

Appellate Division Docket #CV-24-1608

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION, THIRD DEPARTMENT

----- X

CENTER FOR JUDICIAL ACCOUNTABILITY, INC.
and ELENA RUTH SASSOWER, individually and
as Director of the Center for Judicial Accountability, Inc,
acting on their own behalf and on behalf of the People
of the State of New York & the Public Interest,

Albany Co. Index # 902654-24
AD Docket # CV-24-1608

Appellants,

-against-

NEW YORK STATE COMMISSION ON LEGISLATIVE,
JUDICIAL AND EXECUTIVE COMPENSATION,

KATHY HOCHUL and ANTONIO DELGADO, in their official
capacities as GOVERNOR and LIEUTENANT GOVERNOR
OF THE STATE OF NEW YORK,

ROWAN WILSON and JOSEPH ZAYAS, in their official capacities
as CHIEF JUDGE and CHIEF ADMINISTRATIVE JUDGE
OF THE STATE OF NEW YORK,

ANDREA STEWART-COUSINS, in her official capacity
as TEMPORARY SENATE PRESIDENT and
THE NEW YORK STATE SENATE,

CARL HEASTIE, in his official capacity as
ASSEMBLY SPEAKER, and
THE NEW YORK STATE ASSEMBLY,

LETITIA JAMES, in her official capacity as
ATTORNEY GENERAL OF THE STATE OF NEW YORK,

THOMAS DiNAPOLI, in his official capacity as
COMPTROLLER OF THE STATE OF NEW YORK,

Respondents.

RECORD ON APPEAL

Volume I [R.1 – R.346]

ELENA RUTH SASSOWER, unrepresented Appellant,
individually & as Director of the Center for Judicial Accountability, Inc.,
and on behalf of the People of the State of New York & the Public Interest

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Stipulation in Lieu of Certification pursuant to CPLR §5532

APPELLANTS' STATEMENT PURSUANT TO [CPLR §5531](#)

1. The index number of the case in the court below is [902654-24](#).
2. The full names of the original parties are set forth in the caption. There have been no changes.
3. The lawsuit was commenced in Supreme Court, Albany County.

4. The lawsuit was commenced on March 18, 2024 by the filing of a Verified Petition/Complaint, an RJI, and an Order to Show Cause to Determine Threshold Issues, Including a Preliminary Injunction with TRO.

On March 21, 2024, all respondents, except for the Commission on Legislative, Judicial and Executive Compensation, were personally served. Respondent Commission on Legislative, Judicial and Executive Compensation dodged service, abetted by the other respondents – Respondent Attorney General James, in particular. As a result, it was necessary for appellants to effect “Personal service by mail”, pursuant to CPLR §312-a, which they did on April 8, 2024 and which Respondent Commission received on April 10, 2024.

5. This is a hybrid Article 78 proceeding, CPLR §3001 declaratory judgment action, and State Finance Law Article 7-A citizen-taxpayer action against public officers and bodies, with two causes of action, plus other and further relief.
6. These are three appeals:

(1) from three “Decision(s), Order(s), and Judgment(s)” dated August 14, 2024 of Rensselaer County Court Judge Jennifer Sober, entered on that date – the subject of appellants’ September 12, 2024 Notice of Appeal to this Court;

(2) from those same three August 2024 decisions – the subject of appellants’ October 21, 2024 Notice of Direct Appeal of Right to the Court of Appeals, pursuant to Article VII, §3(b)(2) of the New York State Constitution, which it transferred to this Court by a March 18, 2024 Order; and

(3) from a November 13, 2024 “Decision/Order/Judgment” of Ulster County Surrogate Court Judge Sara McGinty, entered November 14, 2024 – the subject of appellants’ November 29, 2024 Notice of Direct Appeal of Right to the Court of Appeals, pursuant to Article VII, §3(b)(2) of the New York State Constitution, which it transferred to this Court by the same March 18, 2024 Order.

7. These appeals are being perfected on a full, reproduced record of [902654-24](#) .

Appellants' September 12, 2024 Notice of Appeal [R.1-37]

SUPREME COURT OF STATE OF NEW YORK
COUNTY OF ALBANY

----- X
CENTER FOR JUDICIAL ACCOUNTABILITY, INC.
and ELENA RUTH SASSOWER, individually and
as Director of the Center for Judicial Accountability, Inc.,
acting on their own behalf and on behalf of the People
of the State of New York & the Public Interest,

[Index #902654-24](#)

September 12, 2024

NOTICE OF APPEAL

Petitioners/Plaintiffs,

-against-

NEW YORK STATE COMMISSION ON LEGISLATIVE,
JUDICIAL AND EXECUTIVE COMPENSATION,

KATHY HOCHUL and ANTONIO DELGADO, in their official
capacities as GOVERNOR and LIEUTENANT GOVERNOR
OF THE STATE OF NEW YORK,

ROWAN WILSON and JOSEPH ZAYAS, in their official capacities
as CHIEF JUDGE and CHIEF ADMINISTRATIVE JUDGE
OF THE STATE OF NEW YORK,

ANDREA STEWART-COUSINS, in her official capacity
as TEMPORARY SENATE PRESIDENT and
THE NEW YORK STATE SENATE,

CARL HEASTIE, in his official capacity as
ASSEMBLY SPEAKER, and
THE NEW YORK STATE ASSEMBLY,

LETITIA JAMES, in her official capacity as
ATTORNEY GENERAL OF THE STATE OF NEW YORK,

THOMAS DiNAPOLI, in his official capacity as
COMPTROLLER OF THE STATE OF NEW YORK,

Respondents/Defendants.
-----X

PLEASE TAKE NOTICE that petitioners/plaintiffs hereby appeal to the Appellate Division,
Third Department at the Justice Building, 5th Floor, Empire State Plaza, Albany, New York 12223,
from Rensselaer County Court Judge Jennifer Sober's:

Appellants' September 12, 2024 Notice of Appeal [R.1-37]

- August 14, 2024 “Decision, Order, and Judgment (Motion Sequence 1&2)” ([NYSCEF #79](#)),
- August 14, 2024 “Decision, Order, and Judgment (Motion Sequence 3)” ([NYSCEF #80](#)), and
- August 14, 2024 “Decision, Order, & Judgment (Motion Sequence 4)” ([NYSCEF #81](#)),

each signed by her as “Acting Supreme Court Justice” and entered in the Albany County Clerk’s Office on August 14, 2024.

All three are attached, followed by petitioners’ “legal autopsy”/analysis of each.

Dated: White Plains, New York
September 12, 2024

Yours, etc.

s/

ELENA RUTH SASSOWER, unrepresented petitioner/plaintiff,
individually & as Director of the Center for Judicial Accountability, Inc.,
and on behalf of the People of the State of New York & the Public Interest

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TO: Attorney General Letitia James
The Capitol
Albany, New York 12224-0341

ATT: Assistant Attorney General Noah Engelhart
Assistant Attorney General James Moore

Appellants' September 12, 2024 Notice of Appeal [R.1-37]

STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

In the Matter of the Application of

**CENTER FOR JUDICIAL ACCOUNTABILITY,
INC. and ELENA RUTH SASSOWER, individually
and as Director of the Center for Judicial
Accountability Inc., acting on their own behalf and on
behalf of the People of the State of New York & the
Public Interest,**

Petitioners,

For a Judgment Pursuant to CPLR Article 78
of the New York Civil Practice Law and Rules,

**DECISION, ORDER, and
JUDGMENT
(Motion Sequence 1&2)**

Index No.: 902654-24

-against-

**NEW YORK STATE COMMISSION ON
LEGISLATIVE, JUDICIAL, AND EXECUTIVE
COMPENSATION, KATHY HOCHUL and
ANTONIA DELGADO, in their official capacities as
Governor and Lieutenant Governor of the State of
New York, ROWAN WILSON and JOSEPH ZAYAS,
in their official capacities as Chief Judge and Chief
Administrative Judge of the State of New York,
ANDREA STEWART-COUSINS, in her official
capacity as Temporary Senate President, THE NEW
YORK STATE SENATE, CARL HEASTIE, in his
official capacity as Assembly Speaker, THE NEW
YORK STATE ASSEMBLY, LETITIA JAMES, in
her official capacity as the Attorney General of the
State of New York, and THOMAS DINAPOLI, in
his official capacity as Comptroller of the State of
New York,**

Respondents.

(Albany County Supreme Court, Special Term)

APPEARANCES:

ELENA RUTH SASSOWER and
CENTER FOR JUDICIAL ACCOUNTABILITY, INC.

Appellants' September 12, 2024 Notice of Appeal [R.1-37]

Petitioners, *Pro Se*
P.O. Box 8101
White Plains, New York 10602

HON. LETITIA JAMES
ATTORNEY GENERAL OF THE STATE OF NEW YORK
Attorneys for Respondents *Kathy Hochul, Antonio Delgado, Rowan Wilson, Joseph Zayas, Andrea Stewart-Cousins, the New York State Senate, Carl Heastie, the New York State Assembly, Letitia James, and Thomas DiNapoli*
(Noah C. Engelhart, Esq., of Counsel)
The Capitol
Albany, New York 12224

SOBER, J.:

Petitioners Elena Ruth Sassower and Center for Judicial Accountability, Inc. seek a preliminary injunction and an order for the following: (1) transferring these proceedings to federal court; (2) appointing independent counsel to Petitioners through the Office of the Attorney General; and (3) a stay in adopting the December 4, 2023 Report by the Commission of Legislative, Judicial, and Executive Compensation by the New State Legislature and enjoining the disbursement of certain appropriations as contemplated by bills in both the Senate and Assembly. Respondents oppose and cross-move to dismiss. Thereafter, Petitioners cross-moved for summary judgment.

Preliminarily, all causes of action asserted on behalf of Petitioner Center for Judicial Accountability, Inc. are hereby dismissed as it is unrepresented by counsel as required by CPLR §321(a), and the Court will only address the claims of Petitioner Elena Ruth Sassower.

Petitioner claims that due to the inherent conflict on the part of this Court, this matter is required to be removed to federal court. The Court finds Petitioner's claim unavailing particularly given Petitioner's previous attempts to disqualify the Court. Pursuant to the Rule of Necessity, this Court is authorized to preside over this matter (*See, Center for Jud. Accountability, Inc. v. Cuomo*, 167 A.D.3d 1406, 1408 [3rd Dept., 2018]; *appealed dismissed*, 33 N.Y.3d 993 [2019]; *lv. dismissed & denied*, 34 N.Y.3d 961 [2019]; *Center for Jud. Accountability, Inc. v. NYS Joint Commission on Public Ethics et al.*, 228 A.D.3d 1148 [2024]). Further, as previously held, Petitioner is not entitled to representation by independent counsel through via the Attorney General's Office under Executive Law §63(1) (*See, Center for Jud. Accountability, Inc. v. Cuomo at 1409*).

With respect to Petitioner's remaining requested relief, "[t]o obtain a preliminary injunction, a party 'must demonstrate a probability of success on the merits, danger of irreparable injury in the absence of an injunction and a balance of equities in its favor'" (*See, 23 A Properties, Inc. v. New Mayfair Development Corp.*, 212 A.D.3d 900, 901 [3rd Dept., 2023] quoting, *Nobu Next Door, LLC v. Fine Arts Housing, Inc.*, 4 N.Y.3d 839, 840 [2005]). At the onset, the Court finds Petitioner's

Appellants' September 12, 2024 Notice of Appeal [R.1-37]

challenge to the appropriations were not ripe for judicial review at the time of Petitioner's filing as neither bill had even left committee, much less been voted on by either the Senate or Assembly or been signed by the Governor into law. Moreover, despite Petitioner's challenge to potential future legislation, the Court finds Petitioner lacks standing as she fails to allege a "wrongful expenditure, misappropriation, misapplication, or any other illegal or unconstitutional disbursement of state funds or state property" within the scope of State Finance Law §123-b(1) or how Petitioner has been directly affected by such legislation. Accordingly, Petitioner fails to demonstrate any likelihood of success on the merits and danger of irreparable injury to obtain a preliminary injunction.

The Court has reviewed Petitioner's remaining contentions and finds them to be without merit.

Therefore, it is hereby

ADJUDGED that Respondents' "Notice of Cross-Motion" to dismiss is hereby granted; and it is further

ADJUDGED that Petitioners' "Verified Petition/Complaint" is dismissed and the relief requested therein is in all respects denied.

ENTER.

DATED: August 14, 2024
Troy, New York



HON. JENNIFER G. SOBER
ACTING SUPREME COURT JUSTICE

08/14/2024

Papers Considered: *via NYCEF*

This shall constitute the Decision/Order/Judgment of the Court. This Decision/Order/Judgment is returned to Respondent. All other papers are delivered to the County Clerk. The signing of this Decision/Order/Judgment shall not constitute entry or filing under CPLR §2220. Counsel is not relieved from the applicable provision of this rule with regard to filing, entry and Notice of Entry.

Appellants' September 12, 2024 Notice of Appeal [R.1-37]

STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

In the Matter of the Application of

**CENTER FOR JUDICIAL ACCOUNTABILITY,
INC. and ELENA RUTH SASSOWER, individually
and as Director of the Center for Judicial
Accountability Inc., acting on their own behalf and on
behalf of the People of the State of New York & the
Public Interest,**

Petitioners,

For a Judgment Pursuant to CPLR Article 78
of the New York Civil Practice Law and Rules,

**DECISION, ORDER, and
JUDGMENT
(Motion Sequence 3)**

Index No.: 902654-24

-against-

**NEW YORK STATE COMMISSION ON
LEGISLATIVE, JUDICIAL, AND EXECUTIVE
COMPENSATION, KATHY HOCHUL and
ANTONIA DELGADO, in their official capacities as
Governor and Lieutenant Governor of the State of
New York, ROWAN WILSON and JOSEPH ZAYAS,
in their official capacities as Chief Judge and Chief
Administrative Judge of the State of New York,
ANDREA STEWART-COUSINS, in her official
capacity as Temporary Senate President, THE NEW
YORK STATE SENATE, CARL HEASTIE, in his
official capacity as Assembly Speaker, THE NEW
YORK STATE ASSEMBLY, LETITIA JAMES, in
her official capacity as the Attorney General of the
State of New York, and THOMAS DINAPOLI, in
his official capacity as Comptroller of the State of
New York,**

Respondents.

(Albany County Supreme Court, Special Term)

APPEARANCES:

ELENA RUTH SASSOWER and
CENTER FOR JUDICIAL ACCOUNTABILITY, INC.

Appellants' September 12, 2024 Notice of Appeal [R.1-37]

Petitioners, *Pro Se*
P.O. Box 8101
White Plains, New York 10602

HON. LETITIA JAMES
ATTORNEY GENERAL OF THE STATE OF NEW YORK
Attorneys for Respondents *Kathy Hochul, Antonio Delgado, Rowan Wilson, Joseph Zayas, Andrea Stewart-Cousins, the New York State Senate, Carl Heastie, the New York State Assembly, Letitia James, and Thomas DiNapoli*
(Noah C. Engelhart, Esq., of Counsel)
The Capitol
Albany, New York 12224

SOBER, J.:

Petitioners Elena Ruth Sassower and Center for Judicial Accountability, Inc., subsequent to their request for a preliminary injunction, seek a order for the following: (1) costs and sanctions against the Office of the Attorney General; (2) to disqualify the Office of the Attorney General; and (3) to transfer the proceeding to federal court. Respondents oppose the requested relief.

Based on the Court's August 14, 2024 "Decision, Order, and Judgment (Motion Sequence 1&2)" wherein Respondents' cross-motion to dismiss was granted, Petitioners' motion has been rendered moot.

ADJUDGED that the April 3, 2024 "Notice of Motion for Relief against Attorney General James including Disqualification, upon Transfer to Federal Court" is hereby denied.

ENTER.

DATED: August 14, 2024
Troy, New York



08/14/2024



HON. JENNIFER G. SOBER
ACTING SUPREME COURT JUSTICE

Papers Considered: *via NYCEF*

This shall constitute the Decision/Order/Judgment of the Court. This Decision/Order/Judgment is returned to Respondent. All other papers are delivered to the County Clerk. The signing of this Decision/Order/Judgment shall not constitute entry or filing under CPLR §2220. Counsel is not relieved from the applicable provision of this rule with regard to filing, entry and Notice of Entry.

Appellants' September 12, 2024 Notice of Appeal [R.1-37]

STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

In the Matter of the Application of

**CENTER FOR JUDICIAL ACCOUNTABILITY,
INC. and ELENA RUTH SASSOWER, individually
and as Director of the Center for Judicial
Accountability Inc., acting on their own behalf and on
behalf of the People of the State of New York & the
Public Interest,**

Petitioners,

For a Judgment Pursuant to CPLR Article 78
of the New York Civil Practice Law and Rules,

**DECISION, ORDER, and
JUDGMENT
(Motion Sequence 4)**

Index No.: 902654-24

-against-

**NEW YORK STATE COMMISSION ON
LEGISLATIVE, JUDICIAL, AND EXECUTIVE
COMPENSATION, KATHY HOCHUL and
ANTONIA DELGADO, in their official capacities as
Governor and Lieutenant Governor of the State of
New York, ROWAN WILSON and JOSEPH ZAYAS,
in their official capacities as Chief Judge and Chief
Administrative Judge of the State of New York,
ANDREA STEWART-COUSINS, in her official
capacity as Temporary Senate President, THE NEW
YORK STATE SENATE, CARL HEASTIE, in his
official capacity as Assembly Speaker, THE NEW
YORK STATE ASSEMBLY, LETITIA JAMES, in
her official capacity as the Attorney General of the
State of New York, and THOMAS DINAPOLI, in
his official capacity as Comptroller of the State of
New York,**

Respondents.

(Albany County Supreme Court, Special Term)

APPEARANCES:

**ELENA RUTH SASSOWER and
CENTER FOR JUDICIAL ACCOUNTABILITY, INC.**

Appellants' September 12, 2024 Notice of Appeal [R.1-37]

Petitioners, *Pro Se*
P.O. Box 8101
White Plains, New York 10602

HON. LETITIA JAMES
ATTORNEY GENERAL OF THE STATE OF NEW YORK
Attorneys for Respondent
New York State Commission on Legislative, Judicial, and Executive Compensation
(Noah C. Engelhart, Esq., of Counsel)
The Capitol
Albany, New York 12224

SOBER, J.:

Respondent New York State Commission on Legislative, Judicial, and Executive Compensation (hereinafter also referred to as "Respondent Commission") seeks to dismiss Petitioners' "Order to Show Cause" signed March 19, 2024 (Ryba, J.) seeking a preliminary injunction. Petitioners Elena Ruth Sassower and Center for Judicial Accountability, Inc. oppose.

Respondent Commission contends Petitioners failed to properly effectuate service on Respondent Commission, mistakenly serving the Office of the Attorney General who was not authorized to accept service on their behalf at the time, and thereafter, attempting service beyond the timetable set by the Court. Petitioners do not dispute the failure to serve the Respondent Commission, but instead blame Respondent Commission for its lack of reasonable assistance in effectuating service upon them including no discernable telephone number, failure to respond to emails, and lack of physical address or designated agent of service. Accordingly, the Court finds Petitioners failed to obtain timely jurisdiction over the Respondent Commission, and Petitioners' claims are hereby dismissed.

Further, were the Court to address the merits of Petitioners' contentions, which it does not, the Court still would have denied same as Petitioners' fail to demonstrate any likelihood of success on the merits and danger of irreparable injury to obtain a preliminary injunction as set forth in the Court's August 14, 2024 "Decision, Order, and Judgment Motion (Sequence 1&2)."

Therefore, it is hereby

ADJUDGED that Respondents' "Notice of Motion" to dismiss pursuant to CPLR §3211(a)(8) is hereby granted; and it is further

ADJUDGED that Petitioners' "Verified Petition/Complaint" is dismissed and the relief requested therein is in all respects denied.

Appellants' September 12, 2024 Notice of Appeal [R.1-37]

ENTER.

DATED: August 14, 2024
Troy, New York

08/14/2024



HON. JENNIFER G. SOBER
ACTING SUPREME COURT JUSTICE

Papers Considered: *via NYCEF*

This shall constitute the Decision/Order/Judgment of the Court. This Decision/Order/Judgment is returned to Respondent. All other papers are delivered to the County Clerk. The signing of this Decision/Order/Judgment shall not constitute entry or filing under CPLR §2220. Counsel is not relieved from the applicable provision of this rule with regard to filing, entry and Notice of Entry.

Appellants' September 12, 2024 Notice of Appeal [R.1-37]

“LEGAL AUTOPSY”/ANALYSIS
OF THE THREE AUGUST 14, 2024 DECISIONS OF
RENSSELAER COUNTY COURT JUDGE JENNIFER SOBER

Center for Judicial Accountability, et al. v.
Commission on Legislative, Judicial and Executive Compensation, et al.
Albany Co. #902654-24

“[A] plaintiff’s cause of action is valuable property within the generally accepted sense of that word, and, as such, it is entitled to the protections of the Constitution.”,
Link v. Wabash Railroad Co, 370 U.S. 626, 646 (1962),
 U.S. Supreme Court Justice Hugo Black writing in dissent,
 with Chief Justice Earl Warren concurring.

This analysis constitutes a “legal autopsy”¹ of the three August 14, 2024 decisions of Rensselaer County Court Judge Jennifer Sober ([NYSCEF #79](#)), ([NYSCEF #80](#)), ([NYSCEF #81](#)), each entitled “DECISION, ORDER, and JUDGMENT”, purporting to determine “(Motion Sequence 1&2)”, “(Motion Sequence 3)”, and “(Motion Sequence 4)”, respectively – and purporting to do so as an “Acting Supreme Court Justice”.

As a matter of law – and threshold – these three decisions are nullities, irrespective of whether or not Judge Sober is an “Acting Supreme Court Justice”,² as she was without jurisdiction to render them, pursuant to [Judiciary Law §14](#), because she has direct financial and other interests in this lawsuit involving her judicial salary and the corruption infesting New York’s judiciary, encompassing its “throwing” cases by fraudulent judicial decisions. She conceals this by her three fraudulent decisions “throwing” this case.

