**ANALYSIS OF   
THE NEW YORK STATE COMPENSATION COMMITTEE’S   
DECEMBER 10, 2018 REPORT**

As hereinbelow demonstrated, the December 10, 2018 Report and transmitting letter of the New York State Compensation Committee are, throughout, knowingly false and deceitful, violative of a variety of Penal Law provisions. Among these:

“offering a false instrument for filing in the first degree” (Penal Law §175.35)

“defrauding the government” (Penal Law §195.20),

“scheme to defraud in the first degree” (Penal §190.65),

“PUBLIC TRUST ACT:

“corrupting the government in the first degree” ([Penal Law §496.05](http://ypdcrime.com/penal.law/article496.htm));

“Public corruption"  ([Penal Law §496.06](http://ypdcrime.com/penal.law/article496.htm))

**The Committee’s Transmitting Letter**

The Compensation Committee’s Report has no title page. It goes directly from a transmitting coverletter to a table of contents.

The transmitting coverletter, from the Committee’s chair, H. Carl McCall, is addressed to the “three-men-in-a-room” who had inserted Part HHH, establishing the Committee, into Revenue Budget Bill #S.7509-C/A.9505-C – Governor Andrew Cuomo, then Temporary Senate President John Flanagan, and Assembly Speaker Carl Heastie – and, additionally, to then-incoming Temporary Senate President Andrea Stewart-Cousins.

The misrepresentations contained in the transmitting letter begin with the letterhead and the first sentence bearing the name “Committee on Legislative and Executive Compensation”. Although this is functionally what the Committee is about, such name does not appear in Part HHH of what became Chapter 59 of the Laws of 2018 – and is, seemingly, the first time the Compensation Committee identified itself by that name.

The letter then continues by misrepresenting the Committee’s compliance with Part HHH. Its second sentence reads:

“Pursuant to Part HHH of Chapter 59 of the Laws of 2018, this report sets forth the Committee’s recommendations with respect to the levels of executive and legislative compensation over the ensuing three calendar years.” (underlining added).

Yet, Part HHH did not authorize the Committee to make recommendations with respect to “levels” of compensation. Rather, its §1 restricted the Committee to recommendations with respect to “adequate levels of compensation”. Neither here nor in the Report does the Committee purport that its recommendations are restricted to “adequate levels” – or that it found existing compensation levels to be inadequate.

The next sentence then continues to imply the Committee’s compliance with Part HHH:

“In furtherance of its statutory mandate, the Committee considered a broad range of pertinent data, beginning with the factors delineated in the statute.” (underlining added).

However, Part HHH did not mandate that the Committee consider “a broad range of pertinent data”. Rather, its §2.3 required the Committee to “take into account all appropriate factors, including, but not limited to” the eight factors delineated therein. Neither here nor in the Report does the Committee state that it has “take[n] into account all appropriate factors”.

The letter then continues:

“The Committee carefully reviewed the public testimony and extensive written submissions received in connection with the question of appropriate compensation for New York State Officials.” (underlining added).

This is false. Careful review would have compelled a very different report. Indeed, the Committee needed to do no more than review the “public testimony and extensive written submissions” of one witness in particular, Elena Sassower, director of the Center for Judicial Accountability, Inc. (CJA) – because her “extensive written submissions” were, as she stated them to be, “dispositive” that Part HHH is unconstitutional and that the Committee had “nowhere to go” with its salary increase recommendations because the first delineated factor that the Committee was required to “take into account” – “the parties’ performance and timely fulfillment of their statutory and Constitutional responsibilities” – made the others irrelevant.

Then again, “the question” before the Committee was not, as the letter here purports, “appropriate compensation”, but, as the statute’s §1 states, “adequate levels of compensation” – with the statute’s §2.1, reinforcing this by the phrase “prevailing adequacy”.

The letter concludes with Chair McCall thanking the Committee members for “their thoughtful consideration and hard work in dealing with this important issue”. This is utter deceit. Their work and his was superficial, perfunctory, and driven by bias, and their culminating December 10, 2018 Report a fraud – as Chair McCall is presumed to know.

The page following the letter is a “Table of Contents” for the Committee’s Report – and herewith is one for this analysis of its contents:

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**“Members of the Committee on Legislative and Executive Compensation”  
(at pp. 3-4)**

Here, as elsewhere in the Report, there is no acknowledgment – even by a footnote – that “the chief judge of the state of New York” was designated by the statute’s §1 to be a Committee member, that the chief judge, Janet DiFiore, recused herself, and the reason therefor.

Nor is there any acknowledgment that the other four members, whose bios are presented alphabetically, were designated by the statute – or that the designation was not by their names, but by their government positions (§1).

Although the bios of the four members reflect that they are all either current or prior comptrollers of New York State or New York City and that all four are from the metropolitan New York City area – in other words, that there is no occupational or regional diversity among them – no mention is made of their party affiliations. All are Democrats.

Also omitted – from the bio of William C. Thompson, Jr. – is that in 2011 Governor Cuomo had appointed him to be member and chair of the Commission on Judicial Compensation, established by Chapter 567 of the Laws of 2010 – materially identical to Part HHH of Chapter 59 of the Laws of 2018. This is far more germane and relevant than any of the other gubernatorial appointments recited by Mr. Thompson’s bio: three others by Governor Cuomo, in 2016, 2015, and 2011 and, in 2010, appointment by former Governor David Paterson.

The only explanation for this omission is to conceal Mr. Thompson’s disqualification as a member of the Compensation Committee based on what he had done as chair of the Commission on Judicial Compensation.

The issue of Mr. Thompson’s disqualification was raised by CJA director Sassower in her first communication to the Committee – her November 14, 2018 e-mail requesting to testify at its November 30, 2018 hearing, which had read:

“Please reserve your maximum five minutes for my opposition testimony at the Friday, November 30, 2018 NYC hearing.    More to follow as to the unconstitutionality of the statute, *as written*, *as applied*, and by its enactment – as well as the absolute disqualification of two of the Committee’s members, William Thompson, Jr. and Thomas DiNapoli, as they themselves should recognize.  The Center for Judicial Accountability’s website, [www.judgewatch.org](http://www.judgewatch.org), has a webpage entitled ‘The Corrupt Commission Scheme to Raise Salaries of Corrupt Public Officers’, from which everything is accessible.  Here’s the direct link: <http://www.judgewatch.org/web-pages/judicial-compensation/menu-ny-judicial-compensation.htm>.

Thank you.”

The cited webpage link to CJA’s website furnished all the primary-source evidence as to how the Commission on Judicial Compensation had operated under Chair Thompson, culminating in its fraudulent, statutorily-violative, and unconstitutional August 29, 2011 Report – so-demonstrated by CJA’s October 27, 2011 Opposition Report, addressed to the four appointing authorities of its Commission members – Governor Cuomo, then Temporary Senate President Dean Skelos, then Assembly Speaker Sheldon Silver, and then Chief Judge Jonathan Lippman – calling upon them to take corrective steps, beginning with overriding the Report’s “force of law” judicial pay raise recommendations.

Their nonfeasance, in failing to respond to ANY of the facts, law, and legal argument laid out by CJA’s October 27, 2011 Opposition Report – as likewise the nonfeasance of then Attorney General Eric Schneiderman and Comptroller Thomas DiNapoli, with whom CJA filed corruption/fraud complaints based on the October 27, 2011 Opposition Report, gave rise, in March 2012, to CJA’s declaratory judgment action against all of them – and, thereafter, to CJA’s first and second citizen-taxpayer actions, additionally challenging the judiciary and legislative budgets and ultimately the whole of the executive budget. This included the budget statute – Chapter E, Part 60 of the Laws of 2015 that repealed and replaced Chapter 567 of the Laws of 2010 with a Commission on Legislative, Judicial and Executive Compensation, whose December 24, 2015 report replicated the fraud, statutory violations, and unconstitutionality of the August 29, 2011 Report, on which it materially relied in making further “force of law” judicial pay raise recommendations.

