch employees pursuant to Executive Law §94(13)((a).

6. Public Officers Law §74 prohibits a state officer or statewide elected official from possessing interests or engaging in activities that are in conflict with

the proper discharge of his or her duties in the public interest. It dictates "standards of conduct", prohibiting certain conduct. (See N.Y. Ethics Comm'n Adv. Op. 98-12 [Oct. 20, 1998], p. 1). Among the enumerated prohibited conduct, §74(3) provides:

(d) No officer or employee of a state agency, member of the legislature or legislative employee should use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or others, including but not limited to, the misappropriation to himself, herself or to others of the property, services or other resources of the state for private business or other compensated non-governmental purposes.

(f) An officer or employee of a state agency... should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.

(h) An officer or employee of a state agency... should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.

7. Upon receipt of a sworn complaint alleging a violation(s) of the Public Officers Law, "the commission shall, *within sixty calendar days* after a complaint or a referral is received or an investigation is initiated on the commission's own initiative, vote on whether to commence a full investigation of the matter under consideration to determine whether a substantial basis exists to conclude that a violation of law has occurred." (Executive Law §94[13][a] [emphasis added]), As

held by a State Supreme Court Justice: “The requirement that a vote be held within [60] days from receipt is a purely ministerial act – which must be carried out in accordance with the clear statutory language.” (*Matter of Trump v New York State Joint Commn. On Pub. Ethics*, 47 Misc.3d 993, 997 [Sup. Ct. Alb. Co. 2015]).

7. Upon the passage of 60 calendar days after a complaint is filed, there is no basis for the Commission to refuse to disclose if the statutorily required vote occurred. (*Matter of Trump v New York State Joint Commn. On Pub. Ethics*, 47 Misc.3d 993, 997-998 [Sup. Ct. Alb. Co. 2015]). Further, to the extent the Commission has not voted on a complaint, a Supreme Court judge may direct that such a vote take place. (*Matter of Trump v New York State Joint Commn. On Pub. Ethics*, 47 Misc.3d 993, 997-998 [Sup. Ct. Alb. Co. 2015]).

8. Executive Law §94(13)(b) further directs the Commission that if it “determines at any stage that there is no violation, that any potential violation has been rectified, or if the investigation is closed for any other reason, the Commission shall so advise the individual and the complainant, if any in writing *within fifteen days* of such decision.” (emphasis added). This notification requirement is a purely ministerial act which must be carried out by the

Commission.

PETITIONERS' COMPLAINTS

9. On February 15, 2018, petitioner Cox, individually and on behalf of the New York Republican State Committee, in accordance with Executive Law §94(13)(a), filed a complaint with the Commission requesting that it commence an investigation into the misconduct of Joseph Percoco, Governor Andrew Cuomo, and other currently unidentified employees of the Governor's Executive Chamber from 2014, alleging, among other violations, violations by them of the Public Officers Law. A copy of the complaint is appended to this Verified Petition as Exhibit "A."

10. Among other unlawful conduct, petitioner Cox alleged in his complaint several instances in which State resources were being used for private and political purposes in violation of provisions of the Public Officers Law.

11. On April 13, 2018, petitioner Marc Molinaro in accordance with Executive Law §94(13)(a), filed a complaint with the Commission requesting that it commence an investigation into the misconduct of Governor Andrew Cuomo, alleging, among other violations, violations by him of the Public Officers Law. A copy of his complaint is appended to this Verified Petition as Exhibit "B."

12. Among other unlawful conduct, petitioner Molinaro alleged in his complaint several instances in which State resources were being used for private and political purposes in violation of provisions of the Public Officers Law. Many of these instances were also raised in the complaint filed by Cox.

THE COMMISSION'S FAILURE TO ACT

13. As previously stated, pursuant to Executive Law §94(13)(a), the Commission was required to vote on whether to commence an investigation based on the Complaints within 60 calendar days of receiving the Complaint.

14. The Commission received the Complaint from petitioner Cox on February 15, 2018. As such, the Commission was required to vote on whether or not to pursue the Complaint no later than April 16, 2018.

15. More than 151 days have now elapsed since petitioner Cox filed his complaint with the Commission.

16. Petitioner Cox has not been notified by the Commission as to the result of the statutorily required vote by the Commission as to his complaint.

17. The Commission received the Complaint from petitioner Molinaro on April 13, 2018. As such, the Commission was required to vote on whether or not to pursue the Complaint no later than June 12, 2018.

18. More than 104 days have now elapsed since petitioner Molinaro filed his complaint with the Commission.

19. Petitioner Molinaro has not been notified by the Commission as to the result of the statutorily required vote by the Commission as to his complaint.

20. The failure and/or refusal of the Commission to inform the petitioners as to the vote on their complaints and even as to whether such a vote occurred is in violation of the Executive Law, contrary to the stated purpose of the Commission, namely, enhancing the public's trust and confidence in government and its elected officials through the prevention of corruption, favoritism, undue influence and abuse of official position.

21. Furthermore, upon information and belief, the Commission has taken no or little investigative actions regarding the complaints. Neither petitioner has been contacted by the Commission and upon further information and belief, neither have journalists or reporters covering the subject action been contacted. Appended to this verified petition as Exhibit "C" are relevant news articles. In fact, the only investigative actions regarding the complaints appear to have been conducted by journalists and reporters.

22. Petitioners are concerned about the pace and thoroughness of the

Commission's investigation. In this regard, the Commission's Executive Director during the time frames of the actions, Seth Agata, was a high level Counsel to the Governor during the time frames of the actions raised in the complaints.in the Governor' Executive Chamber

RELIEF REQUESTED

23. For all the foregoing reasons, petitioners respectfully request an order from this Court directing the Commission to act in accordance with Executive Law §94(13)(a)(b) and (A) order the respondent Commission to formally notify the petitioners whether the result of its statutorily required voting in accordance with New York Executive Law §94(13)(a)(b) in response to the complaints filed by petitioners on February 15, 2018 and April 13, 2018 was to close the matter and consequently notify petitioners of such decision pursuant to Executive Law §94(13) (a)(b); or (B) alternatively, if the statutorily required voting as to the complaints did not occur, directing respondent Commission to comply with Executive Law §94(13)(a) and conduct such vote within thirty (30) days of such order and formally notify petitioners of the result of such vote. and (C) for such other and further relief as to this Court may seem just and proper.

24. No previous application for the relief herein requested has been made.

WHEREFORE, petitioners respectfully request that a judgment be entered pursuant CPLR Article 78 in accordance with said order.

Dated: July 23, 2018

MICHAEL J. HUTTER, ESQ.

By: 

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