All three decisions upend ALL adjudicative standards and are “so totally devoid of evidentiary support as to render [them] unconstitutional under the Due Process Clause” of the United States Constitution, [Garner v. State of Louisiana](#), 368 U.S. 157, 163 (1961), [Thompson v. City of Louisville](#), 362 U.S. 199 (1960), and, comparably, under Article I, §6 of the New York State Constitution, “No person shall be deprived of life, liberty or property without due process of law”. So, too, are they criminal acts, violating a succession of New York’s penal laws, including:

¹ The term “legal autopsy” is taken from the law review article “*Legal Autopsies: Assessing the Performance of Judges and Lawyers Through the Window of Leading Contract Cases*”, 73 [Albany Law Review](#) 1 (2009), by Gerald Caplan, recognizing that the legitimacy of judicial decisions can only be determined by comparison with the record (“...Performance assessment cannot occur without close examination of the trial record, briefs, oral argument and the like...” (p. 53)).

² To ascertain the facts, petitioners have made a FOIL request to the Unified County System ([NYSCEF #86](#)) and, additionally, a motion for renewal seeking the Court’s own clarification as to same ([NYSCEF #83](#)).

Appellants' September 12, 2024 Notice of Appeal [R.1-37]

[Penal Law §195](#) (“official misconduct”);
[Penal Law §496](#) (“corrupting the government”) – part of the “Public Trust Act”;
[Penal Law §195.20](#) (“defrauding the government”);
[Penal Law §175.35](#) (“offering a false instrument for filing in the first degree”);
[Penal Law §155.42](#) (“grand larceny in the first degree”);
[Penal Law §190.65](#) (“scheme to defraud in the first degree”);
[Penal Law §20.00](#) (“criminal liability for conduct of another”).

Judge Sober’s partner in crime, also having financial and other interests in this lawsuit, is Attorney General Letitia James, a respondent representing herself and her fellow respondents.³ The first respondent is the New York State Commission on Legislative, Judicial and Executive Compensation, whose statutorily-violative, fraudulent, and unconstitutional “force of law” December 4, 2024 Report on Judicial Compensation underlies this lawsuit. The others respondents are the public officers to whom petitioners furnished a January 18, 2024 Opposition Report ([NYSCEF #6](#)) to assist them in discharging their “Discharge of Constitutional & Oversight Responsibilities”: the Governor, Lieutenant Governor, Chief Judge, Chief Administrative Judge, Temporary Senate President, the Senate, Assembly Speaker, the Assembly, Attorney General, and Comptroller.

Having NO defense to the Opposition Report and this lawsuit based thereon, Respondent AG James corrupted the judicial process with litigation fraud, for which Judge Sober’s fraudulent judicial decisions rewarded her and her co-respondents.

OVERVIEW – & EVIDENCE

Petitioners’ written submissions for “Motion Sequences” 1-4, all accessible from the [NYSCEF docket](#), are a “paper trail” establishing Respondent AG James’ litigation fraud by her “of counsel” Assistant Attorney General Noah Engelhart and his supervisor Assistant Attorney General John Moore. Simultaneous with abetting the Commission in ducking service, their every filing was a “fraud on the court”, This conduct, in “Motion Sequence 1&2”, was the basis for “Motion Sequence 3”, petitioners’ April 3, 2024 motion for monetary sanctions and disciplinary and criminal referrals of Respondent AG James, her culpable staff and co-respondents, and to disqualify her from representing her co-respondents. To eliminate it, Judge Sober split it off into her “Motion Sequence 3” decision, denying it as “rendered moot” by her “Motion Sequence 1&2” decision which, without identifying a single allegation of petitioners’ March 18, 2024 verified petition, granted Respondent AG James’ March 26, 2024 “cross-motion” to dismiss it on grounds not specified, after impliedly denying petitioners’ March 19, 2024 order to show cause for threshold relief. She then disposed of “Motion Sequence 4”, Respondent AG James’ unauthorized May 3, 2024 motion on behalf of the Commission, also to dismiss the verified petition, by concealing the ducking of service issue and granting the motion based on her decision in “Motion Sequence 1&2”.

³ For simplicity, respondents/defendants are referred to as respondents, the petitioners/plaintiffs are referred to as petitioners, and their verified petition/complaint is most frequently referred to as the verified petition.

Appellants' September 12, 2024 Notice of Appeal [R.1-37]

Common to all three of these flimsy decisions is that they omit the most basic procedural history and identification of moving, opposition, and reply papers and their content. This, in addition to not identifying any of the content of the verified petition and any law pertaining to dismissal of a pleading. As for the requirement of [CPLR §2219](#): “An order determining a motion made upon supporting papers shall...recite the papers used on the motion...”, the three decisions reduce it to the same four words: “Papers Considered: via NYCEF”, not even listing the NYSCEF numbers of the “papers used” within the motion sequences.

To falsely make it appear that the lawsuit is an Article 78 proceeding – and only an Article 78 proceeding – each decision utilizes Respondent AG James’ falsified case caption and further falsifies it. Thus, whereas Respondent AG James had inserted into the caption the words “In the Matter of the Application of...For a Judgment Pursuant to CPLR Article 78 of the New York Civil Practice Law and Rules”, leaving intact the party designations of “Petitioners/Plaintiffs” and “Respondents/Defendants”, Judge Sober changes the party designations to “Petitioners” and “Respondents”, which is what they would be if the lawsuit were not also a declaratory judgment action and citizen-taxpayer action, both of which it also is.

Other than the altered caption, the decisions do not identify that the lawsuit is an Article 78 proceeding or why, do not identify that it is a declaratory judgment action or why, do not identify that it is a citizen-taxpayer action or why, and do not identify that it is brought by petitioners, “on behalf of the People of the State of New York & the Public Interest”. Indeed, **the decision in “Motion Sequence 1&2” seems to imply that the lawsuit is not a citizen-taxpayer action and would have no basis for being one – presumably because the citizen-taxpayer statute, by its terms, removes technical bars of prematurity and lack of standing, the implicit grounds for the decision’s dismissing the verified petition.**

“Motion Sequence 1” is petitioners’ “Order to Show Cause to Determine Threshold Issues, Including Preliminary Injunction with TRO” ([NYSCEF #13](#)) which Albany Supreme Court Justice Christina Ryba signed on March 19, 2024 ([NYSCEF #17](#)), removing from its title the words “to Determine Threshold Issues, Including Preliminary Injunction with TRO”, striking the TRO, and making the order to show cause returnable a full ten days later, on March 29, 2024, before a to-be-assigned judge, which was Judge Sober. A full 3-1/2 months later, and after ignoring petitioners’ June 17, 2024 and July 30, 2024 letters ([NYSCEF #77](#), [NYSCEF #78](#)), inquiring as to whether there was any explanation for her inaction with respect to the March 19, 2024 order to show cause other than her “direct financial interest in this lawsuit”, Judge Sober impliedly denied the order to show cause by the first of her August 14, 2024 decisions, simultaneous with granting Respondent AG James’ March 26, 2024 “cross-motion” to dismiss the verified petition, which is “Motion Sequence 2”.

The three threshold issues that petitioners’ order to show cause had succinctly phrased – and which the first decision conceals and falsifies – are:

“(a) transferring this hybrid Article 78 proceeding/citizen-taxpayer action/declaratory judgment action to federal court, inasmuch as Judiciary Law §14 divests every New

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York State justice and acting justice of jurisdiction because of their direct financial and other interests and 'rule of necessity' cannot be invoked by reason thereof;

(b) determining that the unrepresented petitioners/plaintiffs are entitled to representation/intervention by the Office of the Attorney General, pursuant to Executive Law §63.1 and State Finance Law, Article 7-A, *via* appointment of independent counsel;

(c) granting petitioners/plaintiffs a preliminary injunction to stay the 'force of law' judicial salary increase recommendations of the December 4, 2023 Report of Respondent Commission on Legislative, Judicial and Executive Compensation from taking effect on April 1, 2024 and enjoining disbursement of the \$34,600,000 appropriation in Legislative/Judiciary Budget Bill #S.8301/A.8801 (at pp. 18-19) based thereon".

As this first decision also conceals ALL the facts, law, and legal argument presented by petitioners' March 18, 2024 moving affidavit ([NYSCEF # 14](#)) and these suffice to establish what the subsequent record reinforces, namely, petitioners' entitlement to the granting of the three branches of their order to show cause and to summary judgment on the two causes of action of their verified petition and the granting of its specified "other and further relief mandated by the record herein" ([NYSCEF #1](#)) – its ten paragraphs are here reprinted, essentially in full:

"1. ...This affidavit is submitted in support of the accompanying order to show cause pertaining to threshold issues ([NYSCEF #13](#)).

2. The most threshold issue is the jurisdictional bar to this Court's hearing and determining this lawsuit wherein petitioners seek to prevent the Court – and every other state-paid justice and judge of the New York courts – from receiving salary increases, effective April 1, 2024, which they will, by 'force of law', as a result of the December 4, 2023 Report of the Commission on Legislative, Judicial and Executive Compensation ([NYSCEF #4](#)).

3. [Judiciary §14](#) is unequivocal:

'A judge shall not sit as such in, or take any part in the decision of, an action, claim, matter, motion or proceeding...in which he is interested...'

This more than disqualifies, it divests of jurisdiction. As stated by the Appellate Division, Third Department in [People v. Alteri](#), 47 A.D.3d 1070 (2008):

'A statutory disqualification under Judiciary Law §14 will deprive a judge of jurisdiction (see [Wilcox v. Supreme Council of Royal Arcanum](#), 210 N.Y. 370, 377...[1914]; see also [Matter of Harkness](#)

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Apt. Owners Corp. v. Abdus-Salaam, 232 A.D.2d 309, 310... [1996])... In fact, “a judge disqualified under a statute cannot act even with the consent of the parties interested, because the law was not designed merely for the protection of the parties to the suit, but for the general interests of justice” (Matter of Beer Garden v. New York State Liq. Auth., 79 N.Y.2d 266, 278–279...[1992], quoting Matter of City of Rochester, 208 N.Y. 188, 192... [1913])’.

4. Nor is the jurisdictional bar overcome by ‘rule of necessity’ – as only judges having jurisdiction can invoke such judge-made doctrine – a fact United States v. Will, 449 U.S. 200, 210-211 (1980), makes evident^{fn2} and 32 New York Jurisprudence §45 (1963) also reflects:

‘...since the courts have declared that the disqualification of a judge for any of the statutory reasons deprives him of jurisdiction,^{fn} a serious doubt exists as to the applicability of the necessity rule where the judge is disqualified under the statute.^{fn}’

5. Consequently, the only solution would be for the lawsuit to be transferred to federal court, as its judges are not beneficiaries of the judicial salary increases at issue.

6. Upon information and belief, there is no legal obstacle to the Court transferring the case in the circumstances at bar – or to respondents applying for its removal. Certainly, the Court should be able to rely on the Attorney General for a full briefing on transfer/removal to federal court, including pursuant to Article IV, §4 of the United States Constitution: ‘The United States shall guarantee every State in this Union a Republican Form of Government’.

7. Secondly, and just as threshold, is that petitioners are unrepresented by counsel and are entitled to the Attorney General’s representation/intervention pursuant to Executive Law §63.1 and State Finance Law Article 7-A (§123-A, §123-

^{fn2} The federal courts have NO analogue to Judiciary Law §14, which is why in *US v. Will*, involving federal judicial salaries, the U.S. Supreme Court could invoke “rule of necessity”, which it did after first reciting, under the title heading ‘Jurisdiction’, its jurisdiction and that of the lower courts to decide the case.

New York courts apparently recognize this, as in cases involving judicial self-interest, they cite NOT to the jurisdiction-stripping Judiciary Law §14, but to *US v. Will*, either directly or through other cases, so as to bootstrap the jurisdictional issue. Thus, the Court of Appeals decisions in Maresca v Cuomo, 64 N.Y.2d 242, 247, n.1 (1984), Matter of Morgenthau v Cooke, 56 N.Y.2d 24, 29 n.3 (1982), and Maron v Silver, 14 N.Y.3d 230, 249 (2010). Similarly, the Appellate Division, Third Department’s Maron v Silver, 58 A.D.3d 102, 106-107 (2008).”

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C, §123-D, §123-E). This is obvious from the most cursory examination of petitioners' January 18, 2024 Opposition Report on which this lawsuit rests ([NYSCEF #6](#)) – as there is NO DEFENSE to its demonstration of statutory violations and fraud by the Commission. Based thereon, petitioners have an open-and-shut, summary judgment entitlement to the relief their verified petition seeks, including its further relief:

‘referral of all respondents to criminal authorities for the corruption and collusion established by petitioners' January 18, 2024 Opposition Report and by their correspondence, complaints, and testimony’ (at p. 15).

8. Attorney General James is a respondent herein because of her violation of duties with respect to the Opposition Report, the accuracy and truth of which she has had two months to fully and completely verify – most importantly, the records of [CJA v. Cuomo...DiFiore, et al.](#) and [CJA v. JCOPE, et al.](#) – featured by [petitioners'] testimony at the Commission's October 13, 2023 hearing ([NYSCEF #3](#)) and by the Opposition Report. Those records are *prima facie* as to EXACTLY what occurred in each case, *to wit*, the Attorney General, a defendant representing her fellow defendants, had no legitimate defense, corrupted the judicial process with litigation fraud, and was rewarded by fraudulent judicial decisions.

9. Respondent Attorney General James must be required to disgorge her findings of fact and conclusions of law with respect to the Opposition Report and her compliance with conflict-of-interest protocols in determining her obligations under Executive Law §63.1 and State Finance Law Article 7-A to provide petitioners with representation, including by independent counsel.

10. Finally, there is the threshold issue of petitioners' entitlement to a preliminary injunction to stay the judicial salary increases of the Commission's December 4, 2023 Report from acquiring ‘the force of law’ on April 1, 2024 and to enjoin disbursement of the \$34,600,000 appropriation in Legislative/Judiciary Budget Bill S.8301/A.8801 based thereon ([NYSCEF #5](#)). As this lawsuit has a 100% likelihood of success on the merits based on petitioners' January 18, 2024 Opposition Report, and the equities are entirely in their favor inasmuch as the December 4, 2023 Report was procured by fraudulent advocacy of New York's judges before the Commission, injunctive relief is warranted to avoid the slightest possibility of any unrecoverable financial loss to the state resulting from disbursement.” (hyperlinking, capitalization, and italics in the original).

On April 1, 2024, with Respondent AG James' “fraud on the court” litigation tactics already demonstrated by petitioners' March 29, 2024 reply affidavit in further support of their order to show cause ([NYSCEF #33](#)), Judge Sober reaped the financial benefit of her interest-driven nonfeasance. Her Rensselaer County Court judge salary jumped from \$200,400 to \$221,100 based on the “force of

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law” December 4, 2023 Report ([NYSCEF #47](#)) – \$101,300 of which was the product of the statutory violations, fraud, and unconstitutionality of that Report and the two predecessor commission reports on which it rests. These two predecessor reports, each survivors of prior lawsuits “thrown” by fraudulent judicial decisions rewarding Respondent AG’s litigation fraud – so-identified and demonstrated in the record before her – meant that Judge Sober had an actual salary interest of more than half million dollars – this being her “claw-back” liability from the January 1, 2018 date she first started drawing a judicial salary to the March 29, 2024 return date of the order to show cause. ([NYSCEF #84](#), ¶¶6-9).

Below is an analysis of Judge Sober’s three August 14, 2024 decisions, preceded by a Table of Contents.

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* * *

“DECISION, ORDER, and JUDGMENT (Motion Sequence 1&2)” ([NYSCEF #79](#))

This decision consists of five paragraphs, followed by two decretal paragraphs.

The first paragraph (p. 2) is three sentences, ostensibly setting forth what the decision will be determining.

The **first sentence** reads:

“Petitioners Elena Ruth Sassower and Center for Judicial Accountability, Inc. seek a preliminary injunction and an order for the following: (1) transferring these proceedings to federal court; (2) appointing independent counsel to Petitioners through the Office of the Attorney General; and (3) a stay in adopting the December 4, 2023 Report by the Commission on Legislative, Judicial and Executive Compensation by the New York State Legislature and enjoining the disbursement of certain appropriations as contemplated by bills in both the Senate and Assembly.

Not identified is that this is “Motion Sequence 1”, petitioners’ order to show cause signed by Justice Ryba on March 19, 2024 ([NYSCEF #17](#)). The summarization of its three branches is seemingly lifted from Respondent AG James’ March 26, 2024 opposition to the order to show cause ([NYSCEF #30](#), at p. 1) and replicates its deceptions.

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Thus, the description of the first branch of the order to show cause is correct, but only because it removes the jurisdictional issue that is the basis for the transfer, identified by the first branch. The description of the second branch is materially misleading as it did not request “appointing independent counsel to Petitioners through the Office of the Attorney General”, but determination of the issue. As for the description of the third branch, it is materially false, as it did NOT seek to “stay” the Legislature’s “adopting” of the Commission’s December 4, 2023 Report because it was already adopted by “force of law”, so-identified by the third branch.

The second sentence reads:

“Respondents opposed and cross-moved to dismiss.”

Not identified is that respondents’ opposition and cross-motion were combined ([NYSCEF #30](#)), or that Respondent AG James’ March 26, 2024 notice of cross-motion ([NYSCEF #28](#)), though indicating a March 29, 2024 return date, was, in fact, returnable on April 12, 2024, or that this is “Motion Sequence 2” for:

“an order pursuant to CPLR 3211(a)(2), CPLR 3211(a)(7), CPLR 7804(f) and CPLR 3001 granting Respondents’ motion to dismiss the Verified Petition/Complaint in its entirety, together with such other and further relief as may be just and proper”.

The third sentence reads:

“Thereafter, Petitioners cross-moved for summary judgment.”

This is fraud, concealing, *in toto*:

- that on the March 29, 2024 return date of the order to show cause, petitioners filed a reply affidavit in further support ([NYSCEF #33](#)), asserting that Respondent AG James’ opposition, as contained in her dismissal cross-motion, was a “fraud upon the court” – and demonstrating this by 17 pages of fact and law under the title heading “Respondents’ Opposition to the Three-Fold Threshold Relief Sought by Petitioners’ Order to Show Cause is Fraudulent”. Its prefatory paragraph stated:

“8. Respondents’ opposition to petitioners’ order to show cause is NO opposition, *as a matter of law*, as it conceals the facts and law upon which petitioners’ three branches of requested threshold relief rests – the accuracy of which it does NOT deny or dispute, substituting, instead, knowing and deliberate falsehoods.” (capitalization and italics in the original);

- that on April 3, 2024, petitioners filed opposition papers to Respondent AG James’ cross-motion to dismiss their verified petition, consisting of an opposition affidavit

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([NYSCEF #38](#)) and opposition memorandum of law ([NYSCEF #48](#)), demonstrating that the cross-motion was also a “fraud upon the court” and seeking summary judgment pursuant to CPLR §3211(c).

Under the title heading “Attorney General James’ Cross-Motion to Dismiss the Verified Petition Must be Denied, *as a Matter of Law*” (pp. 2-8), petitioners’ opposition memorandum of law presented 6 pages of law and legal argument, including this summarizing paragraph:

“As Attorney General James rests her dismissal cross-motion, *in toto*, on her fraudulent opposition to the preliminary injunction, it is fraudulent for all the reasons already detailed by petitioners’ March 29, 2024 reply affidavit, plus the reasons arising from her complete failure to furnish any briefing of the four statutory provisions on which she bases her dismissal cross-motion.” (at p.3, underlining in the original).

Under the title heading “Petitioners Have a *Matter of Law* Entitlement to Summary Judgment Pursuant to CPLR §3211(c)”, the memorandum of law presented 4 pages of law and legal argument (pp. 9-13), including:

“Petitioners asserted, in their March 18, 2024 moving affidavit in support of their order to show cause ([NYSCEF #14](#), at ¶¶7, 10), that ‘obvious from the most cursory examination of [their] January 18, 2024 Opposition Report on which this lawsuit rests ([NYSCEF #6](#)) [is that] there is NO DEFENSE to its demonstration of statutory violations and fraud by the Commission’ and that, based thereon, they ‘have an open-and-shut, summary judgment entitlement to the relief their verified petition seeks’ – ‘a 100% likelihood of success on the merits’. They repeated this, at the March 21, 2024 oral argument on the TRO ([NYSCEF #34](#), pp. 8-9, 20-24), with reinforcing caselaw from *CJA v. Cuomo...DiFiore* and *Delgado v. State of New York*, specifying, as to the latter, the Court of Appeals decision and, in particular, the concurring opinion of Respondent Wilson, then a Court of Appeals associate judge...

...

The referred-to Court of Appeals decision in *Delgado*, rendered November 17, 2022, consisting of a three-judge plurality opinion and Respondent Wilson’s concurring opinion that made it a majority, plus a two-judge dissenting opinion, is [here](#).

There is NO difference between the plurality opinion, the concurring opinion, and dissenting opinion that statutory compliance is the *sine qua non* for any legislative delegation of power to a commission, agency, or other entity – of constitutional dimension even where the statutory legislative delegation does not bestow ‘force

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of law' power. As to 'force of law' statutory delegations of legislative power, deemed unconstitutional by the dissenters, the majority's holding of constitutionality is predicated on strict compliance to the statute by the entity to which the legislative delegation has been made, as the statute replaces the checks-and-balance safeguards of the constitutionally-ordained legislative process, dispensed with by the statute.

Respondent Wilson's dissent was for purposes of underscoring his constitutional concerns, which he stated to be overcome by the judiciary's strict scrutiny of compliance with the statute.

...

Undeterred Attorney General James here regurgitated her contrived, fraudulent no-citizen taxpayer-standing argument, without identifying its rejection in *Delgado* – and without identifying the Court of Appeals opinions therein as to the constitutional imperative of heightened judicial scrutiny of reports rendered pursuant to 'force of law' statutes, making further obvious that petitioners have a cause of action and grounds for declarations in their favor.

