

In the Supreme Court of the United States

NICOLE MALLIOTAKIS, ET AL.,
APPLICANTS,

v.

MICHAEL WILLIAMS, ET AL.,
RESPONDENTS.

On Application For Stay to the Court of Appeals of the State of New York to
the Honorable Sonia Sotomayor, Associate Justice of the Supreme Court of
the United States and Circuit Justice for the Second Circuit

OPPOSITION TO MOTION FOR LEAVE TO FILE SUR-REPLY

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Applicants Congresswoman Nicole Malliotakis and Individual Voters Edward L. Lai, Joel Medina, Solomon B. Reeves, Angela Sisto, and Faith Togba (collectively, “Applicants”) oppose the *Williams* Respondents’ Motion For Leave To File Sur-Reply.

The parties already briefed the only issue that the Sur-Reply raises—the import of the Appellate Division’s February 19 order denying Applicants’ motion for a stay and motion for leave to appeal to the Court of Appeals—in their stay papers before this Court, making the *Williams* Respondents’ Sur-Reply clearly improper. The *Williams* Respondents’ Opposition argued that the Applications are “premature” because Applicants have not yet sought review of the Appellate Division’s February 19 order. *See Williams* Resp.2. Applicants specifically addressed that contention in their Reply: “Court rules generally do not require ‘paper shuffling [that] serves no practical purpose.’ *Outlaw v. Airtech Air Conditioning & Heating, Inc.*, 412 F.3d 156, 163 (D.C. Cir. 2005) (Roberts, J.) (quoting *Bankers Trust Co. v. Mallis*, 435 U.S. 381, 385 (1978)). In addition to Applicants’ emergency-stay motion, the Appellate Division had before it Applicants’ motion for a leave to appeal to the Court of Appeals, their request that the Appellate Division issue any additional orders necessary to permit that appeal, and a clear plea that this leave was necessary for relief by February 24. App.3647a–48a. If this Court now denied this Application without prejudice to Applicants filing the futile, duplicative state-court motion that the *Williams* Respondents appear to be urging, that would simply generate another couple of weeks of chaos and delay in New York’s congressional elections, with no benefit to anyone.

Such a pointless filing is not required by any exhaustion principle, including anything in this Court’s Rule 23.3.” Applicants’ Reply at 13–14.

Nothing in the *Williams* Respondents’ improper Sur-Reply changes the analysis. After the *Williams* Respondents told the Appellate Division that it should not grant leave to appeal to the Court of Appeals unless the Appellate Division first issues an “order,” App.301a–03a, Applicants asked the Appellate Division to enter any order that would permit an immediate appeal and to permit appeal from such order, as the only practical way that the Court of Appeals could grant relief before February 24, *see* App.144a–45a. The Appellate Division then denied Applicants’ motion for leave to appeal in full. Suppl.App.102–03. Unlike in *Yeshiva University v. YU Pride Alliance*, 143 S. Ct. 1 (2022), the Appellate Division did not suggest that Applicants’ filing was procedurally improper in any respect, nor did it indicate that it would be open to considering a serial, follow-on motion—much less that such a motion could be briefed and granted in time for the Court of Appeals to even consider granting relief prior to February 24. *Compare id.* at 1, *with* Suppl.App.102–03. Given the foregoing, the *Williams* Respondents do not seriously suggest that a successive motion for leave to appeal would serve any “practical purpose.” *See Bankers Trust*, 435 U.S. at 385.

If this Court nonetheless concludes that such a redundant, futile motion in the Appellate Division is a prerequisite to relief from this Court, Applicants will, of course, file one. But Applicants respectfully submit that there is no sound basis to require such a filing, particularly given that it is undisputed that there are no further

steps that Applicants could have taken to obtain relief from both the Appellate Division and the Court of Appeals before February 24, which is the date when they will begin to suffer irreparable harm.

This Court should deny the *Williams* Respondents' improper request to file a Sur-Reply and should stay the trial court's order today, thereby permitting New York's congressional elections to begin as scheduled on February 24.

Respectfully submitted,

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