**“Summary of the Committee’s Recommendations”  
(at pp. 5-7)**

This section is largely identical to the section of the Committee’s Report entitled “Recommendations” (at pp. 14-18), but without the elaborative comments there included.

**“Statutory Mandate” (at pp. 7-9)**

This section purports to summarize Part HHH of Chapter 59 of the Laws of 2018, which it selectively and inconsistently cites in some of its paragraphs, but not in others.

Thus, without citing to any section of Part HHH, the first paragraph states:

“The provisions of law which established this Committee are found at Part HHH of Chapter 59 of the Laws of 2018. These provisions establish a one-time committee to consider the compensation of statewide elected officials, the Commissioners of the state agencies whose salaries are contained in Section 169 of the Executive Law, and the compensation of the Legislature, whose salaries and allowances are contained in Legislative Law §5 and §5-a.” (underlining added).

This is too broad. The Committee’s charge was NOT “to consider…compensation”, as, for instance, how it is structured, but, pursuant to §1, “to examine, evaluate and make recommendations with respect to adequate levels of compensation” – and reinforcing this is §2.1, stating that it “shall examine the prevailing adequacy of pay levels, allowances…and other non-salary benefits”.[[1]](#footnote-1)

The second and third paragraphs of this section then digress to a defense of the statute’s constitutionality. The second paragraph reads:

“While a full copy of this legislation is attached at the end of this report, it is important to note that this section of law fits within a Constitutional framework. The compensation of statewide elected officials and legislators is a matter which is addressed in both Article III and Article IV of the New York State Constitution.”

This is a deceit as the phrase “fits within a Constitutional framework” is intended to imply that the statute is consistent with the Constitution – and, specifically, Article III and Article IV, which it is not. That this is the intended inference is made manifest by the third paragraph, reading:

“To the extent that these provisions are to be ‘fixed by law,’ this Committee is tasked with making recommendations which have the force of law and supersede existing law. The Committee takes this important responsibility very seriously and is guided and constrained by the provisions of Part HHH.”

In other words, without any discussion of the meaning “fixed by law”, or citation to where in Article III and Article IV such phrase appears, this paragraph purports that it can mean fixed by a committee whose “force of law” recommendations will “supersede existing law”. It offers up ZERO legal authority for the bald proposition, which it implies, that the Legislature can delegate the constitutional duty to fix compensation to a committee. That it cannot was summed up by Robert Schulz, testifying at the November 28, 2018 hearing, and by James Coll, testifying at the November 30, 2018 hearing – and further particularized and established by the record of the sixth cause of action (Sections A & B) of CJA’s second citizen-taxpayer, furnished by CJA director Sassower in testifying on November 30, 2018.

As for the bald assertion that the Committee “takes this important responsibility very seriously and is guided and constrained by the provisions of Part HHH”, this pretense is essential to upholding the constitutionality of what is unconstitutional – and such pretense is utterly false, so-proven by the Committee’s conduct, from its belated first meeting on November 13, 2018 – nearly 7-1/2 months after the Committee was “established” by Part HHH – culminating in its flimsy, fraudulent December 10, 2018 Report.

The section then proceeds to recite, by a combination of quotes and paraphrase from Part HHH, what it purports (at p. 7) to be “Most relevant to our charge”.

It begins by now quoting, incompletely, §1: “To ‘make recommendations with respect to **adequate levels of compensation, non-salary benefits, and allowances** pursuant to section 5-a of the legislative law, for members of the legislature, statewide elected officials, and those state officers referred to in section 169 of the executive law.’”, as to which it states “(See, Part HHH at §1 emphasis added).” It does not identify why it has bolded for emphasis the words “**adequate levels of compensation, non-salary benefits, and allowances**” – but the inference is that it has adhered to this restriction to its “recommendations”, which is false.

It then skips, as “Most relevant to our charge”, §2.1, whose reiteration of the “adequate levels” referred to by §1, is, as follows:

“In accordance with the provisions of this act, the committee shall examine the prevailing adequacy of pay levels, allowances pursuant to section 5-a of the legislative law, and other non-salary benefits, for members of the legislature, statewide elected officials, and those state officers referred to in section 169 of the executive law.” (underlining added).

And it also skips as “Most relevant to our charge”, §2.2, which reads:

“The committee shall determine whether, on January 1, 2019, the annual salary and allowances of members of the legislature, statewide elected officials, and salaries of state officers referred to in section 169 of the executive law, warrant an increase.”

Instead, it leaps to §2.3 – to which it does not cite – and which it materially misrepresents, stating:

“We must determine whether on January 1, 2019 an increase in compensation is warranted, and the statute further provides that the Committee shall take into account all appropriate factors, including, but not limited to:

1. the parties’ performance and timely fulfillment of their statutory and Constitutional responsibilities;
2. the overall economic climate;
3. rates of inflation;
4. changes in public sector spending;
5. the levels of compensation and non-salary benefits received by executive branch officials and legislators of other states and of the federal government;
6. the levels of compensation and non-salary benefits received by comparable professionals in government, academia and private and nonprofit enterprise;
7. the ability to attract talent in competition with comparable private sector positions; and
8. the state’s ability to fund increases in compensation and non-salary benefits.”

This is false. The Committee is not charged with determining whether, on January 1, 2019, “an increase in compensation is warranted”, but whether – as set forth in §2.2 – “the annual salary and allowances of members of the legislature, statewide elected officials, and the salaries of state officers referred to in section 169 of the executive law, warrant an increase.” It is for this purpose that it is to “take into account all appropriate factors”. Thus, the Committee’s charge is not the global, “holistic” assessment as to “whether on January 1, 2019 an increase in compensation is warranted” – which, later in the Report (at p. 18), the Committee will use as justification for its recommendations on outside income.

The next paragraph in this section (at p. 8) then cites to §2.4(a) that a recommendation of salary increase may be phased in, so long as the last phase is no later than January 1, 2021, and cites to and quotes §2.4(b), in stating:

“each phased-in increase is statutorily conditioned upon ‘performance of the executive and legislative branch and upon the timely legislative passage of the budget for the preceding year” (underlining added).

Thereupon, a one-sentence paragraph, with interpretive comment, follows:

“This Committee is tasked with, as part of its report, delineating what those conditions require, although ‘legislative passage of the budget’ is set forth as having the same meaning as in Legislative Law §5(3)” (underlining added).

In other words, the Committee here purports that whereas “legislative passage of the budget” is defined by Part HHH, not so with “performance” and, therefore, it is “tasked” with interpreting it, with respect to phased-in increases.

The next paragraph (at p. 8) then skips, entirely, §3, although its fourth and fifth subdivisions are clearly “Most relevant to our charge” – these pertaining to the resources that would enable the Committee to fulfill its responsibilities:

§3.4 “To the maximum extent feasible, the committee shall be entitled to request and receive and shall utilize and be provided with such facilities, resources and data of any court, department, division, board, bureau, committee, agency or public authority of the state or any political subdivision thereof as it may reasonably request to properly carry out its powers and duties pursuant to this act.”

§3.5 “The committee may request, and shall receive, reasonable assistance from state agency personnel as is necessary for the performance of its function.”

Instead, this section speeds to §4.1, to which it cites, falsely implying that December 10, 2018 is the date the Committee’s report “is to be submitted” – as if mandatory. In fact, it is the date by which the Committee “should submit” the report.

The following paragraph (at p. 8) pertains to §4.2, without citing to it – and materially misrepresents that the Committee’s “recommendations ‘shall have the force of law” unless abrogated by the Legislature “by statute prior to the commencement of the new term on January 1, 2019”. This is false.

* First, the only Committee recommendations having “the force of law” pertain to those “to implement a determination pursuant to section two of this act” – this being §2.2 as to “whether,…the annual salary and allowances of members of the legislature, statewide elected officials, and salaries of state officers referred to in section 169 of the executive law warrant an increase” (underlining added).
* Second, the only recommendations having “the force of law” unless modified or abrogated by January 1, 2019 are those pertaining to 2019, as §4.2 reads “unless modified or abrogated by statute prior to January first of the year as to which such determination applies to legislative and executive compensation”.