Under applicable legal principles, the deceit and fraud perpetrated by AAG Engelhart, in his 'of counsel' capacity to Respondent Attorney General James, reinforce petitioners' entitlement to summary judgment based on their January 18, 2024 Opposition Report ([NYSCEF #6](#)):

'when a litigating party resorts to falsehood or other fraud in trying to establish a position, a court may conclude that position to be without merit and that the relevant facts are contrary to those asserted by the party.' Corpus Juris Secundum, Vol 31A, 166 (1996 ed., p. 339);

'It has always been understood – the inference, indeed, is one of the simplest in human experience – that a party's falsehood or other fraud in the preparation and presentation of his cause...and all similar conduct, is receivable against him as an indication of his consciousness that his case is a weak or unfounded one; and that from that consciousness may be inferred the fact itself of the cause's lack of truth and merit. The inference thus does not necessarily apply to any specific fact in the cause, but operates, indefinitely though strongly, against the whole mass of alleged facts constituting his cause.' II John Henry Wigmore, Evidence §278 at 133 (1979)."

Petitioners never "cross-moved for summary judgment" – and the decision's assertion that they did is simply another import from Respondent AG James, this from page 1 of her April 11, 2024 reply

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memorandum of law in further support of her dismissal cross-motion ([NYSCEF #52](#)) – the fraudulence of which petitioners established, line-by-line, by their “legal autopsy”/analysis of it ([NYSCEF #62](#), pp. 3, 5) that was Exhibit A to their April 25, 2024 reply affidavit in further support of their April 3, 2024 motion for sanctions and other relief against Respondent AG James ([NYSCEF #61](#), ¶¶10-11) – “Motion Sequence 3”.

Obviously, had petitioners “cross-moved for summary judgment”, it would have had a “Motion Sequence” number – and the decision would have added it to its “Motion Sequence 1&2” designation. This it does not do because the cross-motion does not exit.

The second paragraph (at p. 2) is a single sentence, pertaining to petitioner Center for Judicial Accountability, Inc., reading:

“Preliminarily, all causes of action asserted on behalf of Petitioner Center for Judicial Accountability, Inc. are hereby dismissed as it is unrepresented by counsel as required by CPLR §321(a), and the Court will only address the claims of Petitioner Elena Ruth Sassower.”

This is fraud – exported from Respondent AG James’ opposition/cross-motion ([NYSCEF #30](#), at p. 10), which urged dismissal of petitioner CJA’s claims because it had no attorney representing it. Petitioners’ March 29, 2024 reply affidavit (at ¶34) rebutted this, stating,

“the corporate petitioner is entitled to the intervention/representation of the Attorney General, pursuant to Executive Law §63.1 and State Finance Law, Article 7-A, based on petitioners’ dispositive January 18, 2024 Opposition Report”. (underlining in the original).

The truth of this is proven by the decision’s concealment of the language of Executive Law §63.1 and omission of any mention of State Finance Law Article 7-A and its language, and of any mention of petitioners’ January 19, 2024 Opposition Report and its content.

As for the assertion that the “Court will only address” petitioner Sassower’s claims, this is also fraud, as the dismissal of petitioner CJA’s claims is “of no consequence”, as they are identical to petitioner Sassower’s claims – and petitioners’ March 29, 2024 reply affidavit (¶34) pointed this out.

The third paragraph (at p. 2) is four sentences, impliedly disposing of the first and second branches of petitioners’ order to show cause.

The **first, second, and third sentences** pertain to the first branch of the order to show cause and read:

“Petitioner claims that due to the inherent conflict on the part of this Court, this matter is required to be removed to federal court. The Court finds Petitioner’s claim unavailing particularly given Petitioner’s previous attempts to disqualify the

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Court. Pursuant to the Rule of Necessity, this Court is authorized to preside over this matter (*See, Center for Jud. Accountability, Inc. v. Cuomo*, 167 A.D.3d 1406, 1408 [3rd Dept., 2018]; *appeal dismissed*, 33 N.Y.3d 993 [2019]; *lv. dismissed & denied*; 34 N.Y.3d 961 [2019]; *Center for Jud. Accountability, Inc. v. NYS Joint Commission on Public Ethics et al.*, 228 AD.3d 1148 [2024]).”

These three sentences are frauds – and replicate, even more extremely, Respondent AG James’ frauds with respect to the first branch ([NYSCEF #30, at p. 4](#)), exposed by petitioners’ March 29, 2024 reply affidavit ([NYSCEF #33](#), at pp. 3-5), as to which the decision makes no findings, in favor of this single sentence that:

- falsely purports an “inherent conflict on the part of this Court”, which is unspecified because there is nothing “inherent” about financial and other interests in the subject matter of the lawsuit, concealed by these sentences;
- conceals Judiciary Law §14 and the jurisdictional issue pertaining to it and “Rule of Necessity”;
- rests on the Appellate Division, Third Department’s decisions in *CJA v. Cuomo...DiFiore* and *CJA v. JCOPE, et al.*, when neither decision identifies any jurisdictional issue pertaining to “Rule of Necessity”;
- conceals that the Appellate Division’s decision in *CJA v. Cuomo...DiFiore* is a judicial fraud, so-pleaded by petitioners’ verified petition herein ([NYSCEF #1](#), at ¶¶7, 23, 29), substantiated by links to the full record and by petitioners’ “legal autopsy”/analysis of it ([NYSCEF #35](#)) and letter transmitting it to the Court of Appeals in support of their appeal of right ([NYSCEF #36](#)), both exhibits to their March 29, 2024 reply affidavit in further support of their order to show cause ([NYSCEF #33](#));
- concealing that the Appellate Division’s decision in *CJA v. JCOPE, et al.* is a judicial fraud, as to which petitioners’ July 30, 2024 letter to Judge Sober ([NYSCEF #78](#)) gave implied notice by its links to the [NYSCEF docket therein](#) and petitioners’ *sub judice* [July 4, 2024 motion](#).

The fourth sentence pertains to the second branch of petitioners’ order to show cause and reads:

“Further, as previously held, Petitioner is not entitled to representation by independent counsel through via (sic) the Attorney General’s Office under Executive Law §63(1) (*See, Center for Jud. Accountability, Inc. v. Cuomo at 1409*).”

This sentence is also fraud – and replicates Respondent AG James’ fraud with respect to the second branch ([NYSCEF #30](#), at pp. 4-6), exposed by petitioners’ March 29, 2024 reply affidavit in further support of their order to show cause ([NYSCEF #33](#), at ¶¶13-21). Here, too, the decision makes no

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findings, in favor of this single sentence that does not identify State Finance Law, Article 7-A, nor the language of Executive Law §63.1, comparably not identified by the Appellate Division's decision in *CJA v. Cuomo...DiFiore*, and does not identify petitioners' January 18, 2024 Opposition Report, decisive of petitioners' entitlement to intervention/representation pursuant to the State Finance Law, Article 7-A and Executive Law §63.1 statutory provisions.

The fourth paragraph (at pp. 2-3) is four sentences and pertains to the third branch of petitioners' order to show cause, for a preliminary injunction.

The **first sentence** reads:

“With respect to Petitioner’s remaining requested relief, ‘[t]o obtain a preliminary injunction, a party ‘must demonstrate a probability of success on the merits, danger of irreparable injury in the absence of an injunction and a balance of equities in its favor’” (See, [23 A Properties, Inc. v. New Mayfair Development Corp.](#), 212 A.D.3d 900, 901 [3rd Dept., 2023] quoting [Nobu Next Door, LLC v. Fine Arts Housing, Inc.](#), 4 N.Y.3d 839, 840 [2005]).” (hyperlinks added).

This is the standard boilerplate of the three-prong legal standard for a preliminary injunction that ¶10 of petitioners' March 18, 2024 moving affidavit reflected as having been met, and which they further established as met by all their subsequent submissions, beginning with their March 29, 2024 reply affidavit ([NYSCEF #33](#)), whose ¶7 also reiterated:

“petitioners’ request, appearing in their March 18th proposed order to show cause ([NYSCEF #13](#)), which [Justice Ryba] deleted, without a trace:

‘UPON ORAL ARGUMENT, the parties shall be ready to proceed to any EVIDENTIARY HEARING, with testimony taken, from the witness stand, under oath.’”

The **second sentence** reads:

“At the outset, the Court finds Petitioner’s challenge to the appropriations were (sic) not ripe for judicial review at the time of Petitioner’s filing as neither bill had even left committee, much less been voted on by either the Senate or Assembly or been signed by the Governor into law.”

This is fraud. Apart from the fact that the verified petition itself identified ([NYSCEF #1](#), ¶¶27-29) that the Senate and Assembly bills had “left committee”, unamended, and how the FY2024-2025 state budget was unfolding – which is precisely how it did unfold -- this second sentence replicates the “not ripe for judicial review” fraud of Respondent AG James’ opposition/cross-motion ([NYSCEF #30](#), pp. 6-7). Petitioners rebutted it, resoundingly, by their March 29, 2024 reply affidavit ([NYSCEF #33](#), ¶¶24-28), April 3, 2024 opposing affidavit ([NYSCEF #38](#), ¶¶14-15), and April 3, 2024 opposing memorandum of law ([NYSCEF #48](#), at pp. 6-8) – with their memorandum of

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law quoting the citizen-taxpayer statute for the proposition that it “encompasses prospective, anticipated, and impending misappropriation”, *to wit*,

“...its ‘Legislative purpose’, [§123](#), which states:

‘It is the purpose of the legislature to recognize that each individual citizen and taxpayer of the state has an interest in the proper disposition of all state funds and properties. Whenever this interest is or may be threatened by an illegal or unconstitutional act of a state officer of employee, the need for relief is so urgent that any citizen-taxpayer should have and hereafter does have a right to seek the remedies provided herein.’ (underlining added).

[§123-b\(1\)](#), which states:

‘Notwithstanding any inconsistent provision of law, any person, who is a citizen taxpayer, whether or not such person is or may be affected or specially aggrieved by the activity herein referred to, may maintain an action for equitable or declaratory relief, or both, against an officer or employee of the state who in the course of his or her duties has caused, is now causing, or is about to cause a wrongful expenditure, misappropriation, misapplication or any illegal or unconstitutional disbursement of state funds or state property...’ (underlining added).

and [§123-c\(1\)](#), which states:

‘An action pursuant to this article shall be brought in the supreme court in any county wherein the disbursement has occurred, is likely to occur, or is occurring...’ (underlining added)’.

It ALSO highlighted the same with respect to the declaratory judgment action statute, stating:

“So, too, are prospective, anticipated, and impending actions cognizable under the declaratory judgment action statute, CPLR §3001. Attorney General James misrepresents this in her ‘set forth more fully above’ ‘Petitioners’ claims are not ripe’ section (at pp. 6-7), by her misleading, inapplicable quotation from [New York Public Interest Group v. Carey](#), 42 NY2d 527, 531 (1977). Not quoted is the actual law, relevant at bar:

‘...when a party contemplates taking certain action a genuine dispute may arise before any breach or violation has occurred and before there is any need or right to resort to coercive measures. In such a case all that may be required to insure compliance with the law is for the courts to declare the rights and obligations of the parties so that

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they may act accordingly. That is the theory of the declaratory judgment action authorized by [CPLR 3001](#) (*James v Alderton Dock Yards*, [256 N.Y. 298](#); Siegel, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, [CPLR 3001](#), pp 355-357; 3 Weinstein-Korn-Miller, N Y Civ Prac, par 3001.02; Borchard, Declaratory Judgments, 9 Brooklyn L Rev, pp 1-3).

Whether a judicial determination of this nature will have this effect is generally for the court to decide in the exercise of sound discretion ([CPLR 3001](#)). There are however certain basic principles. The fact that the court may be required to determine the rights of the parties upon the happening of a future event does not mean that the declaratory judgment will be merely advisory. In the typical case where the future event is an act contemplated by one of the parties, it is assumed that the parties will act in accordance with the law and thus the court's determination will have the immediate and practical effect of influencing their conduct (Borchard, Declaratory Judgments, pp 25-28, 75-76)."

As to all of this, the decision makes no findings, in favor of its single sentence, unsupported by ANY law and concealing that this lawsuit is both a citizen-taxpayer action and declaratory judgment action.

The **third sentence** reads:

"Moreover, despite Petitioner's challenge to potential ***future*** legislation, the Court finds Petitioner lacks standing as she fails to allege a 'wrongful expenditure, misappropriation, misapplication, or any other illegal or unconstitutional disbursement of state funds or state property' within the scope of State Finance Law §123-b(1) or how Petitioner has been directly affected by such legislation." (italics and bold in the original)

This is fraud, replicating the "lacks standing" fraud of Respondent AG James' dismissal/cross-motion ([NYSCEF #30](#), pp. 7-10), rebutted, resoundingly, by petitioners' March 29, 2024 reply affidavit ([NYSCEF #33](#), ¶¶29-31) and their April 3, 2024 opposing memorandum of law ([NYSCEF #48](#), pp. 6-8).

Once again, Judge Sober makes no findings, in favor of this single sentence, falsely purporting that petitioners' have not "allege[d]" what they have, and falsely implying, without citation to ANY law, that petitioners were required to show how they had been "directly affected".

As to the not-cited-to LAW pertaining to being "directly affected", here's what petitioners' March 29, 2024 reply affidavit had to say in response to Respondent AG James' fraud on the subject pertaining to "Article 78 standing":

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“29. ...The applicable law is best seen from [Cox v. JCOPE](#), a 2018 Albany Supreme Court decision in an Article 78 proceeding, citing Appellate Division, Third Department cases, wherein the Court stated:

“‘[s]tanding has been granted absent personal aggrievement where the matter is one of general public interest.’ [Police Conference of N.Y. v. Municipal Police Training Council](#), 62 AD2d 416, 417 (3d Dept. 1978). In such case, a ‘citizen may maintain a mandamus proceeding to compel a public officer to do his [or her] duty.’ [Matter of Hebel v. West](#), 25AD3d 172, 176 (3d Dept. 2005)...see [Matter of Schenectady County Benevolent Assn. v. McEvoy](#), 124 AD2d 911,912 (3rd Dept. 1986).... the Court finds that the matter here is one of general public interest, and petitioners have standing to bring this proceeding.’ (p. 5, hyperlinking added).

Indeed, in 1976, the Appellate Division, Fourth Department summed up the situation in [Albert Ella Bldg. Co. v. New York State Urban Dev. Corp.](#), 54 A.D.2d 337, 342, stating:

‘As a general rule, where a citizen, in common with all other citizens, is interested in having some act of a general public nature done, devolving as a duty upon a public body or officer refusing to perform it, the performance of such act may be compelled by a proceeding brought by such citizen against a body or officer. This is especially so where the matter involved is one of great public interest, and granting the relief requested would benefit the general public (24 Carmody-Wait 2d, N Y Civ Prac, §145.255). The office which the citizen performs is merely one of instituting a proceeding for the general benefit, the only interest necessary is that of the people at large (*People ex rel. Stephens v Halsey*, [37 N.Y. 344](#); 24 Carmody-Wait 2d, N Y Civ Prac, §145.255). Any citizen may maintain a mandamus proceeding to compel a public officer to do his duty (*Matter of Cash v Bates*, [301 N.Y. 258](#); *Matter of Andresen v Rice*, [277 N.Y. 271](#); *Matter of McCabe v Voorhis*, [243 N.Y. 401](#); *Matter of Yerry v Goodsell*, [4 A.D.2d 395, 403](#) affd [4 N.Y.2d 999](#)). ... Standing has been granted absent personal aggrievement where the matter is one of general public interest (8 Weinstein-Korn-Miller, N Y Civ Prac, par 7802.01, n 2).’” (hyperlinking in the original).

As to Judge Sober “find[ing]” that petitioners “fail[ed] to allege a ‘wrongful expenditure, misappropriation, misapplication, or any other illegal or unconstitutional disbursement of state funds or state property’”, this is fraud. The second cause of action makes the allegations that are purported

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as not alleged, twice, including in its title, reading, in full:

“The \$34,600,000 Line-Item Appropriation in Legislative/Judiciary Budget Bill #S.8301/A.8801 for Judicial Salary Increases Based on the December 4, 2023 Report Must Be Stricken as a Wrongful Expenditure, Misappropriation, Illegal, and Unconstitutional”

37. Petitioners repeat, reiterate, and reallege ¶¶1-36, with the same force and effect as if more fully set forth herein.

38. The \$34,600,000 line-item appropriation at pages 18-19 of Governor HOCHUL’s Legislative/Judiciary Budget Bill #S.8301/A8801 ([Exhibit D](#)) reads:

‘For expenses necessary to implement the recommendations of the commission on legislative, judicial and executive compensation pursuant to chapter 60 of the Laws of 2015, as amended by Part WW of chapter 55 of the Laws of 2020, for adjustment of the salaries of judges and justices of the unified court system effective April 1, 2024’.

39. As such ‘recommendations’ are the product of fraud and flagrant violations of Chapter 60, Part E, of the Laws of 2015 that are conditions precedent for salary increase recommendations, so-proven by petitioners’ January 18, 2024 Opposition Report ([Exhibit E](#)), the \$34,600,000 line-item is a wrongful expenditure, misappropriation, illegal, and unconstitutional – and must be stricken, as State Finance Law Article 7-A provides. (bold in the original, underlining added).

Correspondingly, petitioners’ “Prayer for Relief”/WHEREFORE clause seeks:

“As to the second cause of action: for a declaration, pursuant to State Finance Law Article 7-A, that the \$34,600,000 line-item appropriation in Legislative/Judiciary Budget Bill #S.8301/A.8801 (at pp. 18-19) for judicial salary increases is a wrongful expenditure, misappropriation, illegal, and unconstitutional, so-proven by petitioners’ January 18, 2024 Opposition Report – and striking it” ([NYSCEF #1](#), p. 15) first underling in the original, second underling added).

The foregoing, from the verified petition, was materially quoted by petitioners’ April 3, 2024 opposing memorandum of law ([NYSCEF #48](#), pp. 6-7), in its exposition of the fraud of Respondent AG James’ cross-motion.

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The **fourth sentence** reads:

“Accordingly, Petitioner fails to demonstrate any likelihood of success on the merits and danger of irreparable injury to obtain a preliminary injunction.

This is fraud. Petitioners’ March 18, 2024 moving affidavit stated (at ¶10) “this lawsuit has a 100% likelihood of success on the merits based on petitioners’ January 18, 2024 Opposition Report” – and the decision itself proves it by:

- (1) concealing ALL the allegations of the verified petition, including of the Opposition Report, whose very existence is nowhere mentioned;
- (2) concealing ALL the facts, law, and legal argument that petitioners’ March 18, 2024 moving affidavit particularizes and making NO findings of fact and conclusions of law with respect to the record thereon in “Motion Sequence 1”;
- (3) making NO findings of fact and conclusions of law with respect to petitioners’ request for summary judgment, by their April 3, 2024 opposition to Respondent AG James’ dismissal cross-motion in “Motion Sequence 2”;

As for “danger of irreparable injury”, petitioners’ March 18 2024 moving affidavit (at ¶10) also identified the possibility of “unrecoverable financial loss to the state resulting from disbursement”. The record is devoid of even a claim by respondents that disbursement would be recoverable, fully or otherwise – and such constitutes irreparable injury. Mar v. Liquid Mgt. Partners, LLC, 880 NYS2d 647, 648 (AD2d 2009): “Where the plaintiffs can be fully compensated by a monetary award, an injunction will not issue because no irreparable harm will be sustained in the absence of such relief (see Dana Distribs., Inc. v. Crown Imports, LLC, 48 AD3d 613, 613-614...; Price Paper Twine Co. v. Miller, 182 AD2d 488, 750).”

Notably, the decision here conceals the third prong for a preliminary injunction – balancing of the equities – although petitioners’ March 18, 2024 moving affidavit (at ¶10) addressed it, stating, “the equities are entirely in petitioners’ favor inasmuch as the December 4, 2023 Report was procured by fraudulent advocacy of New York’s judges before the Commission.” The record is devoid of any contradiction to this – and it is evidentiarily established by petitioners’ Opposition Report (NYSCEF #6, p. 5), to which the decision makes no reference.

The fifth paragraph (at p. 3), a single sentence, reads:

“The Court has reviewed Petitioner’s remaining contentions and finds them to be without merit.”

This is fraud. ALL petitioners’ “contentions” are concealed and NOT determined by the decision – and petitioners’ so-called “remaining contentions” are not only meritorious, but DISPOSITIVE, which is why the decision does not specify a single one.

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High on the list of petitioners' "contentions" is certainly Respondent AG James' litigation fraud by her opposition to petitioners' order to show cause in "Motion Sequence 1" and by her March 26, 2024 dismissal cross-motion that is "Motion Sequence 2", involving, as well, her collusion with the Commission in its dodging of service, identified throughout "Motion Sequence 1&2", beginning with petitioners' March 29, 2024 reply affidavit ([NYSCEF #33](#), at ¶40).

The concluding two decretal paragraphs (at p. 3):

"Therefore, it is hereby

ADJUDGED that Respondents' 'Notice of Cross-Motion' to dismiss is hereby granted; and it is further

ADJUDGED that Petitioners' 'Verified Petition/Complaint' is dismissed and the relief requested therein is in all respects denied." (underlining added)

This is fraud – and it starts with the prefatory "Therefore, it is hereby", as petitioners' "Motion Sequence 1" order to show cause, to which essentially ALL the decision is devoted, is NOT denied by either of the two decretal paragraphs. Rather, both decretal paragraphs pertain to Respondent AG James' "Motion Sequence 2" dismissal cross-motion, whose only prior reference in the decision is in the first paragraph sentence "Respondents oppose and cross-move to dismiss". Altogether missing from the decision are any specifics about the dismissal cross-motion, any mention of opposition to it, nothing about the grounds upon which the cross-motion would here be granted, nor even prior mention of the "Verified Petition/Complaint", all of whose allegations are concealed, including that it presents two causes of action. Impliedly, the grounds upon which the cross-motion is here granted and the "Verified Petition/Complaint" dismissed are prematurity and lack of standing – the same as the fourth paragraph fraudulently purports to be why petitioners are not entitled to a preliminary injunction.

