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May 15, 2020

VIA EMAIL ONLY

Re: HoganWillig, PLLC v. NYS AG Letitia A. James & Gov. Andrew M. Cuomo
20-cv-00577 WDNY

Dear Colleague:

HoganWillig, PLLC (“HoganWillig”), filed a Complaint on May 13, 2020 in the U.S. District Court for the Western District of New York against Atty Gen. Letitia A. James and Gov. Andrew M. Cuomo. The Complaint arose out of Governor Cuomo’s issuance of his COVID-19-related Executive Orders, and Attorney General James’ enforcement thereof. The Complaint and all exhibits may be accessed by the following link:

<https://www.hoganwillig.com/assets/htmldocuments/Complaint.pdf>

Over the course of the last two months, Governor Cuomo has been shutting down commerce throughout the State of New York, even those businesses deemed by the Empire State Development Corporation (“ESD”), to be “essential.” See their “[Guidance for Determining Whether a Business Enterprise is Subject to a Workforce Reduction Under Recent Executive Orders](#)” (the “Guidance”).

HoganWillig applied for, and received, an explicit designation from ESD providing that HoganWillig was, and is, an Essential Business under the Executive Orders 202, *et seq.* ESD also subsequently issued clarifying Guidance for all lawyers, which now provides:

Lawyers may continue to perform all work necessary for any service so long as it is performed remotely. Any in-person work presence shall be limited to work only in support of essential businesses or services; however, even work in support of an essential business or service should be conducted as remotely as possible.

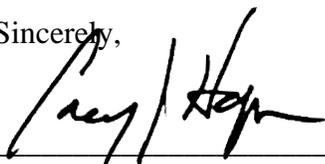
HoganWillig maintains that the steps Governor Cuomo has taken, and AG James has enforced, in an attempt to “flatten the COVID-19 curve” far exceed the Governor’s authority under Section 29-a of Article 2-B of the Executive Law, which Governor Cuomo has cited as his authority for issuing the Executive Orders. Further, we believe those sections of law are repugnant to both the United States and New York State Constitutions. Therefore, while our own circumstances necessitate our challenge of Governor Cuomo’s authority and Attorney General James’ enforcement measures, broader Constitutional issues concerning Governor Cuomo’s and Attorney General James’ disturbing abuses of power must be addressed.

This singular, authoritarian-type governance is occurring, in one form or another, throughout the United States, as governors across the country have issued similar Executive Orders limiting the operations of small businesses or shutting such businesses down completely, beyond the scope of their rightful authority. Moreover, one could argue, the legislative and judicial branches are complicit in this authoritarian-type governance by remaining silent, as governors wield and enforce unchecked power upon the citizens and businesses of their respective States. HoganWillig is choosing not to be silent any longer and to exercise its right to challenge Governor Cuomo’s and Attorney General James’ unconstitutional abuses of power in the face of COVID-19.

Paramount among the reasons this lawsuit is being brought is my concern for what kind of country our children and grandchildren will inherit, as well as an obligation to uphold the principles of our forbearers to keep in place the liberties that many of them gave their lives to secure. As was stated on May 13, 2020 by Holman W. Jenkins, Jr. in a WSJ op-ed, “Our country and our Constitution are finished, however, if the most sweeping, authoritarian and undemocratic restrictions on individual liberty ever contemplated are not subjected to legal challenge and accountability.” This compelling sentiment rings true in this particular moment, as HoganWillig undertakes to mount its own legal challenge to the actions being thrust upon the people in the State of New York under the guise of the ongoing COVID-19 pandemic.

We wanted to provide you with this information for your thoughts, and to facilitate a public discourse on the constitutional issues surrounding Governor Cuomo’s and Attorney General James’ exercise of questionable authority, as well as that same authority exercised by governors and attorneys general throughout the United States during the COVID-19 pandemic. Should you have any thoughts, questions, or comments, please do not hesitate to contact me directly – we would be pleased to hear from you.

Sincerely,



COREY J. HOGAN, ESQ.