The final two paragraphs of this section (at pp. 8-9) are led off by the introductory phrase: “For further reference, among the provisions of law that may be impacted”, furnishing three:

* “Section 5 of the legislative law, which effectuates the salary provisions of the Constitution for Legislators AND Section 5-a of the Legislative Law, which…provides for legislative stipends for legislators who serve in a variety of positions.”;
* “Section 169 of the Executive Law set[ting] forth the salaries for various state officers holding positions such as commissioner, chancellor, executive director and the like.”

Thereby covered up by the word “among” is the deficiency of §4.2 in failing to include, in addition to these three provisions, the provisions pertinent to the salaries of the comptroller and attorney general, *to wit*:

Executive Law §40, entitled “Department of audit and control; comptroller”, which reads, in pertinent part:

“There shall continue to be in the state government a department of audit and control.

1. The head of the department of audit and control shall be the comptroller. He shall be paid an annual salary of one hundred fifty-one thousand five hundred dollars.”

Executive Law §60, entitled “Department of law”, which reads, in full:

“There shall continue to be in the state government a department of law. The head of the department of law shall be the attorney-general who shall receive an annual salary of one hundred fifty-one thousand five hundred dollars.”

**“Findings and Determinations”** (at pp. 10 -13)

Under this heading are 16 paragraphs prefaced by the single sentence:

“Based upon the public testimony and extensive written submissions, and upon its own research and deliberations, the Committee’s findings are as follows:”

This sentence is both insufficient – and fraudulent. Completely missing is even an assertion that the Committee’s so-called “findings” are based on compliance with the provisions of Part HHH. That they are not is evidenced from the misrepresentation and concealment of the Committee’s “Statutory Mandate”, in the prior section. As illustrative, the omission, in the prior section, of §3.4 and §3.5 of Part HHH, conferring upon the Committee the resources to ensure that its data collection and evidentiary review would be thorough, bespeaks the obvious fact that it has not availed itself of same.

The Committee’s so-called “findings” are, as hereinafter shown, devoid of both evidentiary and legal support – and contrived. Indeed, this would have been revealed had it made ANY “findings” addressed to the “public testimony and extensive written submissions” of opposition witnesses such as CJA director Sassower.

Suffice to say that the Committee’s reference to its “own research” is not itemized by any appendix listing of what that “research” consists of, just as there is no appendix listing of the “extensive written submissions” to which it refers, without elaboration. In that regard, the Committee’s website does not post any “extensive written submissions”, even where, as in the case of the limited correspondence and written statements it includes, enclosures and attachments are indicated. As an example,

**Paragraph #1:**

“This Committee is tasked with considering, among other things, the parties’ performance and timely fulfillment of their statutory and Constitutional responsibilities. Indeed, the receipt of any phased-in increase is statutorily conditioned upon the fulfillment of these obligations as a legislative body, as well as on-time budget passage in the prior year.

This first paragraph refers to the first “appropriate” factor delineated by §2.3 of Part HHH – and the condition for phased-in increases set forth by §2.4(b), and §2.4(c). However, it has substituted the phrase “on-time budget passage”, which does not appear in any of these provisions, for the phrase “timely legislative passage of the budget”, which is the language of §2.4(b).

**Paragraph #2:**

“On-time budget passage occurs when both houses finally act upon the executive budget submission in accordance with Article VII of the Constitution, by April 1, with appropriations sufficient to support the ongoing operation and support for state government and local assistance for the ensuing fiscal year (hereinafter defined as ‘on-time budget passage’). Satisfaction of the condition of on-time budget passage is readily ascertainable. This year, 2018, the Governor and Legislature enacted an on-time budget.”

This second paragraph now builds on the substituted phrase “On-time budget” by repeating it in each of its three sentences and by adding the date “April 1” to its first sentence paraphrase of Legislative Law §5.3. Legislative Law §5.3, to which this paragraph does not cite, does not contain the April 1st date or anything that would imply that date. It is by this sleight-of-hand in the first sentence, that the second and third sentences baldly purport that “the Governor and Legislature” complied with “the condition of on-time budget passage” in 2018. Presumably, this means “April 1”, as the budget was not enacted “in accordance with Article VII” as Legislative Law §5.3 requires – and the Committee makes no finding nor determination that the budget was enacted “in accordance with Article VII”.

Explication of Legislative Law §5.3 was furnished by CJA director Sassower’s November 30, 2018 written statement, but the Committee neither refers to it, nor rebuts it. It was, as follows:

As for the Committee’s statutory mandate to consider not only ‘performance…of…statutory and Constitutional responsibilities’, but ‘timely fulfillment’ thereof, this is code for the state budget – and so-reinforced by the statute’s §2(¶4b) reference to ‘timely legislative passage of the budget’, repeated in §2(¶4c) as having ‘the same meaning as defined in subdivision 3 of section 5 of the legislative law’, *to wit*,

‘that the appropriation bill or bills submitted by the governor pursuant to section three of article seven of the state constitution have been finally acted on by both houses of the legislature in accordance with article seven of the state constitution and the state comptroller has determined that such appropriation bill or bills that have been finally acted on by the legislature are sufficient for the ongoing operation and support of state government and local assistance for the ensuing fiscal year. In addition, legislation submitted by the governor pursuant to section three of article seven of the state constitution determined necessary by the legislature for the effective implementation of such appropriation bill or bills shall have been acted on. Nothing in this section shall be construed to affect the prohibition contained in section five of article seven of the state constitution.’

In other words, pursuant to Legislative Law §5-a, timeliness with respect to ‘legislative passage of the budget’ has no date, but rests on compliance with Article VII and, seemingly, §4, whose relevant language – providing for a rolling budget, enacted bill by bill – reads:

‘Such an appropriation bill shall when passed by both houses be a law immediately without further action by the governor, except that appropriations for the legislature and judiciary and separate items added to the governor’s bills by the legislature shall be subject to his approval as provided in section 7 of article 4.’”

The Committee’s failure to make any finding with respect to this explication reflects its knowledge that it cannot do so without conceding its accuracy, precluding ANY salary increases to the legislators and the statewide electeds because the budget flagrantly violates Article VII, as likewise statutory and legislative rule provisions based thereon – so-demonstrated by CJA’s second citizen-taxpayer action.

**Paragraph #3:**

“The ‘performance’ of the legislature in its statutory and Constitutional activities, however, is to be interpreted and determined by this Committee. While some may want a litmus test by issue (or by individual Legislator), we cannot have (nor would the statute permit), an increase to be challenged based upon the needs or wants of any particular citizen. The statute charges us with considerations and determinations regarding the body as a whole. Accordingly, we find that this first condition is met by the implementation of the Committee’s limitations on stipends and outside earned income, that will advance the full-time nature of today’s legislative duties to, as a body, satisfy fulfillment of their statutory and Constitutional responsibilities.”

Once again, the Committee makes a word swap – changing “statutory and Constitutional responsibilities” to “statutory and Constitutional activities”. And here, too, but now expressly, it engages in redefinition, purporting that it can swap “performance” – whose definition would be whether the Legislature has met its “statutory and Constitutional responsibilities” in the past and currently – for future legislative acceptance of “limitations on stipends and outside earned income” – neither of which the Legislature has any constitutional or statutory duty to enact and which, assuredly, constitute a “litmus test by issue”, arising from “the needs [and] wants” of a select band of citizens. Without asserting that “the body as a whole”, as presently constituted, has failed to fulfill its “statutory and Constitutional responsibilities” – let alone showing same to be attributable to “stipends and outside earned income” – the Committee nonetheless “find[s]” that reconfiguring the Legislature without “stipends and outside earned income” will “advance the full-time nature of today’s legislative duties” so that it can fulfill “statutory and Constitutional duties” that the Committee has not alleged to be deficient. This is baseless nonsense.