As for the unexplained quotes around "Notice of Cross-Motion" in the first decretal paragraph, it is presumably because respondents' cross-motion was NOT returnable on the same March 29, 2024 date as petitioners' order to show cause, and, therefore, NOT properly a cross-motion to it – an issue flagged at the outset of petitioners' March 29, 2024 reply affidavit and April 3, 2024 opposing affidavit and memorandum of law, and which, by the decision's use of quotes, it here seemingly concedes.

As for the unexplained quotes around petitioners' "Verified Petition/Complaint" in the second decretal paragraph, the ONLY explanation is to conform to the decision's fraud that the lawsuit is an Article 78 proceeding – nothing more – accomplished by its false caption for the lawsuit.

Finally, because petitioners' lawsuit is a declaratory judgment and citizen-taxpayer action, it could not be simply "dismissed", as Respondent AG James had urged and as the decision here does. It required declarations – and petitioners pointed this out by their March 29, 2024 reply affidavit.

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([NYSCEF #33](#), ¶41).

“DECISION, ORDER, and JUDGMENT (Motion Sequence 3)”
([NYSCEF #80](#))

This decision, of three paragraphs, pertains to “Motion Sequence 3”, which is petitioners’ April 3, 2024 “Notice of Motion for Relief against Attorney General James including Disqualification, Upon Transfer to Federal Court” ([NYSCEF #49](#)).

The first paragraph is two sentences, ostensibly setting forth what the decision will be determining:

The first sentence reads:

“Petitioners Elena Ruth Sassower and Center for Judicial Accountability, Inc., subsequent to their request for a preliminary injunction, seek a (sic) order for the following: (1) costs and sanctions against the Office of the Attorney General; (2) to disqualify the Office of the Attorney General; and (3) to transfer the proceeding to federal court.” (underlining added).

This is fraud, making it falsely appear that petitioners’ so-called “subsequent” motion was unrelated to their “request for a preliminary injunction”, *to wit*, their March 19, 2024 order to show cause, when the opposite is the case. Thus, the April 3, 2024 notice of motion sought an order:

1. pursuant to 22 NYCRR §130-1.1 et seq., imposing costs and maximum sanctions upon Respondent Attorney General Letitia James, her “of counsel” Assistant Attorney General Noah Engelhart, other culpable AG staff, and co-respondents for their opposition to petitioners’ March 19, 2024 order to show cause, combined with their March 26, 2024 cross-motion to dismiss petitioners’ March 18, 2024 verified petition – such being not merely ‘frivolous’, but ‘fraud on the court’;
2. pursuant to Judiciary Law §487(1), making such determination as would afford petitioners treble damages in a civil action against Respondent Attorney General James, *et al.* based on their March 26, 2024 opposition/dismissal cross-motion, and, additionally, for Assistant Attorney General Engelhart’s fraud at the March 21, 2024 oral argument in opposition to petitioners’ order to show cause for a TRO;
3. pursuant to 22 NYCRR §100.3D(2), referring Respondent Attorney General James, *et al.* to:

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- (a) appropriate disciplinary authorities for their knowing and deliberate violations of New York's Rules of Professional Conduct for Attorneys and, specifically, Rule 3.1 'Non-Meritorious Claims and Contentions'; Rule 3.3 'Conduct Before A Tribunal'; Rule 8.4 'Misconduct'; Rule 5.1 'Responsibilities of Law Firms, Partners, Managers and Supervisory Lawyers'; and Rule 5.2 'Responsibilities of a Subordinate Lawyer';
- (b) appropriate criminal authorities for their Judiciary Law §487 'misdemeanor', and for their knowing and deliberate violations of penal laws, including Penal Law §496 'corrupting the government'; Penal Law §195 'official misconduct'; Penal Law §175.35 'offering a false instrument for filing in the first degree'; Penal Law §195.20 'defrauding the government'; Penal Law §190.65 'scheme to defraud in the first degree'; Penal Law §155.42 'grand larceny in the first degree'; Penal Law §105.15 'conspiracy in the second degree'; Penal Law §20 'criminal liability for conduct of another';
4. pursuant to Executive Law §63.1, State Finance Law Article 7-A, and Rule 1.7 of New York's Rules of Professional Conduct, disqualifying Respondent Attorney General James from representing her co-respondents and directing her representation/intervention on behalf of petitioners pursuant to Executive Law §63.1 and State Finance Law Article 7-A, or, at very least, and as requested by ¶9 of petitioners' March 18, 2024 affidavit in support of their order to show cause, that Attorney General James be directed:
- 'to disgorge her findings of fact and conclusions of law with respect to the [petitioners' January 18, 2024] Opposition Report and her compliance with conflict-of-interest protocols in determining her obligations under Executive Law §63.1 and State Finance Law Article 7-A to provide petitioners with representation, including by independent counsel.'
5. for such other and further relief as is just and proper and, specifically, pursuant to CPLR §3211(c), summary judgment to petitioners on the two causes of action of their March 18, 2024 verified petition, as requested by their April 3, 2024 opposition to Attorney General James' March 26, 2024 cross-motion to dismiss.

As the record before this Court on petitioners' March 19, 2024 order to show cause to determine threshold issues establishes the Court has no jurisdiction to do anything but transfer this case to federal court, inasmuch as Judiciary Law

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§14 divests it of jurisdiction because of its direct financial and other interests – shared by every other New York State Supreme Court justice and acting justice – and ‘rule of necessity’ cannot be invoked by reason thereof – petitioners request this motion be part of that transfer.” (underlining, bold, and italics in the original).

Accompanying the April 3, 2024 notice of motion, whose return date was April 19, 2024, was petitioners’ April 3, 2024 moving affidavit ([NYSCEF #50](#)), stating in pertinent part:

“3. In the interest of economy, petitioners rest on the record of their March 19, 2024 order to show cause – and the record of their opposition to Attorney General James’ March 26, 2024 cross-motion to dismiss the verified petition, filed today: [petitioners’] April 3, 2024 opposing affidavit ([NYSCEF #38](#)) and April 3, 2024 opposing memorandum of law ([NYSCEF #48](#)).

4. Suffice to add that [petitioners’] April 3, 2024 opposing affidavit includes an Exhibit C ([NYSCEF #47](#)) reflecting this Court’s direct, immediate, and actualized financial interest and that of every other New York Supreme Court justice and acting justice, for which transfer to federal court is necessitated by [Judiciary Law §14](#) – and as to which a law-abiding, unconflicted Attorney General would seek removal.” (hyperlinks in the original).

The motion was further substantiated by an additional April 3, 2024 memorandum of law ([NYSCEF #51](#)), whose “Introduction” read, in full:

“This memorandum of law is submitted in support of petitioners’ accompanying April 3, 2022 notice of motion ([NYSCEF #49](#)), seeking relief against Respondent Attorney General Letitia James for her litigation fraud in defending herself and nine of her co-respondents against petitioners’ March 18, 2024 verified petition ([NYSCEF #1](#)) and order to show cause to determine threshold issues, [NYSCEF #13](#), [#14](#) – and for aiding and abetting Respondent Commission on Legislative, Judicial and Executive Compensation in dodging service.

Appearing ‘of counsel’ for Respondent Attorney General James is Assistant Attorney General Noah Engelhart, whose opposition to petitioners’ order to show cause, signed by Justice Christina Ryba on March 19, 2024 and made returnable on March 29, 2024 ([NYSCEF #17](#)), was by a March 26, 2024 cross-motion to dismiss the verified petition ([NYSCEF #28](#), [#29](#), [#30](#), [#31](#), [#32](#)).

As demonstrated by petitioners’ March 29, 2024 reply affidavit in further support of their order to show cause ([NYSCEF #33](#)) and by their April 3, 2024 opposition to the dismissal cross-motion consisting of an opposing affidavit ([NYSCEF #38](#)) and opposing memorandum of law ([NYSCEF #48](#)), Attorney General James’ opposition/cross-motion is not just frivolous, but a ‘fraud on the

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court',^{fn1} fashioned throughout on knowingly false and misleading factual assertions, material omissions,^{fn2} and on law that is inapplicable, misstated, or both."

Annotating footnote 1 read:

"'Fraud on the court' is defined by Black's Law Dictionary (7th ed. 1999) as:

'A lawyer's or party's misconduct in a judicial proceeding so serious that it undermines or is intended to undermine the integrity of the proceeding.'

See, also CDR Creances S.A.S. v Cohen, et al., 23 N.Y.3d 307 (2014):

'Fraud on the court involves willful conduct that is deceitful and obstructionist, which injects misrepresentations and false information into the judicial process 'so serious that it undermines . . . the integrity of the proceeding' (*Baba-Ali v State*, 19 NY3d 627, 634, 975 N.E.2d 475, 951 N.Y.S.2d 94 [2012] [citation and quotations omitted]). It strikes a discordant chord and threatens the integrity of the legal system as a whole, constituting 'a wrong against the institutions set up to protect and safeguard the public' (*Hazel-Atlas Glass Co. v. Hartford-Empire*, 322 U.S. 238, 246, 64 S. Ct. 997, 88 L. Ed. 1250, 1944 Dec. Comm'r Pat. 675 [1944]; *see also Koschak v Gates Const. Corp.*, 225 AD2d 315, 316, 639 N.Y.S.2d 10 [1st Dept 1996]['The paramount concern of this Court is the preservation of the integrity of the judicial process'"]

Annotating footnote 2 read:

"60A New York Jurisprudence 2d (2001), §91 – Concealment: Generally:

'Fraud may be committed by suppression of the truth, that is, by concealment, as well as by positive falsehood or misrepresentation.^{fn} Where a failure to disclose a material fact is calculated to induce a false belief, the distinction between concealment and affirmative misrepresentation is tenuous; both are fraudulent.^{fn} Thus, the suppression of material facts which a person is, in good faith, bound to disclose is evidence of and equivalent to a false representation.^{fn}'"

The second sentence reads:

"Respondents opposed the requested relief."

This is fraud, as it does not identify any reply, thereby making it falsely appear that petitioners had

Appellants' September 12, 2024 Notice of Appeal [R.1-37]

filed none. In fact, petitioners' April 25, 2024 reply affidavit ([NYSCEF #61](#)) not only blew to smithereens AAG Moore's April 19, 2024 opposition memorandum to petitioners' April 3, 2024 motion ([NYSCEF #60](#)), demonstrating that it warranted imposition of further maximum \$10,000 sanctions, pursuant to 22 NYCRR §130.1.1, but, because AAG Moore's April 19, 2024 opposition rested on AAG Engelhart's April 11, 2024 reply in "Motion Sequence 2" to petitioners' April 3, 2024 opposition to the March 26, 2024 dismissal cross-motion ([NYSCEF #52](#)), annexed a "legal autopsy"/analysis of the April 11, 2024 reply as Exhibit A ([NYSCEF #62](#)) demonstrating its fraudulence, virtually line-by-line.

The second and third paragraphs, each a single sentence, read:

"Based on the Court's August 14, 2024 'Decision, Order, and Judgment (Motion Sequence 1&2' wherein Respondents' cross-motion to dismiss was granted, Petitioners' motion has been rendered moot.

ADJUDGED that the April 3, 2024 'Notice of Motion for Relief against Attorney General James including Disqualification, Upon Transfer to Federal Court' is hereby denied."

This is fraud upon fraud. "Motion Sequence 3" is integrally part of "Motion Sequence 1&2", whose paltry decision is a complete fraud, as hereinabove demonstrated, covering up, *in toto*, petitioners' entitlement to all the relief sought by their "Motion Sequence 1" order to show cause, to summary judgment on Respondent AG James' "Motion Sequence 2" dismissal cross-motion – and to the relief against Respondent AG James, her culpable attorney staff, and her fellow respondents that is "Motion Sequence 3".

"DECISION, ORDER, and JUDGMENT (Motion Sequence 4)"
([NYSCEF #81](#))

This third August 14, 2024 decision consists of three paragraphs and two concluding decretal paragraphs.

The first two paragraphs read:

"Respondent New York State Commission on Legislative, Judicial and Executive Compensation (hereinafter also referred to as 'Respondent Commission') seeks to dismiss Petitioners' 'Order to Show Cause' signed March 19, 2024 (Ryba, J.) seeking a preliminary injunction. Petitioners Elena Ruth Sassower and Center for Judicial Accountability, Inc. oppose.

Respondent Commission contends Petitioners failed to properly effectuate service on Respondent Commission, mistakenly serving the Office of the Attorney General who was not authorized to accept service on their behalf at the time, and

Appellants' September 12, 2024 Notice of Appeal [R.1-37]

thereafter, attempting service beyond the timetable set by the Court. Petitioners do not dispute the failure to serve the Respondent Commission, but instead blame Respondent Commission for its lack of reasonable assistance in effectuating service upon them, including no discernable telephone number, failure to respond to emails, and lack of physical address or designated agent of service. Accordingly, the Court finds Petitioners failed to obtain timely jurisdiction over the Respondent Commission, and Petitioners' claims are hereby dismissed."

This is fraud and pertains to Respondent AG James' May 3, 2024 motion on behalf of the Commission ([NYSCEF #65](#)), "Motion Sequence 4", which she made, notwithstanding Judge Sober had not responded to her April 16, 2024 letter for permission to make such motion ([NYSCEF #54](#)). Respondent AG James' fraud by that letter, including by her representation of the Commission, was the subject of petitioners' responding April 17, 2024 affidavit ([NYSCEF #55](#)), which concluded by stating:

"18. Before granting AAG Engelhart's unwarranted, dilatory, and frivolous request, petitioners counter-request that the Court order Respondent AG James to do what she has not done, voluntarily, during the past month in which she has never purported that her representation of the other respondents is in 'the interest of the state', as Executive Law §63.1 mandates, namely:

"to disgorge her findings of fact and conclusions of law with respect to the [petitioners' January 18, 2024] Opposition Report and her compliance with conflict-of-interest protocols in determining her obligations under Executive Law §63.1 and State Finance Law Article 7-A to provide petitioners with representation, including by independent counsel."

19. In any event, based on the record of petitioners' fully-submitted March 19, 2024 OSC for threshold relief – and AAG Engelhart's letter does *not* request to supplement same, on behalf of the Commission – the first threshold relief must be granted, without further delay:

'transferring this hybrid Article 78 proceeding/citizen-taxpayer action/declaratory judgment action to federal court, inasmuch as Judiciary Law §14 divests every New York State justice and acting justice of jurisdiction because of their direct financial and other interests and 'rule of necessity' cannot be invoked by reason thereof.'" (underlining and italics in the original).

Petitioners followed this up with a May 6, 2024 letter to Judge Sober ([NYSCEF #75](#)), alerting her that on May 3, 2024, Respondent AG James had made a motion, on behalf of the Commission, to dismiss the verified petition, additionally opposing the preliminary injunction sought by petitioners' March 19, 2024 order to show cause – and in so doing had concealed her April 16, 2024 letter-

Appellants' September 12, 2024 Notice of Appeal [R.1-37]

request and petitioners' April 17, 2024 affidavit, to which Judge Sober had not responded to either. Petitioners asked:

“Isn’t Respondent AG James’ May 3rd motion, made without the Court’s authorization and concealing that it does not have such authorization, a flagrant contempt of the Court? Under such circumstances, isn’t it a nullity, requiring no answering papers from petitioners by its designated May 17th date for answering papers?” (bold and underlining in the original).

The next 2-1/2 pages detailed the fraudulence of Respondent AG James’ May 3, 2024 motion, resting, exclusively on her March 26, 2024 opposition/cross-motion – now adding CPLR §3211(a)(8), for dismissal for improper and untimely service, for which she offered NO applicable law, furnished no probative sworn statement from the Commission, and none from herself as to the relevant facts, and made no claim that “Respondent Commission did not endeavor to evade service and intentionally default in appearing for the March 21st oral argument (before Justice Ryba) on the TRO to further accomplish same, and that the other respondents did not abet Respondent Commission in so doing.”

The May 6, 2024 letter concluded stating:

“Should the Court not deem Respondent AG James’ unauthorized and contemptuous May 3rd motion a nullity, please advise when the Court will be ruling on petitioners’ plainly threshold April 17th affidavit.”

Judge Sober did not respond. Nor did she respond to petitioners’ follow-up June 17, 2024 letter ([NYSCEF #77](#)), and July 30, 2024 letter ([NYSCEF #78](#)).

Suffice to say, it is fraud for the decision to purport that “Petitioners failed to obtain timely jurisdiction over Respondent Commission” – as the question is whether the failure was excusable. At bar, it absolutely was – and petitioners were entitled to a hearing, if the issue was not determined in their favor, based on their submissions, establishing – without dispute – that Respondent Commission was “ducking service”, aided and abetted by Respondent AG James and the other respondents and by Justice Ryba, including by the service provision she unilaterally made to petitioners’ order to show cause ([NYSCEF #13](#), [NYSCEF #17](#)), which at the March 21, 2024 oral argument on the TRO, was her duty to have modified ([NYSCEF #34](#)). That is why the decision conceals any issue of evasion of service, furnishes no treatise authority or applicable caselaw, and makes no mention of Justice Ryba’s role.

The third paragraph reads:

“Further, were the Court to address the merits of Petitioners’ contentions, which it does not, the Court still would have denied same as Petitioners’ fail to demonstrate any likelihood of success on the merits and danger of irreparable injury to obtain a preliminary injunction as set forth in the Court’s August 14, 2024

Appellants' September 12, 2024 Notice of Appeal [R.1-37]

‘Decision, Order, and Judgment (Motion Sequence 1&2).’

This is more fraud. As stated at ¶10 of petitioners’ March 18, 2024 moving affidavit in support of their order to show cause for a preliminary injunction ([NYSCEF #14](#)), their likelihood of success on the merit was 100% based on their January 18, 2024 Opposition Report ([NYSCEF #6](#)). The decision’s reliance on the “Motion Sequence 1&2” decision to purport the contrary is but a further fraud, as hereinabove shown.

The two final decretal paragraphs read:

“Therefore, it is hereby

ADJUDGED that Respondents’ ‘Notice of Motion’ to dismiss pursuant to CPLR §3211(a)(8) is hereby granted; and it is further

ADJUDGED that Petitioners’ ‘Verified Petition/Complaint’ is dismissed and the relief requested therein is in all respects denied.”

Here, again, fraud – and it is based upon concealing the record, *in toto*, including the law before the Court requiring, in actions for declaratory relief, as at bar, declarations, not here made. Once again, there is no explanation for the quotes around petitioners’ “Verified Petition/Complaint”. Their pleading was rightfully that because it was a combined Article 78 proceeding/declaratory judgment action/citizen-taxpayer action. As for the quotes around respondents’ “Notice of Motion”, the only explanation is that it *sub silentio* signifies that Respondent AG James had not obtained the Court’s authorization for making the motion.

Supreme Court of the State of New York

Appellate Division: Third Judicial Department

Informational Statement (Pursuant to 22 NYCRR 1250.3 [a]) - Civil

Case Title: Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.		For Court of Original Instance	
CENTER FOR JUDICIAL ACCOUNTABILITY, INC. and ELENA RUTH SASSOWER, individually and as Director of the Center for Judicial Accountability, Inc., acting on their own behalf and on behalf of the People of the State of New York & the Public Interest - against - NEW YORK STATE COMMISSION ON LEGISLATIVE, JUDICIAL AND EXECUTIVE COMPENSATION, KATHY HOCHUL and ANTHONY DELGADO, in their official capacities as GOVERNOR and LIEUTENANT GOVERNOR OF THE STATE OF NEW YORK, ROWAN WILSON and		Date Notice of Appeal Filed	
For Appellate Division			
Case Type		Filing Type	
☒ Civil Action ☐ CPLR Article 75 Arbitration ☒ CPLR Article 78 Proceeding ☒ Special Proceeding Other ☐ Habeas Corpus Proceeding		☒ Appeal ☐ Original Proceedings ☐ CPLR Article 78 ☐ Eminent Domain ☐ Labor Law 220 or 220-b ☐ Public Officers Law § 36 ☐ Real Property Tax Law § 1278 ☐ Transferred Proceeding ☐ CPLR Article 78 ☐ Executive Law § 298 ☐ CPLR 5704 Review	
Nature of Suit: Check up to three of the following categories which best reflect the nature of the case.			
☐ Administrative Review	☐ Business Relationships	☐ Commercial	☐ Contracts
☒ Declaratory Judgment	☐ Domestic Relations	☐ Election Law	☐ Estate Matters
☐ Family Court	☐ Mortgage Foreclosure	☐ Miscellaneous	☐ Prisoner Discipline & Parole
☐ Real Property (other than foreclosure)	☐ Statutory	☐ Taxation	☐ Torts

Petitioners' September 25, 2024 Informational Statement [R.38-41]

Appeal	
Paper Appealed From (Check one only):	If an appeal has been taken from more than one order or judgment by the filing of this notice of appeal, please indicate the below information for each such order or judgment appealed from on a separate sheet of paper.
☐ Amended Decree ☐ Amended Judgement ☐ Amended Order ☒ Decision ☐ Decree ☐ Determination ☐ Finding ☐ Interlocutory Decree ☐ Interlocutory Judgment ☐ Judgment	☐ Order ☒ Order & Judgment ☐ Partial Decree ☐ Resettled Decree ☐ Resettled Judgment ☐ Resettled Order ☐ Ruling ☐ Other (specify):
Court: Supreme Court	County: Albany
Dated: August 14, 2024	Entered: August 14, 2024
Judge (name in full): County Court Judge Jennifer G. Sober	Index No.: 902654-24
Stage: ☐ Interlocutory ☒ Final ☐ Post-Final	Trial: ☐ Yes ☒ No If Yes: ☐ Jury ☐ Non-Jury
Prior Unperfected Appeal and Related Case Information	
Are any appeals arising in the same action or proceeding currently pending in the court? ☐ Yes ☒ No If Yes, please set forth the Appellate Division Case Number assigned to each such appeal.	
Where appropriate, indicate whether there is any related action or proceeding now in any court of this or any other jurisdiction, and if so, the status of the case: Center for Judicial Accountability, et al. v. JCOPE, et al. (AD3 #CV-23-0115) -- sub judice July 4, 2024 motion for reargument, leave to appeal to Court of Appeals, vacatur for lack of jurisdiction & fraud.	
Original Proceeding	
Commenced by: ☒ Order to Show Cause ☐ Notice of Petition ☐ Writ of Habeas Corpus	Date Filed: 03/18/2024
Statute authorizing commencement of proceeding in the Appellate Division:	
Proceeding Transferred Pursuant to CPLR 7804(g)	
Court: Choose Court	County: Choose County
Judge (name in full):	Order of Transfer Date:
CPLR 5704 Review of Ex Parte Order:	
Court: Choose Court	County: Choose County
Judge (name in full):	Dated:
Description of Appeal, Proceeding or Application and Statement of Issues	
Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed. This is an appeal from: (1) a "paper" entitled "Decision, Order, and Judgment (Motion Sequence 1&2)", whose two decretal paragraphs granted respondents' (March 26, 2024) "Notice of Cross-Motion" and dismissed and denied petitioners' Verified Petition/Complaint; (2) a "paper" entitled "Decision, Order, and Judgment (Motion Sequence 3)", whose single decretal paragraph denied (as moot) petitioners' "April 3, 2024 Notice of Motion for Relief against Attorney General James including Disqualification upon Transfer	

Informational Statement - Civil

Petitioners' September 25, 2024 Informational Statement [R.38-41]

Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review, the grounds for reversal, or modification to be advanced and the specific relief sought on appeal.