By contrast, at the November 30, 2018 hearing, CJA director Sassower asserted that the Legislature has fallen below any constitutionally acceptable level of functioning – and that this was verifiable from the second citizen-taxpayer action, whose record she handed up for verification. The record itself rebutted that there was any difference between full-time legislators without outside earned income, and part-time legislators, with outside earned income – and established that the issue was capable of empirical proof. It contained an excerpt of her oral testimony at the Legislature’s January 30, 2017 budget hearing, in which she had stated:

“The reason why Albany is dysfunctional, the Legislature is dysfunctional, has nothing to do with whether there are full time legislators or part-time legislators, whether you earn outside income or not, whether we have public campaign financing or not. That is bogus. Because there is no difference, empirically – I’ve interacted with members of the Legislature for 25 years, and I can tell you there’s no difference between a legislator who purports to be full-time or one who has outside work. There’s no difference. The problem is that you don’t have the resources and you are emasculated by rules. (transcript, pp. 524-525)”,

It also included her subsequent empirical test between three full-time legislators who are Harvard Law School graduates:

Assemblyman David Buchwald, Esq. – a member of BOTH the Assembly Committee on Government Operations and the Assembly Judiciary Committee – and Sassower’s own Assembly member;

Senator Michael Gianaris – second-in-command to then Senate Minority Leader Stewart-Cousins – Sassower’s own Senator;

Senator Brad Holyman – then ranking member of BOTH the Senate Committee on Investigations and Government Operations AND the Senate Judiciary Committee

and two part-time legislators:

Assemblyman Phil Steck, Esq. – a member of the Assembly Committee on Government Operations, with a law practice;

Assemblyman David Pietro – a legislator who owns three dry-cleaning stores.

There was absolutely no difference between these five legislators. None would confront the record of the second citizen-taxpayer action – just as no other legislator had been willing to confront it – all blithely continuing and facilitating the constitutional, statutory, and rule violations the second citizen-taxpayer action established.

Suffice to note that this paragraph discusses only the “performance” of the Legislature. There is NO subsequent paragraph assessing the “performance” of the Governor, Comptroller, and Attorney General in fulfilling “their statutory and Constitutional responsibilities”, nor concocting any “outside earned income” excuse for their not doing so. Here, too, CJA’s second citizen-taxpayer action – to which these statewide elected are all defendants – establishes their wholesale violation of “statutory and Constitutional responsibilities” with respect to the budget and the other duties of their offices.

**Paragraph #4**:

“Thus, the increase in salary that we are recommending for effectiveness on January 1, 2019 should be paid to every Legislator, whether or not they were elected or held the position the prior year as there was on-time budget passage. Going forward, with our further recommendation for an increase effective January 1, 2020, and January 1, 2021, it is the determination and finding of this Committee that the on-time budget passage by April 1, in each prior year, together with compliance with the recommendations of this Committee, shall entitle the Legislature to the recommended increases.”

This paragraph builds on the frauds of the predecessor three. The Committee here removes any “performance” component from the first phase of legislative increase, which it recommends for January 1, 2019 – justifying same by its fraud as to the Legislature’s supposed “on-time budget” in 2018.

**Paragraph #5**:

“New York ranks fourth in the country in terms of population and second in the country in terms of its operating budget. The overall gross product produced by New York ranks third in the country with over $1.5 trillion earned annually. The duties and responsibilities of the Commissioners, the Governor and Statewide elected officials and Legislature are amongst the most complex in the world. The output of New York State and the needs of its population dwarf those of many countries worldwide.”

This paragraph implies that New York’s statewide and legislative electeds are deserving of salary increases because of the enormous “duties and responsibilities” that are theirs by virtue of the size and complexity of New York State government. It does not say that they are discharging their “duties and responsibilities” – and the evidence handed up at the November 30, 2018 hearing by CJA director Sassower establishes, resoundingly, they are not.

**Paragraph #6**:

“By any economic measure, the compensation of New York’s Executive branch and Legislative branch officials has failed to keep pace with the rate of inflation since 1999 when the last pay increase became effective. One can measure simply by the Consumer Price Index, and determine that the actual purchasing power of the salary contained in law has decreased. Speaker Carl Heastie, the only Legislator to address this Committee, made a compelling case to the erosion of the legislators’ salaries. While the median household income in New York is up 67% during the past two decades, the $79,000 base salary for lawmakers now has a purchasing power of $51,401 over 1998 when it was enacted. Despite working many long hours in their districts, the cost of living in every category – health care, child care, transportation, etc. has far outpaced their salary. Members of the Legislature are seeking positions in New York City government or the Executive branch at a much greater rate than in past years.”

This paragraph is materially false and deceitful – beginning with its concealment of what NYPIRG Executive Director Blair Horner had stated in both his November 28, 2018 oral testimony and by his written testimony, namely that New York City Quadrennial Compensation Commission had found that “CPI alone does not adequately capture how the average New Yorker has fared”, that median household income is a better measure, and that the Compensation Committee should review the Quadrennial Compensation Commission’s work. This was easy for the Committee to do because the Quadrennial Compensation Commission’s 2015 Report was already before the Committee – having been furnished a full week earlier, by its chair, Frederick A.O. Schwarz, Jr., by a November 21, 2018 e-mail, stating:

“In our analysis of how to address changes in the cost of living since the existing pay limits were set, we found it appropriate to rely on changes in median household income more than changes in the consumer price index (‘CPI’). (See pp. 52-53 and also p. 3 and pp. 42-43).

This was for two reasons. First, the CPI is less accurate. Second, and most importantly, the actions of government officials can affect median household income.”

Yet, the only source this paragraph identifies is Assembly Speaker Heastie who the Committee purports made “a compelling case”. This, by doing just what the Committee here repeats, focusing on the consumer price index, rather than “median household income”, whose dollar figure Assembly Speaker Heastie also did not identify in stating at the November 30, 2018 hearing:

“The base salary for legislators has remained at $79,500, and its purchasing power has diminished to $51,401. During this same period, the state median household income has risen by 67 percent.”

Notably concealed by Assembly Speaker Heastie is what the mean household income was 20 years ago – when the legislators got their $79,500 salary increase – or what it is today, constituting the 67% rise. And the Committee here repeats this, concealing any dollar figures pertaining to the median household income, which is currently $64,894. In other words, the legislators’ base salary of $79,500 today is still $15,000 higher than the median household income – on top of which legislators have Legislative Law §5-a stipends, plus per diems, mileage, pensions, health insurance – and perhaps other items – none of which Speaker Heastie had revealed and all of which the Committee members are presumed knowledgeable, as current and former comptrollers, with two members former legislators – DiNapoli and Stringer.

Notably, the ONLY non-salary compensation addressed by the Committee’s Report – and that in a completely superficial and unauthorized fashion, are the stipends pursuant to Legislative Law §5-a, whose adequacy was expressly part of the Committee’s charge. Nowhere mentioned are the per diems and mileage – even though the Committee had had a slide revealing them – nor health insurance or, perhaps the most substantial of non-salary benefits – and one which is salary-based, *to wit*, pensions, as to which almost 45 years ago, it was already held:

“Retirement benefits in the public as in the private sector must now be viewed as a significant and integral component of current compensation. … As we observed in review of the New York State Teachers Retirement System, ‘the security offered by membership in the retirement system is generally regarded as an inducement to employment in State service or in the public schools. The value of the retirement benefits and prospective rate of payment, especially in the face of continued inflation, is of vital concern to the [members] and might well be the determining factor in their decision to continue in the teaching profession, or seek more lucrative employment.’ ([*Birnbaum v New York State Teachers Retirement System*, 5 N.Y.2d 1, 6](https://scholar.google.com/scholar_case?case=1669106381245095164&q=Boryszewski+v.+Brydges&hl=en&as_sdt=6,33&as_vis=1).) While we recognize that the inducements to as well as the rewards for public service by elected members of the executive and legislative branches of our State government are not precisely parallel to those in private employment or in nonelective positions in government service, nonetheless, in our view retirement benefits constitute as real and substantial a form of compensation as does a pay check. The only significant difference lies in the time of payment. … Retirement benefits are a component of present compensation”, *Boryszewski v. Brydges*, 37 N.Y.2d 361, 368 (1975).