Petitioners are entitled to transfer to federal court, as all Supreme Court justices and acting Supreme Court justices are without jurisdiction pursuant to Judiciary Law 14 by reason of their financial and other interests in the lawsuit;

Petitioners are entitled to the Attorney General's representation, via outside counsel, as it is they who are advancing the interest of the state pursuant to Executive Law 63.1 and protecting against unlawful and unconstitutional appropriations and disbursements of taxpayer monies pursuant to State Finance Law Article 7-A;

The appealed-from three "Decision(s), Order(s), and Judgment(s)" are prima facie proof that the County Court judge who rendered them was pervasively biased and corrupted the judicial process with fraud, in tandem with the Attorney General, a respondent representing herself and her fellow respondents.

Party Information

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

No.	Party Name	Original Status	Appellate Division Status
1	Center for Judicial Accountability, Inc.	Petitioner	Appellant
2	Elena Ruth Sassower	Petitioner	Appellant
3	NYS Commission on Legislative, Judicial & Executive Compensation	Respondent	Respondent
4	Kathy Hochul, as Governor	Respondent	Respondent
5	Antonio Delgado, as Lieutenant Governor	Respondent	Respondent
6	Rowan Wilson, as Chief Judge	Respondent	Respondent
7	Joseph Zayas, as Chief Administrative Judge	Respondent	Respondent
8	Andrea Stewart-Cousins, as Temporary Senate President	Respondent	Respondent
9	New York State Senate	Respondent	Respondent
10	Carl Heastie, as Assembly Speaker	Respondent	Respondent
11	New York State Assembly	Respondent	Respondent
12	Letitia James, as New York State Attorney General	Respondent	Respondent
13	Thomas DiNapoli, as New York State Comptroller	Respondent	Respondent
14			
15			
16			
17			
18			
19			
20			

Petitioners' September 25, 2024 Informational Statement [R.38-41]

Attorney Information

Instructions: Fill in the names of the attorneys or firms for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

Attorney/Firm Name: Center for Judicial Accountability, Inc., unrepresented -- entitled to AG's representation

Address: Box 8101

City: White Plains	State: New York	Zip: 10602	Telephone No: 914-421-1200
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E-mail Address: mail@judgewatch.org

Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☒ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name: Elena Ruth Sassower, unrepresented -- entitled to AG's representation

Address: 10 Stewart Place, Apt. 2D-#

City: White Plains	State: New York	Zip: 10603	Telephone No: 914-421-1200
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E-mail Address: elena@judgewatch.org

Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☒ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name: New York State Attorney General Letitia James

Address: The Capitol

City: Albany	State: New York	Zip: 12224	Telephone No:
--------------	-----------------	------------	---------------

E-mail Address: noah.engelhart@ag.ny.gov john.moore@ag.ny.gov

Attorney Type: ☐ Retained ☐ Assigned ☒ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name:

Address:

City:	State:	Zip:	Telephone No:
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E-mail Address:

Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name:

Address:

City:	State:	Zip:	Telephone No:
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E-mail Address:

Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name:

Address:

City:	State:	Zip:	Telephone No:
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E-mail Address:

Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Appellants' October 21, 2024 Notice of Direct Appeal to the Court of Appeals [R.42-51]

SUPREME COURT OF STATE OF NEW YORK
COUNTY OF ALBANY

----- X
CENTER FOR JUDICIAL ACCOUNTABILITY, INC.
and ELENA RUTH SASSOWER, individually and
as Director of the Center for Judicial Accountability, Inc.,
acting on their own behalf and on behalf of the People
of the State of New York & the Public Interest,

[Index #902654-24](#)

October 21, 2024

NOTICE OF APPEAL

Petitioners/Plaintiffs,

-against-

NEW YORK STATE COMMISSION ON LEGISLATIVE,
JUDICIAL AND EXECUTIVE COMPENSATION,

KATHY HOCHUL and ANTONIO DELGADO, in their official
capacities as GOVERNOR and LIEUTENANT GOVERNOR
OF THE STATE OF NEW YORK,

ROWAN WILSON and JOSEPH ZAYAS, in their official capacities
as CHIEF JUDGE and CHIEF ADMINISTRATIVE JUDGE
OF THE STATE OF NEW YORK,

ANDREA STEWART-COUSINS, in her official capacity
as TEMPORARY SENATE PRESIDENT and
THE NEW YORK STATE SENATE,

CARL HEASTIE, in his official capacity as
ASSEMBLY SPEAKER, and
THE NEW YORK STATE ASSEMBLY,

LETITIA JAMES, in her official capacity as
ATTORNEY GENERAL OF THE STATE OF NEW YORK,

THOMAS DiNAPOLI, in his official capacity as
COMPTROLLER OF THE STATE OF NEW YORK,

Respondents/Defendants.

-----X
PLEASE TAKE NOTICE that pursuant to [Article VI, §3\(b\)\(2\) of the New York State Constitution](#), petitioners/plaintiffs hereby appeal directly, as of right, to the Court of Appeals of the State of New York from Rensselaer County Court Judge Jennifer Sober's "Decision, Order, and

Appellants' October 21, 2024 Notice of Direct Appeal to the Court of Appeals [R.42-51]

Judgment (Motion Sequence 1&2)”, “Decision, Order, and Judgment (Motion Sequence 3)”, and “Decision, Order, and Judgment (Motion Sequence 4)”, each dated and entered August 14, 2024 – as to which appellants filed a September 12, 2024 notice of appeal to the Appellate Division, Third Department ([NYSCEF #89](#)), annexing these three decisions and, additionally, a “legal autopsy”/analysis of each ([Exhibit 1](#)).

The statutory provision whose “validity under the constitution of the state or of the United States” is the only “constitutional question [to] be considered and determined by the court” is Chapter 60, Part E, of the Laws of 2015. Its unconstitutionality arises from Judge Sober’s corrupting of ALL adjudicative standards to avoid according ANY scrutiny to the “force of law” December 4, 2023 Report of the Commission on Legislative, Judicial and Executive Compensation – let alone the “heightened scrutiny” that then Court of Appeals Associate Judge Wilson held to be required for a “force of law” delegation of legislative power to be constitutional in his concurring opinion in [Delgado v. New York State](#), 39 NY3d 242 (2022), without which the three-judge plurality opinion would not have been a majority.

To facilitate and expedite the Court of Appeals’ determination of petitioners/plaintiffs’ entitlement to a direct appeal, of right, as provided-for by [Article VI, §3\(b\)\(2\)](#), attached is their Preliminary Appeal Statement (Exhibit 2), with live hyperlinks to the [NYSCEF record in Supreme Court/Albany County](#).

Appellants' October 21, 2024 Notice of Direct Appeal to the Court of Appeals [R.42-51]



Elena Ruth Sassower, unrepresented petitioner/plaintiff, individually and as Director of the Center for Judicial Accountability, Inc, acting on her own behalf and on behalf of the People of the State of New York & the Public Interest

Dated: White Plains, New York
October 21, 2024*

* This day marks five years since the death of the Center for Judicial Accountability's co-founder, my beloved mother, Doris L. Sassower, ESQ., a legal giant, patriot, and visionary, October 21, 2019.

Appellants' October 21, 2024 Notice of Direct Appeal to the Court of Appeals [R.42-51]

The below reprints the Court of Appeals' Preliminary Appeal Statement, answering its relevant questions. Its live hyperlinks are accessible from the pdf that is part of appellants' Notice of Appeal, electronically filed on October 21, 2024, [Albany County Supreme Court #902654-24](#) (NYSCEF #95).

**NEW YORK STATE
COURT OF APPEALS**

Preliminary Appeal Statement

Pursuant to section 500.9 of the Rules of the Court of Appeals

1. Caption of Case (as the parties should be denominated in the Court of Appeals):

STATE OF NEW YORK COURT OF APPEALS

*CENTER FOR JUDICIAL ACCOUNTABILITY, INC.
and ELENA RUTH SASSOWER, individually and
as Director of the Center for Judicial Accountability, Inc.,
acting on their own behalf and on behalf of the People
of the State of New York & the Public Interest,*

Petitioners-Appellants,

-against-

*NEW YORK STATE COMMISSION ON LEGISLATIVE,
JUDICIAL AND EXECUTIVE COMPENSATION,*

*KATHY HOCHUL and ANTONIO DELGADO, in their official
capacities as GOVERNOR and LIEUTENANT GOVERNOR
OF THE STATE OF NEW YORK,*

*ROWAN WILSON and JOSEPH ZAYAS, in their official capacities
as CHIEF JUDGE and CHIEF ADMINISTRATIVE JUDGE
OF THE STATE OF NEW YORK,*

*ANDREA STEWART-COUSINS, in her official capacity
as TEMPORARY SENATE PRESIDENT and
THE NEW YORK STATE SENATE,*

*CARL HEASTIE, in his official capacity as
ASSEMBLY SPEAKER, and
THE NEW YORK STATE ASSEMBLY,*

*LETITIA JAMES, in her official capacity as
ATTORNEY GENERAL OF THE STATE OF NEW YORK,*

Appellants' October 21, 2024 Notice of Direct Appeal to the Court of Appeals [R.42-51]

THOMAS DiNAPOLI, in his official capacity as
COMPTROLLER OF THE STATE OF NEW YORK,

Respondents-Respondents

2. Name of court...where case originated, including county:

Supreme Court/Albany County

3. Civil index number...assigned to the matter in the court...of original instance:

[Index #902654-24](#)

4. Docket number assigned to the matter at the Appellate Division:

[CV-24-1604 \(Appellate Division, Third Department\)](#)

5. Jurisdictional basis for this appeal: [New York State Constitution, Article VI, §3\(b\)\(2\)](#)

comparable, but not identical, to your form option

“[CPLR 5601\(b\)\(2\)](#): constitutional ground (judgment of court of original instance)”

6. How this appeal was taken to the Court of Appeals (CPLR 5515[1]):

NOTICE OF APPEAL Date filed: October 21, 2024

Clerk's office where filed: Albany County/Supreme Court

7. Demonstration of timeliness of appeal in civil case (CPLR 5513, 5514):

Was appellant served by its adversary with a copy of the order, judgment or determination appealed from and notice of its entry? Yes

If yes, date on which appellant was served: August 14, 2024

If yes, method by which appellant was served: [NYSCEF #82](#) & mail

On September 12, 2024 appellants timely-filed a notice of appeal to the Appellate Division, Third Department ([NYSCEF #89](#)) from Rensselaer County Court Judge Jennifer Sober's three August 14, 2024 "Decisions(s), Order(s), and Judgments" and simultaneously made a motion before her ([NYSCEF #83](#)) expressly seeking determination of the unconstitutionality of Chapter 60, Part E, of the Laws of 2015 arising from her decisions. On September 19, 2024, the Albany County Supreme Court Clerk's Office administratively reassigned the motion to Ulster County

Appellants' October 21, 2024 Notice of Direct Appeal to the Court of Appeals [R.42-51]

Surrogate Judge Sara McGinty ([NYSCEF #90](#)). It was returnable on October 4, 2024.

8. Party Information:

No.	Party Name	Original Status	Court of Appeal Status
1.	Center for Judicial Accountability, Inc.	Petitioner/Plaintiff	Appellant
2.	Elena Ruth Sassower, individually and as Director	Petitioner/Plaintiff	Appellant
3.	New York State Commission on Legislative, Judicial and Executive Compensation	Respondent/Defendant	Respondent
4.	Governor Kathy Hochul	Respondent/Defendant	Respondent
5.	Lieutenant Governor Antonio Delgado	Respondent/Defendant	Respondent
6.	Chief Judge Rowan Wilson	Respondent/Defendant	Respondent
7.	Chief Administrative Judge Joseph Zayas	Respondent/Defendant	Respondent
8.	Temporary Senate President Andrea Stewart-Cousins	Respondent/Defendant	Respondent
9.	New York State Senate	Respondent/Defendant	Respondent
10.	Assembly Speaker Carl Heastie	Respondent-Defendant	Respondent
11.	New York State Assembly	Respondent/Defendant	Respondent
12.	Attorney General Letitia James	Respondent/Defendant	Respondent
13.	Comptroller Thomas DiNapoli	Respondent/Defendant	Respondent

9. Attorney Information:

***NOTE:** Parties Nos. 3-13 above – the eleven respondents/defendants in this hybrid Article 78 proceeding/declaratory judgment action/citizen-taxpayer action – are here, as below, all represented by the New York State Attorney General James, herself a respondent/defendant – and the lawfulness of that representation was and is contested by petitioners/plaintiffs.

For Parties Nos. 3-10 above:

Appellants' October 21, 2024 Notice of Direct Appeal to the Court of Appeals [R.42-51]

Law Firm Name: Attorney General of the State of New York Letitia James
Responsible Attorney: Assistant Attorney General Noah Engelhart

Street Address: The Capitol
City: Albany State: New York Zip: 12224
Telephone: 518-776-2300
E-Mail: noah.engelhart@ag.ny.gov

10. Self-Represented Litigant Information:

***NOTE:** Parties Nos. 1-2 above – the two petitioners/plaintiffs in this hybrid Article 78 proceeding/declaratory judgment action/citizen-taxpayer action, expressly acting “on behalf of the People of the State of New York & the Public Interest” – are here, as below, unrepresented litigants and sought below the Attorney General’s representation/intervention, pursuant to Executive Law §63.1 and State Finance Law, Article 7-A [§123-a(3); §123-c(3); §123-d; §123-e(2)], to which they remain entitled.

For Party No. 1 above:

Party’s Name: Center for Judicial Accountability, Inc.
Street Address: (c/o Sassower) 10 Stewart Place, Apt. 2D-E
City: White Plains State: New York Zip: 10603
Telephone No.: 914-421-1200

For Party No. 2 above:

Party’s Name: Elena Ruth Sassower
Street Address: 10 Stewart Place, Apt. 2D-E
City: White Plains State: New York Zip: 10603
Telephone No.: 914-421-1200
E-Mail: elena@judgewatch.org

11. Related motions and applications:

Does any party to the appeal have any motions or applications related to this appeal pending in the Court of Appeals? No

Does any party to the appeal have any motions or applications in this case currently pending in the court from which the appeal is taken? Yes (as recited in #7 & #12)

Are there any other pending motions or ongoing proceedings in this case? No

Appellants' October 21, 2024 Notice of Direct Appeal to the Court of Appeals [R.42-51]

12. **Set forth, in point-heading form, issues proposed to be raised on appeal**
(this is a nonbinding designation, for preliminary issue identification purposes only):

POINT I

**Chapter 60, Part E, of the Laws of 2015 is Unconstitutional
as Written & as Applied – & Must Be So-Declared
Consistent with this Court’s opinions in *Delgado v. New York State***

The appealed-from three decisions have rendered Chapter 60, Part E, of the Laws of 2015 unconstitutional by their:

“...willful failure to accord ANY scrutiny to the ‘force of law’ December 4, 2023 Report of the Commission on Legislative, Judicial and Executive Compensation, let alone the ‘heightened scrutiny’ that then Court of Appeals Associate Judge Wilson held to be required for a ‘force of law’ delegation of legislative power to be constitutional in his concurring opinion in [Delgado v. New York State](#), 39 NY3d 242 (2022), without which the three-judge plurality opinion would not have been a majority...”.

Appellants stated this in the reargument branch of their September 12, 2024 notice of motion ([NYSCEF #83](#)), *sub judice* before the lower court – with further particulars furnished by their moving affirmation ([NYSCEF #84](#), ¶15) and, additionally, by their “legal autopsy”/analysis of the decisions that is Exhibit A to the motion ([NYSCEF #85](#), at pp. 9-10). It stated, as to *Delgado*, quoting from their April 3, 2024 memorandum of law for summary judgment pursuant to CPLR §3211(c), voiding the December 4, 2023 Report and for declarations, ([NYSCEF #48](#), at pp. 10-11):

“There is NO difference between the plurality opinion, the concurring opinion, and dissenting opinion that statutory compliance is the *sine qua non* for any legislative delegation of power to a commission, agency, or other entity – of constitutional dimension even where the statutory legislative delegation does not bestow ‘force of law’ power. As to ‘force of law’ statutory delegations of legislative power, deemed unconstitutional by the dissenters, the majority’s holding of constitutionality is predicated on strict compliance to the statute by the entity to which the legislative delegation has been made, as the statute replaces the checks-and-balance safeguards of the constitutionally-ordained legislative process, dispensed with by the statute.

Respondent Wilson’s dissent was for purposes of underscoring his constitutional concerns, which he stated to be overcome by the judiciary’s strict scrutiny of compliance with the statute.”

Appellants' October 21, 2024 Notice of Direct Appeal to the Court of Appeals [R.42-51]

13. Does appellant request that this appeal be considered for resolution pursuant to section 500.11 of the Rules of the Court of Appeals (Alternative Procedure for Selected Appeals)?

No

14. Notice to the Attorney General.

Is any party to the appeal asserting that a statute is unconstitutional? Yes

If yes, has appellant met the requirement of notice to the Attorney General in section 500.9(b) of the Rules of the Court of Appeals? Yes*

***NOTE:** The Attorney General is counsel to respondents/defendants, herself a respondent-defendant, and by her litigation fraud, *inter alia*, her bogus defense of prematurity and lack of standing – and so-demonstrated by petitioners/plaintiffs – procured the decisions that render Chapter 60, Part E, of the Laws of 2015 unconstitutional.

15. ITEMS REQUIRED TO BE ATTACHED TO EACH COPY OF THIS STATEMENT:

- A. A copy of the filed notice of appeal to the Court of Appeals (with proof of service)

A copy of the notice of appeal and proof of service is herewith attached

- B. A copy of the signed order, judgment or determination appealed from to this Court

Annexed to the notice of appeal as Exhibit 1

- C. A signed copy of any order, judgment or determination which is the subject of the order appealed from, or which is otherwise brought up for review None

- D. Copies of all decisions or opinions relating to the orders set forth in subsections B and C above None

Appellants' October 21, 2024 Notice of Direct Appeal to the Court of Appeals [R.42-51]

Date: October 21, 2024*

Submitted by:

Elena Ruth Sassower, unrepresented Appellant-Petitioner, individually and as Director of the Center for Judicial Accountability, Inc., acting on her own behalf and on behalf of the People of the State of New York & the Public Interest

* This day marks five years since the death of CJA's co-founder, my beloved mother, [Doris L. Sassower, ESQ.](#), a legal giant, patriot, and visionary, October 21, 2019.

Appellants' November 29, 2024 Notice of Direct Appeal to the Court of Appeals [R.52-95]

SUPREME COURT OF STATE OF NEW YORK
COUNTY OF ALBANY

----- X
CENTER FOR JUDICIAL ACCOUNTABILITY, INC.
and ELENA RUTH SASSOWER, individually and
as Director of the Center for Judicial Accountability, Inc.,
acting on their own behalf and on behalf of the People
of the State of New York & the Public Interest,

[Index #902654-24](#)**November 29, 2024****NOTICE OF APPEAL**

Petitioners/Plaintiffs,

-against-

NEW YORK STATE COMMISSION ON LEGISLATIVE,
JUDICIAL AND EXECUTIVE COMPENSATION,

KATHY HOCHUL and ANTONIO DELGADO, in their official
capacities as GOVERNOR and LIEUTENANT GOVERNOR
OF THE STATE OF NEW YORK,

ROWAN WILSON and JOSEPH ZAYAS, in their official capacities
as CHIEF JUDGE and CHIEF AMINISTRATIVE JUDGE
OF THE STATE OF NEW YORK,

ANDREA STEWART-COUSINS, in her official capacity
as TEMPORARY SENATE PRESIDENT and
THE NEW YORK STATE SENATE,

CARL HEASTIE, in his official capacity as
ASSEMBLY SPEAKER, and
THE NEW YORK STATE ASSEMBLY,

LETITIA JAMES, in her official capacity as
ATTORNEY GENERAL OF THE STATE OF NEW YORK,

THOMAS DiNAPOLI, in his official capacity as
COMPTROLLER OF THE STATE OF NEW YORK,

Respondents/Defendants.

-----X
PLEASE TAKE NOTICE that pursuant to [Article VI, §3\(b\)\(2\) of the New York State
Constitution](#), petitioners/plaintiffs hereby appeal directly, as of right, to the Court of Appeals of the
State of New York from Ulster County Surrogate Court Judge Sara McGinty's

Appellants' November 29, 2024 Notice of Direct Appeal to the Court of Appeals [R.52-95]

Decision/Order/Judgment ([NYSCEF #97](#)), dated November 13, 2024 and entered November 14, 2024 (Exhibit 1). A “legal autopsy”/analysis of the Decision/Order/Judgment is attached (Exhibit 2).