As for the last sentence of this paragraph: “Members of the Legislature are seeking positions in New York City government or the Executive branch at a much greater rate than in past years.”, the Committee furnishes no particulars. Assembly Speaker Heastie gave no testimony on the subject, either orally or by written submission. The sole witness who made mention of state legislators going to other positions was Common Cause Executive Director Susan Lerner and her oral testimony at the November 30, 2018 hearing was limited to the salary disparity with the City Council, in the wake of the substantial raise its members had voted themselves in 2016 over and beyond the New York City Quadrennial Committee’s recommendations. Notwithstanding Ms. Lerner stated that “several members of the Legislature made the decision that it is advantageous to their families finances to return back to NYC and run for City Council”, such is utterly non-probative, as she did not identify who these legislators are or whether they had ever stated that they were running for Common Council because of the better salary – or was this merely her surmise. Nor did she state that there was a paucity of candidates vying to replace them or that they were not just as qualified, if not more so.

Suffice to note, as well, that neither in this paragraph – or any other – does the Committee give any definition of what constitutes “adequacy” and “adequate” levels”, which are its charge. The record of CJA’s citizen-taxpayer action furnished that definition – the same as CJA had furnished to William Thompson, in his chairmanship of the Commission on Judicial Compensation:

“‘the judgment as to what level of pay is adequate should be based on whether a reasonable supply of well-qualified attorneys will make themselves available to become or remain judges in the courts concerned. The lowest pay which produces an adequate supply of well-qualified candidates for the various courts is the only pay level which is fair to State taxpayers; any higher pay would require unnecessarily high taxes.’” (underlining added by CJA’s August 26th letter, at p. 4, quoting from the report of 30 years earlier of the Temporary State Commission on Judicial Compensation, chaired by William T. Dentzer).

**Paragraph #7**:

“New York’s many agency commissioners likewise do not have many entities to which they can be readily compared given the complexity and scope of their budgets, personnel and missions. However, we analyzed other cities, federal agencies and other states and found that the pay of New York’s agency commissioners was also sorely lagging. For instance: looking at comparison states in the Northeast, as well as larger states like California, Florida and Texas, the highest salaries for agencies such as Health, Transportation, Police, Corrections and Education were all uniformly over $200,000, in many cases closer to $300,000. In many of these categories, New York’s salaries were the lowest of the comparison group. New York City’s Commissioners earn over $200,000, for talent pool with a ready transition from New York City to the State system, that significant decrease in salary makes it difficult to recruit and retain Commissioners. Further, the stagnant salaries of Commissioners has suppressed the salaries of other Executive branch staff, which has also made it difficult to retain talented staff; any increase at the Commissioner level will thus allow for other staff salaries to be increased accordingly. Lastly, the statewide elected officials, the Attorney General, Comptroller,fn1 Lieutenant Governor and Governor have seen their collective salaries decline in the face of inflation over the last two decades as well. Other states and major cities have grown these salaries over 50% more than our own statutorily mandated amounts.”

This paragraph conceals that a functioning Legislature, following fact-finding hearings by its appropriate committees, should have had no problem in enacting bills amending Executive Law §169 so as to properly adjust the salaries of appointed commissioners, thereupon signed by the governor – without controversy or political backlash – and especially if existing salaries were making it “difficult to recruit and retain Commissioners”.

In any event, the Committee had NO probative evidence that the “significant” differences in salaries for commissioners elsewhere in government, made it “difficult to recruit and retain Commissioners” and that it was “difficult to retain talented staff”. Neither the Governor, nor anyone from the Executive Chamber testified or furnished any written statement to the Committee. Nor did any commission head testify or submit a statement. Rather, only a single Executive Law §169 commission member, Diane Burman, came forward to testify -- and her testimony did not substantiate recruitment and retention difficulty inasmuch as she stated that she had taken “an over $30,000 pay cut” from the position she had held as Senate majority counsel, in order to serve on the Public Service Commission, which she termed her “dream job”. According to her, she was testifying “not about the money”, but about “fairness”.

Nor was there any probative evidence before the Committee from the “statewide elected officials, the Attorney General, Comptroller, Lieutenant Governor and Governor” that they viewed themselves as facing hardship because of the decrease in their salaries resulting from inflation. To the contrary, the current salaries are not so deplorable that they had not battled for re-election – facing candidates who themselves would be taking substantial pay cuts were they to win election.

**Paragraph #8**:

“Consideration of private sector wage growth over the same two decades reinforces that there must be an increase. The Committee analyzed salary data for, among others, lawyers, including lawyers working in private practice and the public sector throughout New York State, executives in the non-profit sector, professionals in academia and public education, and government officials in New York City. While public service should never strive to compete solely with the private sector, it is instructive and helpful to understand to properly place our public officials in context of the broader labor market in which the State competes for talented individuals.”

This paragraph is insufficient for any finding that “there must be an increase”, as “salary data” is only a component of the larger examination the Committee was required to undertake. Indeed, none of the “appropriate factors” that the Committee was mandated to “take into account” pertained to salary alone, but, for instance: “the levels of compensation and non-salary benefits received by executive branch officials and legislators of other states and of the federal government”; and “the levels of compensation and non-salary benefits received by comparable professionals in government, academia and private and nonprofit enterprise”. Moreover, no comparison is remotely possible to the “private sector” – where salaries may be the highest anywhere – because in the “private sector” employees who do not do their job are booted out, not – as in New York State government – able to remain in a job they are NOT doing – because ALL oversight and removal safeguards have been rendered non-functional.

**Paragraph #9**:

“New York State is in relatively strong fiscal condition at the present time, inasmuch as the Governor and Legislature have controlled increases in spending. While deficits are projected for the coming fiscal year, continued restraints on spending will manage such deficits. The projected additional cost to the State for the first phase of the Committee’s recommendations can be managed within existing budgets, making this increase affordable as it represents less than 5 one-thousands of 1 percent of all state funds spending (0.0048%).”

The paragraph is devoid of any citation to support its bald statement about New York’s “strong fiscal position” or its claim that it results from “the Governor and Legislature hav[ing] controlled increases in spending” – and this view is not consistent with the views of Republican legislators, expressed in connection with the budget.

That the governor and legislature have created a $160 billion “slush fund” budget, profligate with taxpayer monies and perpetuating government corruption, is demonstrated by the second citizen taxpayer action – and by CJA director Sassower’s testimony at the Legislature’s budget hearings for fiscal year 2018-2019, to which she referred at the Committee’s November 30, 2018 hearing.

Indeed, that monies for the first phase can be “managed within existing budgets is because the existing budgets are slush-funds. Tellingly, the Committee here conceals the cumulative dollar amount represented by the “less than 5 one-thousands of 1 percent of all state funds spending (0.0048%)” – which it surely has, since it has offered up a percentage figure for the first phase. And does this dollar figure include the increases to pensions and other salary-based non-salary benefits?

**Paragraph #10**:

“Salary data for Legislators are not well-compared to legislators in most other states. Many states legislators who are considered ‘part-time’ as compared to New York, which is in reality considered a more ‘full-time legislature, do earn less than New York’s salary of $79,500. However, New York’s legislators compare in workload and productivity to relatively few other legislatures in the country. Further, differences in regional cost of living impact these salaries as well. The National Conference of State Legislatures for instance, compares New York only to Michigan, California, and Pennsylvania as equivalent to work product and time commitment.fn2 In some of those states, the salaries exceed that of New York.”

This paragraph is rife with deceit, beginning with its phase “well-compared” – the inference being that New York’s legislators are not well compensated in comparison to the legislators of other states. This is false, as New York’s legislature is the third highest in the country, behind California ($107,240) and Pennsylvania ($87,180), both “full time legislatures” Not only does this paragraph conceal New York’s third-in-the-country salary ranking – notwithstanding pointed out in the November 28, 2018 oral testimony and written statement of NYPIRG’s Blair Horner – but, the very definition of “full-time” legislature – reflected by the annotating footnote link to the National Conference of State Legislatures: <http://www.ncsl.org/research/about-state-legislatures/full-and-part-time-legislatures.aspx> – takes into account a pay level commensurate with “full time”, *to wit*, “legislators are paid enough to make a living without requiring outside income.” This is certainly true in New York where, reflecting that very fact, the overwhelming majority of legislators do not, in fact, have any outside earned income. Such is also concealed by this paragraph – and elsewhere in the Committee’s Report.

Finally, as to the assertion that “New York’s legislators compare in workload and productivity to relatively few other legislatures in the country”, this is also a deceit by its implication that the comparison is in New York’s favor. The very opposite is the case – and the Brennan Center reports that plaintiff Sassower handed up at the November 30, 2018 hearing – says this explicitly. Illustrative of a comparison to California, in its 2008 report, is the following pertaining to introduction of bills:

“The relatively high number of bills introduced in the [New York] Legislature has increased over time and continues to outpace other states. In 2006, the number of bills introduced, 17,700, jumped 17.7% in one year.fn In 2008, 18,239 bills were introduced, yet only 1,634 (i.e., 9%), passed both houses. That’s slightly better than the 8.2% of bills passed in 2005, but it represents a 20.1% increase in the number of bills introduced over 3 just years. To put these figures in perspective, according to 2006 statistics, the state with the second highest number of bills introduced was New Jersey with 6,430, and California’s legislature, representing nearly twice the population of New York, introduced fewer than 2,000 bills.fn89” (at p. 25, underlining added).

The annotating footnote 89 is to a front-page September 24, 2008 article in the Democrat & Chronicle entitled “*N.Y. Legislature Leads Nation in Legislative Failure*”.

**Paragraph #11:**

“New York’s Legislature does, however, uniquely pay a significant number of Legislators a stipend pursuant to §5-a of the Legislative Law. New York pays out 160 special stipends ranging from $9,000 to $41,500. Pennsylvania, by comparison, only pays 15 members a stipend, California pays only four. It is the finding of this Committee that only those highest ranking officials with the level of duties commensurate to those positions in each house should receive a stipend, and the remainder should be folded into an increase in base pay. This will create more equity amongst all 213 Legislators, more stability and transparency regarding legislative compensation and address certain ethical concerns associated with the stipends. The reconfiguration of the balance between salary and stipend, in the overall compensation of Legislators, also complies within the statutory directive limiting the Committee to consideration of increases in compensation.”

The “find[ing]” that stipends should be eliminated, except for those paid to legislators filling the highest and most demanding positions is beyond the Committee’s to make. Part HHH did not give the Committee authority to recommend elimination of any legislative stipends – or to “reconfigure[e]…the balance between salary and stipend in the overall compensation of Legislators”. Rather, pursuant to §§1 and 2, the Committee’s charge was limited to the adequacy of “allowances pursuant to section 5-a of the legislative law” for purposes of determining whether increases were warranted.

Not referred-to by this paragraph is that the Committee purports to justify its “Recommendation on Stipends” in a 2-1/2 page section under the title heading “Statement in Support” (at pp. 18 - 20) – and its deceit is particularized at pages herein.

**Paragraphs #12-14**:

“As part of this process, many individuals and organizations have called on this committee to ban outside income for Legislators. **The Committee was statutorily charged with reviewing other mechanisms of compensation nationally and in other states.** This Committee finds that the Congressional model employed to limit outside income and potential conflicts of interest is best. Applying this model to limit receipt of outside earned income will eliminate both the perception of and any actual conflicts of interest amongst the membership of the two houses. Further, by completely eliminating outside earned income in those areas of employment set forth in the Congressional rules (which include, but are not limited to, instances of fiduciary relationship by service on a board of a company whether for-profit or not-for-profit, service as an attorney, financial advisor, and consultant), it eliminates the possibility for the public to question whether the citizens of this State are being properly served. Speaker Heastie was the only legislative leader to address this committee and he expressed an openness and willingness to consider such a proposal. Temporary President-elect Andrea Stewart-Cousins did not address this Committee, however she noted on December 6 in a public statement that she and her colleagues in the Democratic Conference have pushed to adopt the Congressional model.” (bold added).

“Therefore the Committee finds that the consideration of compensation cannot be complete without considering outside income, its role in overall compensation and the ability of Legislators to fulfill their responsibilities to serve the public in a focused and ethical manner. Accordingly, as part of a compensation framework for Legislators, the Committee determined to limit outside earned income to ensure that Legislators devote the appropriate time and energy to fulfilling their Constitutional obligations and to also minimize the possibility and perception of conflicts. The Committee finds and determines that a complete ban on any outside income would restrict access to these positions, and the limitation on outside earned income is sufficient to prevent avoidable conflicts of interest.”

“Accordingly, as of January 1, 2020, the Congressional model prohibition on outside income from certain professions and a cap on proceeds from outside employment shall apply to the legislature. Where employment is not prohibited, there shall be an earned income limit of 15% of legislative base salary, to be implemented analogously to the cap on Congressional outside income. For 2020, the limitations on outside earned income shall be $18,000. The Committee recognizes that a small number of Legislators have existing obligations and therefore provides this one-year window for Legislators to come into compliance. Furthermore, the Committee believes that the existing guidance and interpretation available under the Congressional model should serve as a guide to implementation of these restrictions in New York.”

These three paragraphs, pertaining to legislators’ outside income, rest on the fraud, in the second sentence of the first paragraph, that “[t]he Committee was statutorily charged with reviewing other mechanisms of compensation nationally and in other states”. Nowhere does Part HHH so-charge the Committee – and its provisions could not be clearer. §1 and §2.1 direct the Committee to examine “adequate levels of compensation” and “prevailing adequacy of pay levels, allowances…and other non-salary benefits” – for the purpose, stated by §2.2, of “determin[ing] whether…salary and allowances…warrant an increase”. Indeed, the requirement in §2.3 that the Committee “take into account all appropriate factors” is expressly to enable it to “discharge[e] its responsibilities” pursuant to §2 – and, thereby limited.

Not referred-to by this paragraph is that the Committee purports to justify its “Recommendation on Outside Income” in a two-paragraph section under the title heading “Statement in Support” (at p. 18). The deceit of that section is particularized at pages herein.

**Paragraph #15**:

“There have been additional calls for reforms completely unrelated to the compensation of those within the jurisdiction of this Committee. These include campaign finance reform, closing the LLP loophole, and many other myriad requests be part of any package to increase salaries. We believe these demands, wholly unrelated to ‘compensation,’ are inappropriate for this Committee to consider, even while we may individually and collectively support some or all of them, and encourage the Governor and Legislature to give them appropriate consideration.”

The referred-to calls for reform unrelated to compensation are policy matters within the jurisdiction of the Legislature, whose committees – if they were functioning – would have long ago held hearings with respect thereto, rendered reports with findings based thereon, drafted and debated responsive legislation – which, *via* appropriate legislative rules would have been voted out of committee and reached the Senate and Assembly floors for debate, amendments, votes – and then the reconciliation of bills for signature by the Governor. As demonstrated by CJA’s second citizen-taxpayer action , the Legislature is not functioning on any constitutional level and substitutes behind-closed-doors deal-making for open legislative process.

**Paragraph #16**:

“There have also been calls to enact a permanent cost of living adjustment to the recommendations here. The statutory mandate of the Committee requires that no increase be effectuated beyond January 1, 2021, which places the imposition of a permanent cost of living adjustment or COLA outside the scope of this Committee’s authority. Furthermore, the Commission on Judicial, Legislative and Executive Compensation created pursuant to Part E of Chapter 60 of the Laws of 2015 will be re-appointed in June 2019 and will be empowered to make recommendations effective in 2021.”

This paragraph – and Paragraph #15 – are the only ones making findings as to the Committee’s jurisdiction consistent with Part HHH.

**“Recommendations” (at pp. 14-18)**

This section purports that the Committee’s recommendations were “unanimously adopted” at the Committee’s December 6, 2018 meeting – and that they incorporate the “findings and determinations” made by the Report.