The statutory provision whose “validity under the constitution of the state or of the United States” is the only “constitutional question [to] be considered and determined by the court” is Chapter 60, Part E, of the Laws of 2015. Its unconstitutionality, *as written and applied*, arises from Judge McGinty’s corrupting of ALL adjudicative standards to avoid according:

- ANY scrutiny to the “force of law” December 4, 2023 Report of the Commission on Legislative, Judicial and Executive Compensation – let alone the “heightened scrutiny” that then Court of Appeals Associate Judge Wilson held to be required for a “force of law” delegation of legislative power to be constitutional in his concurring opinion in [Delgado v. New York State](#), 39 NY3d 242 (2022), without which the three-judge plurality opinion would not have been a majority; and
- ANY scrutiny to the verified petition ([NYSCEF #1](#)), whose ¶34 stated, in support of declarations:

“Chapter 60, Part E, of the Laws of 2015 (§3, ¶7), required the COMMISSION to furnish its report ‘to the governor, the legislature and the chief judge’, to enable them to discharge their checks-and-balances, oversight duties with respect to salary increase recommendations that would otherwise have the ‘force of law’ and be unconstitutional in the absence of their oversight” (underlining in the original).

Chapter 60, Part E, of the Laws of 2015 is additionally unconstitutional *as written and by its enactment*, through the budget and by fraud. This is particularized by the verified pleadings of the two lawsuits the verified petition highlights (¶¶4, 23), *CJA v. Cuomo...DiFiore* and its “continuation”, *CJA v. JCOPE, et al.*, each “thrown” by fraudulent judicial decisions.

To facilitate and expedite the Court of Appeals’ determination of petitioners/plaintiffs’ entitlement to a direct appeal, of right, as provided-for by [Article VI, §3\(b\)\(2\)](#), attached is their Preliminary Appeal Statement (Exhibit 3), with live hyperlinks to the [NYSCEF record in Supreme Court/Albany County](#).

Appellants' November 29, 2024 Notice of Direct Appeal to the Court of Appeals [R.52-95]



Elena Ruth Sassower, unrepresented petitioner/plaintiff, individually
and as Director of the Center for Judicial Accountability, Inc, acting
on her own behalf and on behalf of the People of the State of New
York & the Public Interest

Dated: White Plains, New York
November 29, 2024

Appellants' November 29, 2024 Notice of Direct Appeal to the Court of Appeals [R.52-95]

STATE OF NEW YORK

SUPREME COURT

COUNTY OF ALBANY

Center for Judicial Accountability, Inc. and Elena Ruth Sassower, individually and as Director of the Center for Judicial Accountability, Inc, acting on their own behalf and on behalf of the People of the State of New York and the Public Interest

Petitioners,

-against-

THE NEW YORK STATE COMMISSION ON LEGISLATIVE, JUDICIAL AND EXECUTIVE COMPENSATION, KATHY HOCHUL and ANTONIO DELGADO, in their official Capacities as Governor and Lieutenant Governor of the State of New York, ROWAN WILSON and JOSEPH ZAYAS, in their official capacities as Chief Judge and Chief Administrative Judge, ANDREA STEWART-COUSINS, in her official capacity as Assembly Speaker, THE NEW YORK STATE ASSEMBLY, LETITIA JAMES, in her official capacity as the Attorney General of the State of New York, and THOMAS DiNAPOLI, in his official Capacity as Comptroller of the State of New York,

DECISION/ORDER/JUDGMENT

Index. No. 902654-24

Respondents,

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

Supreme Court Albany County

Sara W. McGinty, Acting Supreme Court Justice

Appearances:

Elena Ruth Sassower, petitioner, pro se
Center for Judicial Accountability, Inc., petitioner, pro se
10 Stewart Place, Apt. D-E
White Plains, New York 10603

Letitia James
Office of the Attorney General
Rachel S. Ouimet, Esq., AAG
Attorney for the Respondents
The Capitol
Albany, New York 1224-0341

Appellants' November 29, 2024 Notice of Direct Appeal to the Court of Appeals [R.52-95]

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McGinty, J.

In this Article 78 proceeding, petitioner moves pursuant to CPLR 2221(d) and (e) to reargue or renew a series of decisions by Hon. Jennifer G. Sober ASCJ (the "Decisions"), as well as for relief under CPLR 5015(a)(3) and (4) to vacate the decisions and to transfer or remove this case to a federal court pursuant to US Constitution Article IV(4) or to certify the question of disqualification under Judiciary Law 14 to the Appellate Division, Third Department.

The contested Decisions by the Hon. Jennifer G. Sober ASCJ all dated August 14, 2024 denied petitioners' application for preliminary injunction and other relief (NYSCEF Doc. No. 79); denied petitioners' application for costs and sanctions against the Office of the Attorney General (the "AG") and disqualification of the AG and a transfer of the proceeding to federal court (NYSCEF Doc. No. 80); and dismissed petitioners' verified petition/complaint on the motion of respondent New York State Commission on Legislative, Judicial and Executive Compensation (the "Commission") (NYSCEF Doc. No. 81).

These proceedings began with petitioners' verified petition/complaint alleging two causes of action arising from the Commission's December 4, 2023 report (the "Report") approving New York State judicial pay raises, alleging

- the Report was void because the Commission failed to make the findings or determinations required under Chapter 60 of the Laws of 2015 which created the Commission (the "2015 Statute")¹ and the "governor, the legislature and the chief judge," all named as respondents herein, failed to exercise any oversight over the Commission's recommendations; and

¹ The law charges the Commission with evaluating and making recommendations every four years to insure adequate levels of compensation for members of the judiciary, among others.

Appellants' November 29, 2024 Notice of Direct Appeal to the Court of Appeals [R.52-95]

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- the \$34,600,000 appropriations for judicial salary increases are themselves based on Commission recommendations which are the product of “fraud and flagrant violations” of New York State Finance Law 7-A and should be stricken as illegal and unconstitutional.

Judge Sober’s Decisions granted respondents’ motion to dismiss the verified petition/complaint by petitioners based on an absence of standing and a failure to obtain timely jurisdiction over respondents.

In the present proceedings, petitioners first seek a renewal under CPLR 2221(e) based on the “newly-discovered evidence that Judge Sobers is not an ‘Acting Supreme Court Justice.’”

A motion for leave to renew must be based upon new facts not offered on the prior motion or a change in the law, either of which would change the prior determination (*see* CPLR 2221[e][2]). Such a motion shall contain reasonable justification for the failure to present such facts on the prior motion (*Carmike Holding I, LLC v Smith*, 180 AD3d 744, 747 [2d Dept 2020], *citing* CPLR 2221[e][2], [3]). Petitioners’ misapprehension of the exact title of the judge is neither a new fact, nor a change in the law.

Petitioners’ motion for leave to renew pursuant to CPLR 2221(e) is therefore denied.

Petitioners next seek reargument under CLR 2221(d) based on the Court’s having overlooked and misapprehended “all dispositive facts and law” in the three (3) Decisions challenged. Petitioners cite in particular a perceived failure on the part of the Court to review the Commission’s 2023 report or to make a determination as to the constitutionality of the 2015 Law.

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Appellants' November 29, 2024 Notice of Direct Appeal to the Court of Appeals [R.52-95]

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Leave to reargue pursuant to CPLR 2221(d) is properly granted upon a showing that the court overlooked or misapprehended the facts and/or the law or mistakenly arrived at its earlier decision (*Loris v. S & W Realty Corp.*, 16 AD3d 729, 730 [3d Dept 2005]). As an initial matter, the Court notes that the contested Decisions were not made on the merits and did not make findings of fact or law on the petition. Instead, the Decisions disposed of the petition on a variety of jurisdictional grounds (ripeness, standing, service of process and mootness). Even if the Decisions were on the merits, however, petitioners fail to identify with specificity the facts or law overlooked or misapprehended by the Court. A rehash of the grounds for the petition does not fulfill this fundamental pleading requirement under CPLR 2221(d). More to the point, there is no offer of facts or law which address the actual basis for the Decisions, which, as noted above, resolved questions of jurisdiction alone.

Petitioners motion for leave to reargue under CPLR 2221(d) is denied.

Petitioners' final motion seeks CPLR 5015 relief from the Decisions based on fraud/misrepresentation/misconduct by an adverse party under CPLR 5015(a)(3) and absence of subject matter jurisdiction in the Supreme Court under CPLR 5015(a)(4). Petitioners' pleadings are rife with broad allegations of fraud; what's missing are facts. This is fatal to petitioners' motion for relief under CPLR 5015.

Allegations of fraud or other misconduct must be supported by fact (*Pinkesz Mut. Holdings, LLC v. Pinkesz*, 198 AD3d 693, 698 [3d Dept 2021]; *see, also Matter of McLaughlin*, 111 A.D.3d 1185, 1186 [3d Dept 2013]). Conclusory allegations are insufficient to prove fraud,

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Appellants' November 29, 2024 Notice of Direct Appeal to the Court of Appeals [R.52-95]

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misrepresentation, or other misconduct to warrant vacatur of [an] order pursuant to CPLR 5015(a)(3) (*Matter of Romine v. New York Pub. Serv. Comm.*, 209 A.D.3d 1197, 1199 [3d Dept 2022]).

In the absence of facts --- new or otherwise --- probative of the alleged fraud or other misconduct, petitioners' first ground for CPLR 5015(a)(4) relief is dismissed.

Petitioner has also failed to establish grounds for vacating the Decisions under CPLR 5015(a)(4). While a motion to vacate on this basis may be made at any time, a finding that a party lacks standing to bring an action does not implicate or impair the trial court's power to entertain the action (*HSBC Bank USA, NA v. Ashley*, 104 AD3d 975 [3d Dept 2013]; *Deutsche Bank Natl. Trust Co. v. Ford*, 183 AD3d 1168 [3d Dept 2020]). Petitioner has offered no facts or law to support her argument that the Court lacks jurisdiction to hear Article 78 proceedings, which, it should be noted are vested in the Supreme Courts pursuant to CPLR 7804(b).

Petitioners report that they do not seek an order from this Court vacating the Decisions under CPLR 5015(a)(3) or (4) because Judge Sober is disqualified from taking any action in these proceedings under Judiciary Law 14. Petitioners therefore seek not the vacatur of the Decisions, but "only the determinations that would enable a jurisdictionally-empowered tribunal to vacate them." To this end, petitioners seek a transfer to the federal courts or certification of the question to the Appellate Division, Third Department or the Court of Appeals.

Curiously, petitioners simultaneously argue that justices of the Appellate Division, Third Department or the Court of Appeals are divested of jurisdiction under Judiciary Law 14 to

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Appellants' November 29, 2024 Notice of Direct Appeal to the Court of Appeals [R.52-95]

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vacate the Decisions, just as is any Supreme Court Justice.² In sum, petitioners seek a form of relief which their own pleadings dismiss as fruitless.

This Court will not engage in attempting to fashion relief which petitioners advocate for on one hand and then reject on the other. Petitioner's application for a referral from this Court to the Appellate Division, Third Department or the Court of Appeals is denied.

Respondents reject petitioners' position that all State judges are disqualified from hearing this case under Judiciary Law 14. For this purpose, respondents cite the decision in *Center for Judicial Accountability, Inc. v. Cuomo*, 167 AD3d 1406, 1407-08 [3d Dept 2018], *lv den* 33 NY3d 993),³ which has repeatedly rejected petitioners' arguments based on the Rule of Necessity.

Respondents also argue that petitioners' application cannot be transferred to a federal court because they have demonstrated no basis for jurisdiction in a federal court: there is no question of federal law raised by petitioners, nor has diversity of citizenship or an amount in controversy been alleged which might confer jurisdiction on a federal court (28 USC 1331; 1332). Moreover, removal of an action from a state court to a federal court is the exclusive

² Quoting petitioners' "legal autopsy" (NYSCEF Document No. 89): "Judiciary Law 14 divests every New York State justice and acting justice of jurisdiction because of their direct financial and other interests."

³ Petitioners should be familiar with this case, as they were the appellants. Indeed, the arguments raised in this proceeding appear to be identical to the ones disposed of in the 2018 decision. Further examination of the earlier decision might well prove to be the basis for collateral estoppel of the issues litigated (again) here (*see, eg, Schwartz v. Public Adm'r of Count of Bronx*, 24 NY2d 65 [1969]: collateral estoppel will be invoked when there is "an identity of issue which has necessarily been decided in the prior action and is decisive of the present action, and [where] there [has] been a full and fair opportunity to contest the decision now said to be controlling").

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Appellants' November 29, 2024 Notice of Direct Appeal to the Court of Appeals [R.52-95]

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province of defendants or respondents, and is not available to plaintiffs like the petitioners (*Geiger v. Artco Enters.*, 910 F Supp 130 [SDNY 1996]).

Therefore, it is hereby

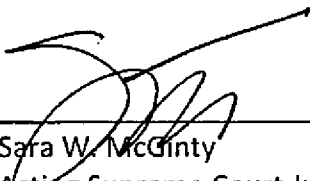
ORDERED and ADJUDGED that the petition is dismissed and the relief requested therein is in all respects denied. Arguments of the parties not referenced herein have been reviewed and found to be without merit or otherwise disposed of by this decision/order/judgment.

This constitutes the Decision/Order/Judgment of the Court. This original Decision/Order/Judgment is being returned to the Petitioner. The below referenced original papers are being delivered to the Albany County Clerk. The signing of this Decision/Order/Judgment shall not constitute entry or filing under CPLR 2220. Petitioner and counsel are not relieved from the provision of that rule regarding filing, entry or notice of entry by the Albany County Clerk.

SO ORDERED.

ENTER.

Dated: November 13, 2024
Kingston, New York



Sara W. McGinty
Acting Supreme Court Justice



Papers Considered:

11/18/2024

NYSCEF Doc. No. 83: Notice of Motion by Petitioners filed September 12, 2024.
NYSCEF Doc. No. 84: Affidavit in Support of Motion, with Exhibits A – D (NYSCEF Doc. Nos. 85-88) filed September 12, 2024.
NYSCEF Doc. No. 92: Memorandum of Law in Opposition to Motion filed September 27, 2024.
NYSCEF Doc. No. 93 Affidavit in Reply, with Exhibit A (NYSCEF Doc. No. 94) filed October 2, 2024.

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Appellants' November 29, 2024 Notice of Direct Appeal to the Court of Appeals [R.52-95]

“LEGAL AUTOPSY”/ANALYSIS
OF THE NOVEMBER 13, 2024 DECISION/ORDER/JUDGMENT
OF ULSTER COUNTY SURROGATE COURT JUDGE SARA MCGINTY

Center for Judicial Accountability, et al. v.
Commission on Legislative, Judicial and Executive Compensation, et al.
[Albany Co. #902654-24](#)

“[A] plaintiff’s cause of action is valuable property within the generally accepted sense of that word, and, as such, it is entitled to the protections of the Constitution.”,
Link v. Wabash Railroad Co, 370 U.S. 626, 646 (1962),
 U.S. Supreme Court Justice Hugo Black writing in dissent,
 with Chief Justice Earl Warren concurring.

This analysis constitutes a “legal autopsy”¹ of Ulster County Surrogate Court Judge Sara McGinty’s November 13, 2024 Decision/Order/Judgment ([NYSCEF #97](#)), denying petitioners’ September 12, 2024 motion for renewal, reargument, and vacatur, upon transfer to federal court, of Rensselaer County Court Judge Jennifer Sober’s three August 14, 2024 “Decision(s), Order(s), and Judgment(s)” ([NYSCEF #83](#)).

As a matter of law – and threshold – Judge McGinty’s decision is a nullity, irrespective of whether she is an “Acting Supreme Court Justice” – as her decision purports – as she, like Judge Sober, has direct financial and other interests in this lawsuit involving her judicial salary and the corruption infesting New York’s judiciary, encompassing its “throwing” cases by fraudulent judicial decisions. She conceals this by her fraudulent decision “throwing” this case.

Identically to Judge Sober’s decisions, Judge McGinty’s decision upends ALL adjudicative standards and is “so totally devoid of evidentiary support as to render [it] unconstitutional under the Due Process Clause” of the United States Constitution, [Garner v. State of Louisiana](#), 368 U.S. 157, 163 (1961), [Thompson v. City of Louisville](#), 362 U.S. 199 (1960), and, comparably, under Article I, §6 of the New York State Constitution, “No person shall be deprived of life, liberty or property without due process of law”. So, too, it is a criminal act, violating a succession of New York’s penal laws, including:

[Penal Law §195](#) (“official misconduct”);
[Penal Law §496](#) (“corrupting the government”) – part of the “Public Trust Act”;
[Penal Law §195.20](#) (“defrauding the government”);

¹ The term “legal autopsy” is taken from the law review article “*Legal Autopsies: Assessing the Performance of Judges and Lawyers Through the Window of Leading Contract Cases*”, 73 [Albany Law Review](#) 1 (2009), by Gerald Caplan, recognizing that the legitimacy of judicial decisions can only be determined by comparison with the record (‘...Performance assessment cannot occur without close examination of the trial record, briefs, oral argument and the like...’ (p. 53)).

Appellants' November 29, 2024 Notice of Direct Appeal to the Court of Appeals [R.52-95]

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

[Penal Law §155.42](#) (“grand larceny in the first degree”);

[Penal Law §190.65](#) (“scheme to defraud in the first degree”);

[Penal Law §20.00](#) (“criminal liability for conduct of another”).

Here, too, as before Judge Sober, Attorney General Letitia James – a respondent representing herself and her fellow respondents – is a partner in crime. Having no defense to petitioners’ September 12, 2024 motion ([NYSCEF #83](#)), she corrupted the judicial process with litigation fraud by her “of counsel” Noah Engelhart, whose fraudulent September 27, 2024 memorandum of law in opposition ([NYSCEF #92](#)) was exposed as such by petitioners’ October 2, 2024 reply affirmation ([NYSCEF #93](#)). No matter, Judge McGinty rewarded AG James and her ten co-respondents by her fraudulent November 13, 2024 decision.

Suffice to say that the fraudulence of Judge McGinty’s decision is verifiable, readily, from her [CPLR §2219\(a\)](#) listing of “Papers Considered”, inventoried at the very end of the decision (at p. 7) as:

“NYSCEF Doc. No. 83: Notice of Motion by Petitioners filed September 12, 2024.

NYSCEF Doc. No. 84: Affidavit in Support of Motion, with Exhibits A-D
(NYSCEF Doc. Nos. 85-88) filed September 12, 2024.

NYSCEF Doc. No. 92: Memorandum of Law in Opposition to Motion
filed September 27, 2024.

NYSCEF Doc. No. 93 Affidavit in Reply, with Exhibit A (NYSCEF Doc. No. 94)
filed October 2, 2024”.

[NYSCEF #84](#), the referred-to “Affidavit in Support of the Motion”, is, in fact, an affirmation. Its ¶2 identifies as Exhibit A ([NYSCEF #85](#)) “petitioners’ 27-page, single-spaced ‘legal autopsy’/analysis of [Judge Sober’s] three August 14, 2024 decisions”, stating it to be “dispositive of every branch [of the motion], but the first, for renewal based on newly-discovered evidence”. Its ¶5 identifies as Exhibit B ([NYSCEF #86](#)) petitioners’ September 10, 2024 FOIL request to the OCA, “now the basis for the first branch..., for renewal so that [Judge Sober] can clarify what is potentially a yet further ground for vacatur”.

Judge McGinty’s decision makes NO mention of the FOIL request and her only reference to the “legal autopsy”/analysis of Judge Sober’s three decisions, whose accuracy she does not deny or dispute in any respect, is in her footnote 2, referring to petitioners’ “legal autopsy”, without identifying what it is a “legal autopsy” of.

For that matter, Judge McGinty’s decision makes no mention as to why, notwithstanding [CPLR §2221](#), “Motion affecting prior order”, and [CPLR §5015](#), “Relief from judgment or order”, require that motions thereunder be made before the judge who rendered them – as petitioners did by their September 12, 2024 motion ([NYSCEF #83](#)) – it is she, NOT Judge Sober, who is deciding the motion.

What became of Judge Sober? Did she recuse herself – or was she removed administratively and, if

the latter, what are the reasons and where is the administrative order? If the former, where is her order and what reasons does it give?

Suffice to say, [Judiciary Law §9](#) states:

“Any judge who recuses himself or herself from sitting in or taking any part in the decision of an action, claim, matter, motion or proceeding shall provide the reason for such recusal in writing or on the record; provided, however, that no judge shall be required to provide a reason for such recusal when the reason may result in embarrassment, or is of a personal nature, affecting the judge or a person related to the judge within the sixth degree by consanguinity or affinity.”

For the convenience of all, a Table of Contents follows:

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I

The Evaporation of Judge Sober, Her Replacement by Judge McGinty, & the First Branch of Petitioners’ Motion: Renewal Pursuant to CPLR §2221(e) Because Judge Sober is Not the Acting Supreme Court Justice Her Decisions Purport & for Disclosure by Her of Pertinent Facts

The starting point for this analysis is not Judge McGinty’s decision, but why the decision is not by Judge Sober. Judge McGinty’s decision furnishes no information about this, nor disclose that petitioners made their motion returnable before Judge Sober, consistent with [CPLR §2221](#), “Motion affecting prior order”, and [CPLR §5015](#), “Relief from judgment or order”, requiring that motions thereunder be made before the judge who rendered them.

The relief sought from Judge Sober by petitioners’ notice of motion ([NYSCEF #83](#)) was as follows:

1. “pursuant to [CPLR §2221\(e\)](#), granting renewal based on newly-discovered evidence that the Court is not an ‘Acting Supreme Court Justice’ as these three decisions/orders/judgments purport and disclosure by the Court of its status and compliance with assignment restrictions and Rules of the Chief Judge and Chief Administrative Judge – the subject of petitioners’ FOIL request to the Unified Court System (Exhibit B, [NYSCEF #86](#));
2. pursuant to [CPLR §2221\(d\)](#), granting reargument based on the Court’s having ‘overlooked’ and ‘misapprehended’ ALL dispositive facts and law by its three decisions/orders/judgments – the subject of petitioners’ ‘legal autopsy/ analysis’ of them (Exhibit A, [NYSCEF #85](#)) – and

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(a) disclosure by the Court of its financial and other interests underlying the pervasive actual bias that its decisions manifest: and

(b) determination by the Court of the constitutional issues arising from its decisions, including as to the unconstitutionality of Chapter 60, Part E, of the Laws of 2015 ([NYSCEF #2](#)), *as applied*, embodied in petitioners' first cause of action ([NYSCEF #1](#), ¶39) and, additionally, by the Court's willful failure to accord ANY scrutiny to the 'force of law' December 4, 2023 Report of the Commission on Legislative, Judicial and Executive Compensation, let alone the 'heightened scrutiny' that then Court of Appeals Associate Judge Wilson held to be required for a 'force of law' delegation of legislative power to be constitutional in his concurring opinion in [Delgado v. New York State](#), 39 NY3d 242 (2022), without which the three-judge plurality opinion would not have been a majority, instead concealing the issue by falsely purporting, in its 'Motion Sequence 1&2' decision, that petitioners were seeking to "stay" the Legislature from 'adopting' the December 4, 2023 Report – a fraud exported from Respondent Attorney General Letitia James;

3. pursuant to [CPLR §5015\(a\)\(3\)](#), for the determinations necessary for a jurisdictionally-empowered tribunal to vacate the Court's three decisions/orders/judgments for 'fraud, misrepresentation, or other misconduct of an adverse party' – this being, in the first instance, Respondent Attorney General James;
4. pursuant to [CPLR §5015\(a\)\(4\)](#), for the determinations necessary for a jurisdictionally-empowered tribunal to vacate the three decisions/orders/judgments for 'lack of jurisdiction' by reason of the Court's financial and other interests, as to which [Judiciary Law §14](#) divests it of jurisdiction – the threshold issue that was before the Court; and
5. pursuant to Article IV, §4 of the United States Constitution, 'The United States shall guarantee every State in this Union a Republican Form of Government', transferring this case to federal court so that it can vacate the Court's three decisions/orders/judgments, inasmuch as this Court cannot do so because a judge disqualified by Judiciary Law §14 'is without jurisdiction, and all proceedings had before such a judge...are void...[and he] is even incompetent to make an order in the case setting aside his own void proceedings.' (28 [New York Jurisprudence 2nd](#) §403 (2018) – or certifying the question to the Appellate Division, Third Department or to the New York

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Court of Appeals, all of whose judges are, likewise, divested of jurisdiction by Judiciary Law §14;

6. granting such other and further relief as may be just and proper, including \$100 motion costs pursuant to [CPLR §8202](#).”

On September 16, 2024, four days after petitioners filed their September 12, 2024 motion, an unsigned “Memorandum” on letterhead of the Clerk’s Office of the Albany County Supreme and County Courts was uploaded to the NYSCEF docket of the case ([NYSCEF #90](#)). Addressed to “Hon. Sara W. McGinty” from Amy Serson, whose title was not given, its three sentences read:

“The Notice of Motion filed September 13, 2024 in the above-captioned proceeding must be reassigned. It has been reassigned to you from the Article 78 Reassignment Wheel.

If you any questions, please feel free to contact me.”

This “Memorandum” was not revealed by AAG Engelhart’ September 27, 224 memorandum of law in opposition to the motion ([NYSCEF #92](#)), nor that Judge McGinty, not Judge Sober, would be adjudicating the motion – and petitioners pointed this out in their October 2, 2024 reply affirmation ([NYSCEF #93](#)), stating, under the heading “AAG Engelhart’s Fraudulent Point I: ‘Petitioner-Plaintiffs’ Motion for Leave to Renew Should be Denied (at p. 3)”:

“The facts and law entitling petitioners to the granting of the first branch of their motion, for renewal ([NYSCEF #83](#)), are set forth by ¶¶3-5 of their moving affirmation ([NYSCEF #84](#)) – including its Exhibit B September 10, 2024 FOIL request ([NYSCEF #86](#)), the importance of which the notice of motion itself identifies.

AAG Engelhart does not contest the accuracy of ¶¶3-5 or the FOIL request. Instead, his single paragraph pertaining to renewal conceals the renewal issue, *to wit*, whether County Court Judge Jennifer Sober could lawfully handle this case, and mischaracterizes the situation as ‘Petitioner-Plaintiffs’ own confusion regarding the exact title of the Court’. Tellingly, AAG Engelhart does not himself furnish ‘the exact title of the Court’ – and makes no mention of the FOIL request, including in his annotating footnote 3 which, without supplying a single fact, baldly disparages petitioners’ “‘investigation’ into various aspects of the Court, including the Court’s title, time on the bench, and salary’ as ‘irrelevant to both [the] legal basis of the August 14, 2024 Decisions and Orders by the Court and the present motion for leave to renew’, which is false.

Tellingly, too, AAG Engelhart does not disclose that the Albany County Clerk’s Office has ostensibly conceded that Judge Sober could not lawfully be assigned to the case by administratively removing her from it ([NYSCEF #90](#)).^{fn3} He

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furnishes no law and offers up no argument that Judge Sober's three August 14, 2024 decisions/orders/judgments do not fall by reason thereof." (hyperlinks and underlining in the original).

Petitioners' annotating fn.3 read:

“^{fn3} The Clerk's Office uploaded its notification of the reassignment at 3:14 pm on September 16, 2024 – about 5-1/2 hours after the Office of Court Administration had acknowledged petitioners' September 10, 2024 FOIL request, cc'ing the Clerk's Office and the administrative office of the Third Judicial District. (Exhibit A – [NYSCEF #94](#)).”

Judge McGinty – like AAG Engelhart – makes no mention of this September 16, 2024 “Memorandum” in her decision and, after twice referring to Judge Sober, at page 2, as “Hon. Jennifer G. Sober ASCJ”, disposes of renewal, at page 3, as follows:

“In the present proceedings, petitioners first seek a renewal under CPLR 2221(e) based on the ‘newly-discovered evidence that Judge Sobers is not an ‘Acting Supreme Court Justice.’”

A motion for leave to renew must be based upon new facts not offered on the prior motion or a change in the law, either of which would change the prior determination (see CPLR 2221[e][2]). Such a motion shall contain reasonable justification for the failure to present such facts on the prior motion (*Carmike Holdin I, LLC v Smith*, 180 AD3d 744, 747 [2d Dept 2020], citing CPLR 2221[e][2][3]. Petitioners' misapprehension of the exact title of the judge is neither a new fact, nor a change in the law.

Petitioners' motion for leave to renew pursuant to CPLR 2221(e) is therefore denied.”

In other words, Judge McGinty adopted AG James' fraud that at issue was “Petitioner-Plaintiffs' own confusion regarding the exact title of [Judge Sober]” by revising it to “Petitioners' misapprehension of the exact title of the judge”.

To clarify why petitioners' September 12, 2024 motion was not decided by Judge Sober, the circumstances of Judge McGinty's assignment to the case – and whether she, herself, is an acting Supreme Court justice – petitioners made a [November 21, 2024 FOIL request to the OCA](#), requesting:

- (1) “records as to who determined that the September 12, 2024 Notice of Motion ([NYSCEF #83](#)) ‘must be reassigned’, the reason for that determination – and whether this was communicated to ‘Hon. Sara W. McGinty’;

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- (2) records as to whether Judge Sober had disqualified or recused herself, had stated why – and whether this was communicated to ‘Hon. Sara W. McGinty’;
- (3) records as to whether, if Judge Sober had NOT disqualified/recused herself, she was consulted as to why the ‘Notice of Motion...must be reassigned’ and, if so, by whom, and her response – and whether this was communicated to ‘Hon. Sara W. McGinty’;
- (4) records as to how ‘the Article 78 Reassignment Wheel’ works – and that it was appropriate for use for the hybrid Article 78 proceeding/declaratory judgment action/citizen-taxpayer action *CJA v. Commission on Legislative, Judicial and Executive Compensation, et al.*, commenced in Albany Supreme Court on March 18, 2024;
- (5) records as to whether ‘the Article 78 Reassignment Wheel’ selected any other judge prior to ‘Hon. Sara W. McGinty’ – and if so, why the assignment did not go to that judge;
- (6) records as to whether ‘Hon. Sara W. McGinty’, the Ulster County Surrogate judge, is an acting Supreme Court justice, including the date(s) she was so-designated, by whom, and for what periods – as she is NOT indicated to be an acting Supreme Court justice on the Unified Court System’s [webpage for her](#) nor on its [webpage for Ulster County Supreme and Court Courts](#);
- (7) records reflecting that the salary of ‘Hon. Sara W. McGinty’ is that of an Ulster County Surrogate judge, not a Supreme Court justice, and that she receives and has received no additional compensation for work connected with Supreme Court assignments.”

It has been eight days since this November 21, 2024 FOIL request to the OCA was sent, without response. As for petitioners’ [September 10, 2024 FOIL request](#) for records pertaining to whether Judge Sober is an acting Supreme Court justice and her compliance with assignment rules, the OCA has delayed its response, first to [October 15, 2024](#), then to [November 12, 2024](#), then to [November 26, 2024](#), and now to [December 10, 2024](#).

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II**Judge McGinty's Financial and Other Interests and Relationships
are Far Greater than Those Particularized by Petitioners' Motion
as to Judge Sober -- & Required Judge McGinty to Have Disqualified or Recused Herself,
from the Outset – and, Failing to Do So, to Have Made Disclosure and
Asserted Her Fairness and Impartiality Notwithstanding**

Clear from petitioners' September 12, 2024 motion ([NYSCEF #83](#)) is that it presented three grounds for Judge Sober to have recused or disqualified herself:

- (1) that she was not an acting Supreme Court justice, as her decisions purported she was;
- (2) her immense financial interest and relationships, which her decisions had not revealed; and
- (3) her pervasive actual bias, arising from her financial interest and relationships, demonstrated by her decisions.

Each of these were issues that Judge McGinty was duty-bound to confront as to herself, threshold, and to have recused or disqualified herself from the case. Failing to do so, her obligation was to have made pertinent disclosure pursuant to [§100.3F of the Chief Administrator's Rules Governing Judicial Conduct](#) and to have asserted that she could be fair and impartial, notwithstanding.

Putting aside whether Judge McGinty is an acting Supreme Court justice, she knew, immediately, that her financial interests and relationships were even more immense and extensive than Judge Sober's, particularized by petitioners' moving affirmation ([NYSCEF #84](#)) as follows:

“6. As for the second branch of this motion, for the granting of reargument so that the Court can disclose its financial and other interests giving rise to the pervasive actual bias demonstrated by its decisions, here's my own calculation of the Court's salary interest as a Rensselaer County Court judge:

- On January 1, 2018, when the Court took office, its Rensselaer County Court judge salary was \$185,200 – \$65,400 more than the \$119,800 Rensselaer County Court judge salary of [Judiciary Law §221-D](#).
- This \$65,400 difference was the product of the 'force of law' August 29, 2011 Report of the Commission on Judicial Compensation, which had raised the Rensselaer County Court judge salary to \$140,300 as of April 1, 2012, to \$146,400 as of April 1, 2013; and to \$152,500 as of April 1, 2014 (Exhibit C/[NYSCEF #87](#)) – then followed by the 'force of law' December 24, 2015 Report of the (1st) Commission on

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Legislative, Judicial and Executive Compensation, which had raised it to \$183,400 as of April 1, 2016, and then to \$185,200 as of April 1, 2017 (Exhibit D/[NYSCEF #88](#));

- The Court collected three months' worth of this \$185,200 salary, following which, on April 1, 2018, its salary rose to \$197,600, and, a year later, on April 1, 2019, rose to \$200,400 on April 1, 2019, – both raises also the product of the 'force of law' December 24, 2015 Report (Exhibit D/[NYSCEF #88](#));
- This \$200,400 salary remained the Court's salary for five years, until April 1, 2024, when, as a result of the 'force of law' December 4, 2023 Report of the (3rd) Commission on Legislative, Judicial and Executive Compensation – the subject of this lawsuit – it rose to \$221,100 ([NYSCEF #47](#)).

7. Because this lawsuit, by its January 18, 2024 Opposition Report ([NYSCEF #6](#)), not only establishes that the December 4, 2023 Report is statutorily-violative, fraudulent, and unconstitutional, but that it replicates the same statutory violations, fraud, and unconstitutionality of the two predecessor Reports, the voiding of the December 4, 2023 Report, sought by the verified petition's first cause of action ([NYSCEF #1](#), pp. 12-13, 15) will necessarily result in the voiding of the prior two Reports.

8. Thus, although this Court's most immediate salary interest in this lawsuit, on March 29, 2024, was the \$20,700 'force of law' increase that, because of the Court's inaction on petitioners' March 19, 2024 order to show cause, took effect on April 1, 2024 ([NYSCEF #47](#)), its actual salary interest is \$101,300, the difference between its now \$221,100 salary and the \$119,800 salary uninflated by those three Reports ([Judiciary Law §221-D](#)).

9. As for the Court's claw-back liability, just in terms of its salary and not counting its salary-based compensation benefits, I believe the total to be \$547,800, as follows:

- from January 1, 2018 to April 1, 2018: \$16,350;
- from April 1, 2018 to April 1, 2019: \$77,800;
- from April 1, 2019 to April 1, 2024: \$403,000;
- from April 1, 2024 to September 30, 2024: \$50,650.

10. This Court's judicial brethren with whom the Court has professional, personal, and political relationships and a multitude of interests arising therefrom have comparably HUGE salary interests and claw-back liabilities. As illustrative, [predecessor Rensselaer County Court Judge Andrew Ceresia](#), elected to that position

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in November 2009 and whose November 2016 election as a Supreme Court Justice created the vacancy that the Court was elected to fill in November 2017. Justice Ceresia, who swore the Court into office on [December 27, 2017](#), and has sat, [since 2022, on the Appellate Division, Third Department](#), is the purported author of its fraudulent June 20, 2024 decision in [CJA v. JCOPE, et al.](#), 228 AD3d 1148 (2024), to which this Court's August 14, 2024 'Motion Sequence 1&2' ([NYSCEF #79](#)) cites for the proposition that 'Pursuant to the Rules of Necessity, this Court is authorized to preside over this matter'. This is utter fraud, as, *on its face*, neither that decision, nor the Appellate Division's fraudulent December 27, 2018 decision in [CJA v. Cuomo...DiFiore](#), 167 AD3d 1406, 1408, on which it rests – and on which this Court's 'Motion Sequence 1&2' decision rests – identify the jurisdictional issue pertaining to 'Rule of Necessity', which was the same before them, as before this Court by the first branch of petitioners' March 19, 2024 order to show cause ([NYSCEF #17](#), [NYSCEF #14](#)).

11. This reargument motion offers the Court the opportunity to back up the frauds and deceits that petitioners' Exhibit A 'legal autopsy'/analysis ([NYSCEF #85](#)) demonstrates as pervading each of its three August 14, 2024 decisions – and confront its fairness and impartiality, which, in invoking 'Rule of Necessity', its 'Motion Sequence 1&2' decision does not even purport."

Upon reading this, Judge McGinty knew that Judge Sober's direct financial interest in this lawsuit paled in comparison to hers – and not simply because she came to the bench a year before Judge Sober, but because of a relationship exponentially more direct, namely, her husband, [Anthony McGinty](#),² [is a Family Court judge and has been one since 2006](#).

Here's the comparable summary of Judge McGinty's own direct salary interest and claw-back liability that she knew could be written as to her, followed by one for her judge-husband.

Salary Interest & Claw-Back Liability
of Ulster County Surrogate Judge Sara McGinty:

- On January 1, 2017, when Judge McGinty took office, her Ulster County Surrogate judge salary was \$183,400 – \$63,600 more than the \$119,800 Ulster County Surrogate judge salary of [Judiciary Law §221-F](#).
- This \$63,600 difference was the product of the "force of law" August 29, 2011 Report of the Commission on Judicial Compensation, which had raised the Ulster County Surrogate salary to \$140,300 as of April 1, 2012, to \$146,400 as of April 1, 2013; and to \$152,500 as of April 1, 2014 ([NYSCEF #87](#)) – then followed by the "force of law" December 24, 2015 Report of the (1st) Commission on Legislative,

² See, "[Three vie for Ulster County Surrogate Court judge](#)", November 10, 2016, HV1 ([Hugh Reynolds](#)).

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Judicial and Executive Compensation, which had raised it to \$183,400 as of April 1, 2016 ([NYSCEF #88](#));

- Judge McGinty collected three months' worth of this \$183,400 salary, following which, on April 1, 2017, the Ulster County Surrogate salary rose to \$185,200. A year later, on April 1, 2018, it rose to \$197,600, and, a year later, on April 1, 2019, it rose to \$200,400 – these three raises also the product of the “force of law” December 24, 2015 Report ([NYSCEF #88](#));
- This \$200,400 salary remained Judge McGinty's salary for five years, until April 1, 2024, when, as a result of the “force of law” December 4, 2023 Report of the (3rd) Commission on Legislative, Judicial and Executive Compensation – the subject of this lawsuit – it rose to \$221,100 ([NYSCEF #47](#)).

Because this lawsuit, by petitioners' January 18, 2024 Opposition Report ([NYSCEF #6](#)), not only establishes that the December 4, 2023 Report is statutorily-violative, fraudulent, and unconstitutional, but that it replicates the same statutory violations, fraud, and unconstitutionality of the two predecessor Reports, the voiding of the December 4, 2023 Report, sought by the verified petition's first cause of action ([NYSCEF #1](#), pp. 12-13, 15) will necessarily result in the voiding of the prior two Reports. Thus, although Judge McGinty's most immediate salary interest in this lawsuit, on March 29, 2024, was the \$20,700 “force of law” increase that, because of Judge Sober's inaction on petitioners' March 19, 2024 order to show cause, took effect on April 1, 2024 ([NYSCEF #47](#)), her actual salary interest is \$101,300, the difference between her now \$221,100 salary and the \$119,800 salary uninflated by the 2011, 2015, and 2023 “false instrument” commission Reports.

As for Judge McGinty's claw-back liability, just in terms of her salary and not counting her salary-based compensation benefits, the total, as of the November 13, 2024 date of her decision, is approximately \$625,412³ as follows:

- From January 1, 2017 to April 1, 2017: \$15,900
- from April 1, 2017 to April 1, 2018: \$65,400
- from April 1, 2018 to April 1, 2019: \$77,800
- from April 1, 2019 to April 1, 2024: \$403,000
- from April 1, 2024 to November 13, 2024: \$63,312.

³ The figure as of September 30, 2024, two weeks after the reassignment to her was made, was approximately \$604,308.

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Salary Interest & Claw-Back Liability
of Ulster County Family Court Judge Anthony McGinty:

- On January 1, 2006, when Anthony McGinty took office as an elected Ulster County Family Court judge, his salary was \$127,000, pursuant to [Judiciary Law §221-E](#).
- Six years and three months later, on April 1, 2012, this \$127,000 salary rose to \$148,700 as a result of the “force of law” August 29, 2011 Report of the Commission on Judicial Compensation (p. 9) ([NYSCEF #87](#)). It rose again, pursuant thereto, on April 1, 2013, to \$155,200, and then again, on April 1, 2014, to \$161,700, where it remained for two years.
- On April 1, 2016, as a result of the “force of law” December 24, 2015 Report of the (1st) Commission on Legislative, Judicial and Executive Compensation, his salary rose to \$185,600 and then rose again, on April 1, 2017, to \$187,400, and then rose again, on April 1, 2018, to \$200,000, and then rose again, on April 1, 2019 to \$202,800 ([NYSCEF #88](#)), where it remained for five years.
- On April 1, 2024, as a result of the “force of law” December 4, 2023 Report of the (3rd) Commission on Legislative, Judicial and Executive Compensation – the subject of this lawsuit – Family Court Judge McGinty’s salary rose to \$221,100 ([NYSCEF #47](#)).

Because this lawsuit, by petitioners’ January 18, 2024 Opposition Report ([NYSCEF #6](#)), not only establishes that the December 4, 2023 Report is statutorily-violative, fraudulent, and unconstitutional, but that it replicates the same statutory violations, fraud, and unconstitutionality of the two predecessor Reports, the voiding of the December 4, 2023 Report, sought by the verified petition’s first cause of action ([NYSCEF #1](#), pp. 12-13, 15), will necessarily result in the voiding of the prior two Reports. Thus, although Judge McGinty’s most immediate salary interest in this lawsuit, on March 29, 2024, was the \$20,700 “force of law” increase that, because of Judge Sober’s inaction on petitioners’ March 19, 2024 order to show cause, took effect on April 1, 2024 ([NYSCEF #47](#)), his actual salary interest is \$94,100, the difference between his now \$221,100 salary and the \$127,000 salary uninflated by the 2011, 2015, and 2023 “false instrument” commission Reports.

As for Family Court Judge McGinty’s claw-back liability, just in terms of his salary and not counting his salary-based compensation benefits, the total, as of the November 13, 2024 date of his wife’s decision, is approximately \$749,112 as follows:

- from April 1, 2012 to March 31, 2013: \$21,700
- from April 1, 2013 to March 31, 2014: \$28,200
- from April 1, 2014 to March 31, 2016: \$69,400

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- from April 1, 2016 to March 31, 2017: \$58,600
- from April 1, 2017 to April 1, 2018: \$60,400
- from April 1, 2018 to April 1, 2019: \$73,000
- from April 1, 2019 to April 1, 2024: \$379,000
- from April 1, 2024 to November 13, 2024: \$58,812.

With knowledge of all this direct salary interest – and the multitude of personal, professional, and political relationships, both hers and her husband's, that would be adversely impacted by a law-abiding, record-based decision in this lawsuit – Judge McGinty not only did not disqualify herself, but made no disclosure and no claims that she could be fair and impartial. Indeed, because her November 13, 2024 decision is disconnected and fleeting in its references to judicial salary and conflicts of interest, one can read the decision and not discern the issue as relates to her.

III

**Like Judge Sober's Decisions, Judge McGinty's Decision is,
from Beginning to End, Fraudulent and Demonstrates Her Actual Bias,
Born of the Financial and Other Conflicts of Interest she has Not Disclosed**

From beginning to end, and in virtually sentence, Judge McGinty's November 13, 2024 decision is a judicial fraud, manifesting her actual bias, arising from her undisclosed financial and other conflicts of interest. Here are the particulars, apart from her fraudulent disposition of the renewal branch of petitioner's motion, already discussed (at pp. 6-8, *supra*).