Although the section essentially repeats the Report’s “Summary of the Committee’s Recommendations” (at pp. 5-7), it differs by including elaborative comments. None of these comments identify any finding having been made by the Committee that current salary levels are “inadequate” – or that legislative stipends are “inadequate” – which is the only statutory basis for recommendations that increases are warranted.

To the contrary, and relating to the Legislature, this section identifies that the Committee’s recommended increases are based on what it deems “appropriate compensation for a member of the Legislature” (at p. 14).

Relating to the Governor and Lieutenant Governor, whose current salary are nowhere identified by the Report, this section advises (at p. 16) that its recommended salary increase for the Governor is:

“a number that while short of the inflation-adjusted amount, reflects the complexity of the office and the fairness in supporting a substantial increase.”

No basis for the salary increase recommendation for the Lieutenant Governor is provided.

Relating to the Attorney General and Comptroller, whose current salary is also nowhere identified by the Report, this section states (at p. 17) that the Committee is recommending a salary that “while less than the inflation-adjusted amount for each reflects the complexity of the office and the fairness in supporting a substantial increase.”

Relating to Executive Law 169 Commissioners, this section states (at p. 17), without elaboration, that it is recommending “an increase for all levels of commissioners” and “simplifying the categories of Commissioners to better reflect scope of responsibilities, complexity, budget and workforce based on current data and account for ranges of income.”

To be integrated -- The Committee further finds that the continuation of unrestricted receipt of outside income runs counter to, as Speaker Heastie testified, the fulltime nature of legislative responsibilities, risks actual and perceived conflicts of interest, and thus creates difficulty in setting levels of compensation. The Committee was charged with reviewing other mechanisms of compensation nationally and in other states. This Committee finds that the Congressional model employed to limit outside earned income and potential conflicts of interest is best. New York shall limit receipt of outside earned income to eliminate both the perception of and any actual conflicts of interest amongst the membership of the two houses and shall completely eliminate outside earned income where there is a fiduciary relationship including service on a board of a company whether for-profit or not-for-profit, to serve as an attorney, financial advisor, consultant or in any other capacity where the public could question whether the employer or the citizens of this state are being properly served. In all cases, where employment is not prohibited, a hard cap of 15% of legislative base salary shall be imposed on outside earned income to ensure that the primary source of earned income is from the state.

Specifically, the prohibited activities are:…

**“STATEMENT IN SUPPORT” (at pp. 18-21)**

**“Recommendation on Outside Income” (at p. 18)**

The two paragraphs under this heading offer sham justification for the Committee’s recommendation. The first is:

“This Committee is created to ‘examine, evaluate, and make recommendations with respect to adequate levels of compensation.’ This directive authorizes a holistic review and analysis of compensation for Legislators without limiting that analysis to simply setting salary levels. The list of considerations is extensive, but not exhaustive. The law explicitly provides that the Committee shall take into account ‘all appropriate factors.’ Part HHH, Sec. 2.3. Limiting outside income in conjunction with increases in salary falls squarely within the scope of ‘examining and evaluating adequate levels of compensation.’ It also falls within the broad objective of the Legislature in creating the Commission in the first place.”

This is a deceit.

The definition of “holistic”, by the Merriam-Webster dictionary,[[2]](#footnote-2) is “relating to or concerned with wholes or with complete systems rather than the analysis of, treatment of, or dissection into parts”, further elaborated upon by its note 1:

**“Look at the Big Picture With *Holistic***

‘The whole is greater than the sum of its parts’ expresses the essence of *holism…* . Holism generally opposes the Western tendency toward analysis, the breaking down of wholes into parts sometimes to the point that ‘you can't see the forest for the trees’. Holism is an important concept in the sciences and social sciences, and especially in medicine. …”

Firstly, if the Committee is purporting to have taken “a holistic review and analysis” of “adequate levels of compensation” for legislators based on the “directive” of §1, the place for it to have started was by actually examining compensation, which it did not do. This is reflected by its failure to identify what the components of compensation are – most significantly, pensions and health benefits, which it does not even mention, let alone disclose their dollar value – making its report violative of the statutory requirement that the Committee examine adequate levels of compensation and non-salary benefits. Secondly, the “extensive, but not exhaustive” “list of considerations” that the statute enumerates at §2.3 did not include median household income – and such was an “appropriate factor” that the Committee was required to “take into account”, particularly in the context of its allegedly “holistic review and analysis”.

As for the Committee’s bald claim that its recommendation on outside income “falls within the broad objective of the Legislature in creating the Commission in the first place”, it is a flagrant falsehood. And proving this is the outcry of legislators in the wake of the Committee’s report – including Temporary Senate President Flanagan and Assembly Speaker Heastier – the “two men in the room” responsible with defendant Cuomo for Part HHH.

The brief second paragraph reads:

“Moreover, among its criteria for examining adequacy is a comparability analysis to the federal government. It would be difficult to analyze the comparable levels of compensation and use them to set compensation levels without at least considering the concomitant restrictions on outside income.”

This is a deceit. There are many differences between New York legislative compensation and compensation in “the federal government”, as for instance, members of Congress, who, among other differences are restricted as to outside income. There is nothing “difficult” about noting such differences and taking them into account – especially as the statute does not task the Committee with setting “comparable levels of compensation”, but, rather, levels that are “adequate”.

**“Recommendations on Stipends” (at pp. 18 - 20)**

The 2-1/2 pages under this heading alternate paragraphs and sentences that are true with those that are deceitful – and false.

Thus, the first paragraph truthfully recites:

“Article III, Section 6 and Legislative Law Section 5-a provide the authority for special allowances, referred to as legislative stipends, to Legislators. Pursuant to Article III, Section 6: ‘Any member, while serving as an officer of his or her house or in any other special capacity therein…may also be paid and receive, in addition, any allowance which may be fixed by law for the particular and additional services appertaining to or entailed by such office or special capacity. Members shall continue to receive such salary and additional allowances as heretofore fixed and provided in this section, until changed by law pursuant to this section.’ N.Y. Const. Article III, §6 (emphasis added).”

The second paragraph is also accurate in stating:

“The constitutional provision is permissive, indicating such allowances ‘may’ be fixed by law. The use of the term ‘may’ in a statute or constitution generally indicated discretion”,

This same paragraph, however, is misleading because the allowances have been “fixed by law”, *to wit*, by Legislative Law §5-a, with the consequence that there is nothing discretionary about the stipend amounts – or that they can only be “changed by law” – the quoted last sentence of Article III, §6 reading:

“Members shall continue to receive such salary and additional allowances as heretofore fixed and provided in this section, until changed by law pursuant to this section.” (underlining added).

The operative word is “shall”, which is mandatory.

The next paragraph is true, other than its possible false implication in its first sentence that a “permissive” constitutional provision has created a permissive statute:

“Section 5-a implements this provision and sets forth an allowance schedule to be paid to members of either house of the Legislature based on their specific positions. See N.Y. Leg. L. 5-a (2018). From 1976 through 2000, the number of members eligible for allowances and their respective allowance amounts increased. For example, in 1976, there were 8 senate officers listed (the highest allowance for this category was $21,000), 48 senators serving in special capacity (the highest allowance for this category was $18,000), 16 assembly officers (the highest allowance for this category was $21,000), and 54 assembly members serving in special capacity (the highest allowance for this category was $18,000). See N.Y. Leg. L. §5-a (1976). In 2000, this number was increased to 24 senate officers (the highest allowance for this category was and remains $41,5000), 63 senators serving in a special capacity (the highest allowance for this category was $34,000), 34 assembly officers (the highest allowance for this category was and is $41,500), 74 assembly members serving in a special capacity (the highest allowance for this category was $34,000), and 8 assembly members serving in a special capacity (the highest allowance for this category was $12,500). See N.Y. Leg. L. §5-a (2000). The numbers of eligible members and their respective allowance amounts have remained unchanged since 2000. See N.Y. Leg. L. §5-a (2018).”

This is followed by a paragraph stating:

“No other state comes close to New York in the number of stipends for serving in a special capacity. Since many of the ‘additional’ duties of these positions would be minimal, if there were additional duties at all, it stands to reason that the number and size of these stipends has been inflated to offset a stagnating base wage.”

The inference of the second sentence is that the added number of stipend-earning positions resulting from the 2000 amendment were sham. However, the Committee does not identify this larceny of taxpayer dollars, spanning the past 18 years. Instead, it states: “it stands to reason that the number and size of these stipends has been inflated to offset a stagnating base wage.” This is not only a cover-up, but false. On January 1, 1999, base legislative salaries had been increased to $79,500. Thus, in 2000, there was no “stagnating base wage” being offset by amendment of Legislative Law §5-a, increasing the number and amounts of the stipends.

The next two paragraphs are then devoted to showing that the statute authorizes the Committee to eliminate the stipends. The first paragraph embeds two true sentences within a frame of sentences that are either false or misleading, finishing off with a final true sentence. Its false first sentence is:

“This Committee has been empowered to take any action with respect to compensation that a statute could effectuate.”

This is false – and making this evident is §2.2 and §4.2, limiting the Committee’s power to change legislative compensation to “force of law” recommendations increasing salaries and increasing stipends.

Also false, the next sentence, reading:

“The enabling legislation charges the Committee not only with the authority to examine and make recommendations with respect to salary levels, but also with respect to non-salary benefits and allowances.”

In fact, the Committee has not been granted open-ended authority to examine and make recommendations “with respect to salary levels” and “with respect to non-salary benefits and allowances”. Rather – as §1 and §2.1 make plain – the examination and recommendations that the Committee was authorized to make were as to “adequate levels” and the “adequacy” of “levels” of pay, allowances, and other non-salary benefits.

Next come two true sentences – annotated by statute references:

“Specifically, the Legislature has delegated to the Commission the authority to ‘examine, evaluate, and made (sic) recommendations’ with respect to the prevailing adequacy of pay levels, ‘allowances pursuant to section 5-a of the legislative law, and other non-salary benefits’ for the Legislature. Part HHH, Sec. 1. Stipends are ‘allowances pursuant to section 5-a of the legislative law.’”

A next sentence then reads:

“Because the Legislature has authorized the Commission to examine stipends, they have given the Commission the authority to analyze and review their use in the context of a compensation package.”

This is false. As hereinabove stated, §1 and §2.1 do not authorize open-ended examination of compensation, but are limited to “adequate levels” and “adequacy” as to “levels” of pay, allowances, and non-salary benefits.

Then follows a true sentence:

“Indeed, the criteria and factors to be considered in the statute apply equally to ‘allowances’ as to ‘levels of compensation’”.

The next, penultimate paragraph then reads, in full:

“The Committee is authorized to determine whether ‘compensation’ warrants an increase. In determining that an over-arching increase is warranted, this Committee may limit the stipends to achieve their true purpose, to supplement the income for those whose positions within the body require significantly more work than that of a Legislature who is serving as a Chair or a Ranking Member in the ordinary sense.”

Again, this is false by its over-reach. §2.2 explicitly states what the Committee is to “determine”, which is “whether, on January 1, 2019, the annual salary and allowances of members of the legislature, statewide elected officials, and salaries of state officers referred to in section 169 of the executive law, warrant an increase.”

It is as follow-up to the final sentence of its penultimate paragraph that the “true purpose” of stipends is “to supplement the income of those whose positions within the body require significantly more work than that of a Legislator who is serving as a Chair or a Ranking Member in the ordinary sense” – that the last paragraph of the section then specifies:

“These positions are: Speaker, Temporary President, the Deputy Leaders in both houses, and the Minority Leaders in Both Houses as well as their respective Deputy Leaders. Additionally, the chair of the Ways and Means Committee and the Senate Finance Chair both have significant additional duties with respect to appointments, consideration of a large volume of legislation, and conducting legislative hearings on the Budget, with the Ranking Members of the fiscal committees in both houses carrying additional duties as well. For similar reasons, in the Assembly, the Speaker Pro Tempore of the Assembly, the Chair of the Codes Committee, and the Ranking Member of the Codes Committee will receive stipends. Significantly, the recommended increase to the base salary will offset the elimination of the stipends and the Legislator will see an increase.”

Yet, there is no finding that those in the referred-to positions are performing their “significantly more work” duties in any kind of responsible, constitutional fashion. That they are not – and to a degree that would warrant their criminal prosecution and removal from office, involving, as it does “grand larceny of the public fisc” and other corruption – is demonstrated, resoundingly, by the second citizen-taxpayer action and, specifically, with respect to the Temporary Senate President, Assembly Speaker, Senate Minority Leader, Assembly Minority Leader, their top Senate and Assembly leaders, and, specifically, the chairs and ranking members of the Senate Finance Committee and Assembly Ways and Means Committee.

Suffice to note that no explanation is furnished as to why, apart from the chair and ranking member of the Legislature’s fiscal committees, only the chair and ranking member of the Assembly Codes Committee are included among those whose stipends should be continued. There would be no basis to so distinguish the Codes Committee, except if it had a unique role. However, the Compensation Committee does not identify what that is.

A clue is provided, however, by Article III, §6 – which is only selectively quoted by the first paragraph of the “Statement of Support”. In full, Article III, §6 reads:

“Each member of the legislature shall receive for his or her services a like annual salary, to be fixed by law. He or she shall also be reimbursed for his or her actual traveling expenses in going to and returning from the place in which the legislature meets, not more than once each week while the legislature is in session. Senators, when the senate alone is convened in extraordinary session, or when serving as members of the court for the trial of impeachments, and such members of the assembly, not exceeding nine in number, as shall be appointed managers of an impeachment, shall receive an additional per diem allowance, to be fixed by law. Any member, while serving as an officer of his or her house or in any other special capacity therein or directly connected therewith not hereinbefore in this section specified, may also be paid and receive, in addition, any allowance which may be fixed by law for the particular and additional services appertaining to or entailed by such office or special capacity. Neither the salary of any member nor any other allowance so fixed may be increased or diminished during, and with respect to, the term for which he or she shall have been elected, nor shall he or she be paid or receive any other extra compensation. The provisions of this section and laws enacted in compliance therewith shall govern and be exclusively controlling, according to their terms. Members shall continue to receive such salary and additional allowance as heretofore fixed and provided in this section, until changed by law pursuant to this section.”

In other words, among the duties of the Senate is to sit “for the trial of impeachments”. Obviously, the Senate cannot sit “for the trial of impeachments” where the underlying procedural channels for bringing charges of impeachments are non-functioning and corrupted. In this regard, Article I “Bill of Rights”, §6 is germane, stating:

“…any public officer who, upon being called before a grand jury to testify concerning the conduct of his or her present office or of any public office held by him or her within five years prior to such grand jury call to testify, or the performance of his or her official duties in any such present or prior offices, refuses to sign a waiver of immunity against subsequent criminal prosecution, or to answer any relevant question concerning such matters before such grand jury, shall by virtue of such refusal, be disqualified from holding any other public office or public employment for a period of five years from the date of such refusal to sign a waiver of immunity against subsequent prosecution, or to answer any relevant question concerning such matters before such grand jury, and shall be removed from his or her present office by the appropriate authority or shall forfeit his or her present office at the suit of the attorney-general.

The power of grand juries to inquire into the wilful misconduct in office of public officers, and to find indictments or to direct the filing of informations in connection with such inquiries, shall never be suspended or impaired by law.”

The conduit to the grand jury are the district attorneys – who are within the jurisdiction of the Codes Committee. Yet, the Codes Committees of both houses – as likewise their Judiciary Committees have not, for decades, held any oversight hearings over the district attorneys to determine whether, in fact, they are discharging their duties to investigate and prosecute public officers for corruption of their official duties – and CJA’s second citizen-taxpayer action establishes this, as well.

1. Suffice to further note that §1 also identifies that the Committee was established, upon enactment of the statute – and that it facilitated same by already designating its five members. [↑](#footnote-ref-1)
2. <https://www.merriam-webster.com/dictionary/holistic#note-1> [↑](#footnote-ref-2)