Page 1: Caption:

Judge McGinty has altered the caption. Although different from the altered captions of Judge Sober and AG James, objected to by petitioners' "legal autopsy"/analysis ([NYSCEF #85](#), pp. 3, 19), it has the same purpose: to falsely make it appear that the lawsuit is only an Article 78 proceeding, not also a declaratory judgment action and a citizen-taxpayer action – as both of these, by caselaw, and the citizen-taxpayer action expressly by its terms, **"remove[] technical bars of prematurity and lack of standing, the implicit grounds for [Judge Sober's] decision dismissing the verified petition"** ([NYSCEF #85](#), pp. 3, 13-17, bold in original at p. 3).

Page 1: Directly beneath Caption:

"Supreme Court Albany County
Sara W. McGinty, Acting Supreme Court Justice"

Though "Supreme Court Albany County" is where petitioners filed this lawsuit – and such is part of the caption that Judge McGinty retains – the lawsuit has NOT been determined in "Supreme Court Albany County", but in Ulster County by its surrogate judge, who may or may not also be an

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“Acting Supreme Court Justice”.

Page 1: “Appearances”:

The two petitioners, Elena Ruth Sassower and Center for Judicial Accountability, Inc., are identified as “pro se”, when they are not. They are “unrepresented” and raised their entitlement to representation by the attorney general, threshold, by their March 18, 2024 order to show cause ([NYSCEF #13](#)), and continually thereafter – and this is highlighted by petitioners’ “legal autopsy”/analysis ([NYSCEF #85](#), pp. 3- 6, 11, 12-13). Judge McGinty entirely omits this issue from her decision, although germane to – and dispositive of – petitioners’ second, third, and fifth branches of their motion.

Letitia James is identified only as “Attorney for Respondents”, although she is, additionally, a respondent – a central issue, from the outset, and so-highlighted throughout petitioners’ “legal autopsy”/analysis ([NYSCEF #85](#)). This, too, is entirely omitted from Judge McGinty’s decision, excepting by its caption.

As for “Rachel S. Ouimet, Esq., AAG”, who is purported to be appearing for AG James, this is false.⁴ All appearances have been by AAG Noah Engelhart, with a one-time appearance of his supervisor AAG John Moore – and this is reflected by the “legal autopsy”/analysis ([NYSCEF #85](#), pp. 2, 23-24) and, further, by AG James’ September 27, 2024 opposition to the motion ([NYSCEF #92](#)), which was by AAG Engelhart, against whom petitioners’ October 2, 2024 reply affirmation ([NYSCEF #93](#)) sought additional sanctions.

Page 2: First Paragraph:

“In this Article 78 proceeding, petitioner moves to (sic) pursuant to CPLR 2221(d) and (e) to reargue or renew a series of decisions by Hon. Jennifer G. Sober ASCJ (the ‘Decisions’), as well as for relief under CPLR 5015(a)(3) and (4) to vacate the decisions and to transfer or remove this case to a federal court pursuant to US Constitution Article IV(4) or to certify the question of disqualification under Judiciary Law 14 to the Appellate Division, Third Department.”

This one-sentence paragraph is fraudulent.

First, it conceals that this lawsuit is not solely an “Article 78 proceeding”, but also a declaratory judgment action and citizen-taxpayer action – so-highlighted by petitioners’ “legal autopsy”/analysis

⁴ A google search of Ms. Ouimet reveals she has a substantial background in Family Court matters, giving rise to the possibility that Judge McGinty’s Family Court judge-husband may have assisted his wife by furnishing her with a template of a decision he had written, in which “Rachel S. Ouimet, Esq., AAG” had appeared for AG James.

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([NYSCEF #85](#), pp. 3, 13-17) in refuting the bogus technical defenses of lack of standing and prematurity asserted by AG James – and adopted by Judge Sober.

Second, it inserts “ASCJ” after “Hon. Jennifer G. Sober” – when the evidence that she is not an “ASCJ” is the subject of the motion’s first branch, for renewal, and its Exhibit B September 10, 2024 FOIL request to the OCA ([NYSCEF #86](#)), to which Judge McGinty’s decision makes no mention.

Third, it transmogrifies petitioners’ September 12, 2024 notice of motion ([NYSCEF #83](#)), which did not seek “to vacate the decisions”, but to enable vacatur by a jurisdictionally-empowered tribunal, did not seek to “remove this case to federal court”, but its transfer, and requested certification not only to the Appellate Division, Third Department, but, additionally, or alternatively, to the Court of Appeals of the question of transfer to federal court, arising from Judiciary Law §14 disqualification.

Page 2: Second Paragraph:

“The contested Decisions by the Hon. Jennifer G. Sober ASCJ all dated August 14, 2024 denied petitioners’ application for preliminary injunction and other relief (NYSCEF Doc. No. 79); denied petitioners’ application for costs and sanctions against the Office of the Attorney General (the ‘AG’) and disqualification of the AG and a transfer of the proceeding to federal court (NYSCEF Doc. No. 80); and dismissed petitioners’ verified petition/complaint on the motion of respondent New York State Commission on Legislative, Judicial and Executive Compensation (the ‘Commission’) (NYSCEF Doc. No. 81).”

This one-sentence paragraph is fraudulent.

First, “[NYSCEF Doc. No. 79](#)”, which is Judge Sober’s “DECISION, ORDER, and JUDGMENT (Motion Sequence 1&2)”, did more than “den[y] petitioners’ application for preliminary injunction and other relief”, which is “Motion Sequence 1”. It additionally granted “Motion Sequence 2”, the purported cross-motion to dismiss the verified petition, made by Respondent AG James on behalf of all respondents except the Commission on Legislative, Judicial and Executive Compensation – and granted it based on grounds of prematurity and standing. This is reflected by “NYSCEF Doc. No. 79” – and by petitioners’ “legal autopsy”/analysis of it ([NYSCEF #85](#), beginning at p. 3 and continuing at pp. 13-17, 19).

Second, “[NYSCEF Doc. No. 81](#)”, which is Judge Sober’s “DECISION, ORDER, and JUDGMENT (Motion Sequence 4)”, dismissed the verified petition only with respect to Respondent AG James’ dismissal motion made on behalf of the Commission on Legislative, Judicial and Executive Compensation, granting dismissal as to it on grounds of untimely service. This is reflected by “NYSCEF Doc. No. 81” – and petitioners’ “legal autopsy”/analysis of it ([NYSCEF #85](#), pp. 24-27).

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Pages 2-3: Third Paragraph:

“These proceedings began with petitioners’ verified petition/complaint alleging two causes of action arising from the Commission’s December 4, 2023 report (the ‘Report’) approving New York State judicial pay raises, alleging:

- the Report was void because the Commission failed to make the findings or determinations required under Chapter 60 of the Laws of 2015 which created the Commission (the ‘2015 Statute’)^{fn1} and the ‘governor, the legislature and the chief judge,’ all named as respondents herein, failed to exercise any oversight over the Commission’s recommendations; and
- the \$34,600,000 appropriations for judicial salary increases are themselves based on Commission recommendations which are the product of ‘fraud and flagrant violations’ of New York State Finance Law 7-A and should be stricken as illegal and unconstitutional.”

The annotating fn.1 reads:

“The law charges the Commission with evaluating and making recommendations every four years to insure adequate levels of compensation for members of the judiciary, among others.”

This is fraud.

First, it conceals that “These proceedings began” with petitioners’ March 18, 2024 order to show cause to determine threshold issues ([NYSCEF #13](#)), which is “Motion Sequence 1” – focally detailed by petitioners’ “legal autopsy”/analysis of Judge Sober’s decisions ([NYSCEF #85](#), pp. 3-7).

Second, it conceals that the “proceedings” are a hybrid Article 78 proceeding/declaratory judgment action/citizen taxpayer action, arising NOT from the Commission’s December 4, 2023 Report “approving New York State judicial pay raises”, but from the willful and deliberate nonfeasance of “the governor, legislature, and chief judge, all named as respondents” with respect to petitioners’ January 18, 2024 Opposition Report. Judge McGinty’s decision nowhere mentions the January 18, 2024 Opposition Report ([NYSCEF #6](#)), as it is “DISPOSITIVE” of petitioners’ entitlement to the granting of their March 18, 2024 OSC for a preliminary injunction with TRO and for summary judgment, so-highlighted by petitioners throughout the “proceedings”, including by their “legal autopsy”/analysis ([NYSCEF #85](#)).

Third, it mischaracterizes the verified petition ([NYSCEF #1](#)), whose two causes of action do not “allege” anything. Rather, by the January 18, 2024 Opposition Report on which they rest, they establish petitioners’ entitlement, *as a matter of law*, to relief requested as follows:

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“As to the first cause of action: declarations, pursuant to CPLR Article 78 and CPLR §3001, that the New York State Commission on Legislative, Judicial and Executive Compensation failed to perform the duties enjoined upon it by Chapter 60, Part E, of the Laws of 2015 for making ‘force of law’ judicial salary increase recommendations and that the highest constitutional officers of the state’s three government branches all failed to discharge their mandated checks and balances/oversight duties with respect thereto – and voiding the Commission’s December 4, 2023 Report as statutorily-violative, fraudulent, and unconstitutional, **so-proven by petitioners’ January 18, 2024 Opposition Report.**

As to the second cause of action: for a declaration, pursuant to State Finance Law Article 7-A, that the \$34,600,000 line-item appropriation in Legislative/Judiciary Budget Bill #S.8301/A.8801 (at pp. 18-19) for judicial salary increases is a wrongful expenditure, misappropriation, illegal, and unconstitutional, **so-proven by petitioners’ January 18, 2024 Opposition Report** – and striking it”. (bold added).

Fourth, its footnote 1 conceals that the Commission flagrantly violated its statutory duty with respect to “adequate levels of compensation” – and this was so-demonstrated by petitioners’ January 18, 2024 Opposition Report and highlighted by the verified petition ([NYSCEF #1](#), ¶33).

Page 3: First Paragraph:

“Judge Sober’s Decisions granted respondents’ motion to dismiss the verified petition/complaint by petitioners based on an absence of standing and a failure to obtain timely jurisdiction over respondents.”

This one-sentence paragraph is fraudulent.

First, “Judge Sober’s Decisions granted” more than a single “respondents’ motion to dismiss the verified petition/complaint” AND neither of respondents’ two dismissal motions, nor Judge Sober’s two decisions granting same, were based on “a failure to obtain timely jurisdiction over respondents” (bold and underlining added). As hereinabove stated:

- Judge Sober’s “DECISION, ORDER, and JUDGMENT (Motion Sequence 1&2)” ([NYSCEF #79](#)) granted Respondent AG James’ dismissal “cross-motion” made on behalf of all respondents except the Commission on Legislative, Judicial and Executive Compensation – and predicated same on prematurity and standing;
- Judge Sober’s “DECISION, ORDER, and JUDGMENT (Motion Sequence 4)” ([NYSCEF #81](#)) granted Respondent AG James’ dismissal motion on behalf of Respondent Commission on Legislative, Judicial and Executive Compensation – and predicated same on failing to obtain timely jurisdiction over Respondent Commission.

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Second, Judge Sober's non-merits dismissals of the petition are frauds, factually and legally – and this is demonstrated by petitioners' "legal autopsy"/analysis ([NYSCEF #85](#), pp. 13-17, 19), without contest by AG James' September 27, 2024 memorandum of law in opposition ([NYSCEF #92](#)) – and so-highlighted by petitioners' October 2, 2024 reply affirmation ([NYSCEF #93](#)).

Page 3: Renewal (1st Branch of Petitioners' Motion):

Already quoted and discussed at pp. 6-8, *supra*.

Pages 3-4: Reargument (2nd Branch of Petitioners' Motion):

"Petitioners next seek reargument under CLR (sic) 2221(d) based on the Court's having overlooked and misapprehended 'all dispositive facts and law' in the three (3) Decisions challenged. Petitioners cite in particular to a perceived failure on the part of the Court to review the Commission's 2023 report or to make a determination as to the constitutionality of the 2015 law.

Leave to reargue pursuant to CPLR 2221(d) is properly granted upon a showing that the court overlooked or misapprehended the facts and/or the law or mistakenly arrived at its earlier decision (*Loris v. S & W Realty Corp.*, 16 AD3d 729, 730 [3d Dept 2005]). As an initial matter, the Court notes that the contested Decisions were not made on the merits and did not make findings of fact or law on the petition. Instead, the Decisions disposed of the petition on a variety of jurisdictional grounds (ripeness, standing, service of process and mootness). Even if the Decisions were on the merits, however, petitioners fail to identify with specificity the facts or law overlooked or misapprehended by the Court. A rehash of the grounds of the petition does not fulfill this fundamental pleading requirement under CPLR 2221(d). More to the point, there is no offer of facts or law which address the actual basis for the Decisions, which, as noted above, resolved questions of jurisdiction alone.

Petitioners motion for leave to reargue under CPLR 2221(d) is denied."
(underlining added).

This is fraud throughout.

First, it conceals that the "reargument" branch of petitioners' motion was expressly based on their "legal autopsy"/analysis of Judge Sober's decisions ([NYSCEF #85](#)), establishing that the decisions "'overlooked' and 'misapprehended' ALL dispositive facts and law".

Second, there is nothing "perceived" about Judge Sober's "failure...to review the Commission's 2023 report or to make a determination as to the constitutionality of the 2015 law". Rather, and as highlighted by petitioners' "legal autopsy"/analysis ([NYSCEF #85](#)), these were acts of willful and

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deliberate nonfeasance by Judge Sober to deprive petitioners of the summary judgment declarations to which they were entitled, open-and-shut, *as a matter of law*, based on their January 18, 2024 Opposition Report ([NYSCEF #6](#)) and March 18, 2024 verified petition thereon ([NYSCEF #1](#)).

Third, its “initial matter” LIES in justifying Judge Sober’s decisions as “not made on the merits” and “not making findings of fact or law on the petition” because they “disposed of the petition on a variety of jurisdictional grounds (ripeness, standing, service of process and mootness)”. As demonstrated by petitioners’ “legal autopsy”/analysis ([NYSCEF #85](#), pp. 13-16), the non-merits “jurisdictional grounds” of “ripeness, standing, service of process” are frauds, exported from Respondent AG James’ dismissal motions. As for “mootness, Judge Sober made no dismissal on that ground.

Fourth, it LIES in purporting that “petitioners fail to identify with specificity the facts or law overlooked or misapprehended by [Judge Sober]”. Petitioners’ “legal autopsy”/analysis of Judge Sober’s decisions ([NYSCEF #85](#)) is a 27-page, single-spaced chronicling, sentence by sentence, of the avalanche of facts and law that Judge Sober “overlooked or misapprehended”.

Fifth, it LIES that petitioners’ request for reargument is supported only by “A rehash of the grounds of the petition”. Petitioners’ “legal autopsy”/analysis presents the most minimal “rehash of the grounds of the petition” – and only as germane to the falsehoods about it by Judge Sober’s decisions ([NYSCEF #85](#), pp. 13, 16-17).

Sixth, it LIES that petitioners make “no offer of facts or law which address the actual basis for the Decisions” – and this is obvious from petitioners’ fact-packed, law-supported “legal autopsy”/analysis of the decisions ([NYSCEF #85](#)).

Pages 4-5: CPLR §5015 (3rd & 4th Branches of Petitioners’ Motion):

“Petitioners’ final motion seeks CPLR 5015 relief from the Decisions based on fraud/misrepresentation/misconduct by an adverse party under CPLR 5015(a)(3) and absence of subject matter jurisdiction in the Supreme Court under CPLR 5015(a)(4). Petitioners’ pleadings are rife with broad allegations of fraud; what’s missing are facts. This is fatal to petitioners’ motion for relief under CPLR 5015.

Allegations of fraud or other misconduct must be supported by fact (*Pinkesz Mut. Holdings, LLC v. Pinkesz*, 198 AD 693 [3d Dept 2021]; *see, also Matter of McLaughlin*, 111 A.D.3d 1185, 1186 [3d Dept 2013]). Conclusory allegations are insufficient to prove fraud, misrepresentation, or other misconduct to warrant vacatur of [an] order pursuant to CPLR 5015(a)(3) (*Matter of Romine v. New York Pub. Serv. Comm.*, 209 A.D. 1197, 1199 [3d Dept 2022]).

In the absence of facts – new or otherwise – probative of the alleged fraud or other misconduct, petitioners’ first ground for CPLR 5015(a)(4) relief is dismissed.

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Petitioner has also failed to establish grounds for vacating the Decisions under CPLR 5015(a)(4). While a motion to vacate on this basis may be made at any time, a finding that a party lacks standing to bring an action does not implicate or impair the trial court's power to entertain the action (*HSBC Bank USA, NA v. Ashley*, 104 AD3d 975 [3d Dept 2013]; *Deutsche Bank Natl. Trust Co. v. Ford*, 183 AD3d 1168 [3d Dept 2020]). Petitioner has offered no facts or law to support her argument that the Court lacks jurisdiction to hear Article 78 proceedings, which, it should be noted are vested in the Supreme Court pursuant to CPLR 7804(b)." (underlining added).

Again, fraud throughout.

First, with respect to CPLR §5015(a)(3) – the subject of the third branch of petitioners' motion – Judge McGinty spits out three LIES that petitioners have not satisfied legal requirements inasmuch as (1) their "pleadings are rife with broad allegations of fraud; what's missing are facts"; (2) that they have furnished only "Conclusory allegations"; and (3) offer an "absence of facts – new or otherwise – probative of the alleged fraud or other misconduct". These are each conclusory frauds, rebutted by "Petitioners' pleadings", from their initiating March 18, 2024 verified petition ([NYSCEF #1](#)) – which is their only "pleading" – to the last of their motion papers, *to wit*, their October 2, 2024 reply affirmation in further support of their September 12, 2024 motion ([NYSCEF #93](#)), from which Judge McGinty supplies not a single example substantiating her bald LIES.

Second, with respect to CPLR §5015(a)(4) – the subject of the fourth branch of petitioners' motion – Judge McGinty LIES, first impliedly and then directly. Petitioners never claimed that "a finding that a party lacks standing to bring an action...[] implicate[s] or impair[s] the trial court's power to entertain the action" – and Judge McGinty offers no citation to the record to support an argument not made – and which, in actuality, she does not purport petitioners made. Instead, Judge McGinty follows with an assertion: "Petitioner has offered no facts or law to support her argument that the Court lacks jurisdiction to hear Article 78 proceedings, which, it should be noted are vested in the Supreme Court pursuant to CPLR 7804(b)." This appears to relate to the question as to whether Judge Sober is an acting Supreme Court justice – the subject of the first branch of petitioners' motion for renewal – not the motion's fourth branch whose basis is Judiciary Law §14.

Pages 5-6: Transfer/Certification (5th Branch of Petitioners' Motion):

"Petitioners report that they do not seek an order from this Court vacating the Decisions under CPLR 5015(a)(3) or (4) because Judge Sober is disqualified from taking any action in these proceedings under Judiciary Law 14. Petitioners therefore seek not the vacatur of the Decisions, but 'only the determinations that would enable a jurisdictionally-empowered tribunal to vacate them.' To this end, petitioners seek transfer to the federal courts or certification of the question to the Appellate Division, Third Department or

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the Court of Appeals.

Curiously, petitioners simultaneously argue that justices of the Appellate Division, Third Department or the Court of Appeals are divested of jurisdiction under Judiciary Law 14 to vacate the Decisions, just as is any Supreme Court Justice.^{fn2} In sum, petitioners seek a form of relief which their own pleadings dismiss as fruitless.

This Court will not engage in attempting to fashion relief which petitioners advocate for on one hand and then reject on the other. Petitioner's application for a referral from this Court to the Appellate Division, Third Department or the Court of Appeals is denied.

Respondents reject petitioners' position that all State judges are disqualified from hearing this case under Judiciary Law 14. For this purpose, respondents cite the decision in *Center for Judicial Accountability, Inc. v. Cuomo*, 167 AD3d 1406, 1407-08 [3d Dept 2018], lv den 33 NY3d 993),^{fn3} which has repeatedly rejected petitioners' arguments based on the Rule of Necessity.

Respondents also argue that petitioners' application cannot be transferred to a federal court because they have demonstrated no basis for jurisdiction in a federal court: there is no question of federal law raised by petitioners, nor has diversity of citizenship or an amount in controversy been alleged which might confer jurisdiction on a federal court (28 USC 1331; 1332). Moreover, removal of an action from a state court to a federal court is the exclusive province of defendants or respondents, and is not available to plaintiffs like the petitioners (*Geiger v. Artco Enters.*, 910 F Supp 130 [SDNY 1996])." (underlining added).

The annotating footnote 2 reads:

"Quoting petitioners' 'legal autopsy' (NYSCEF Document No. 89): 'Judiciary Law 14 divests every New York State justice and acting justice of jurisdiction because of their direct financial and other interests.'"

The annotating footnote 3 reads:

"Petitioners should be familiar with this case, as they were the appellants. Indeed, the arguments raised in this proceeding appear to be identical to the ones disposed of in the 2018 decision. Further examination of the earlier decision might well prove to be the basis for collateral estoppel of the issues litigated (again) here (see, eg, *Schwartz v. Public Adm'r of Count of Bronx*, 24 NY2d 65 [1969]: collateral estoppel will be invoked when there is 'an

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identity of issue which has necessarily been decided in the prior action and is decisive of the present action, and [where] there [has] been a full and fair opportunity to contest the decision now said to be controlling.” (underlining added).

Again, fraud throughout.

First, it conceals the constitutional authority pursuant to which transfer is sought, stated by the motion’s fifth branch, with underscoring, “Article IV, §4 of the United States Constitution”. Thus, even though the first paragraph of Judge McGinty’s decision (at p. 2) identifies that petitioners’ motion seeks:

“to transfer or remove this case to a federal court pursuant to US Constitution Article IV(4) or to certify the question of disqualification under Judiciary Law 14 to the Appellate Division, Third Department”,

Judge McGinty here conceals it because, as obvious, she cannot and does not contest that it is solid authority for the transfer.

Second, it LIES that petitioners’ request for certification is “futile” – as she does not herself confront the Judiciary Law §14 jurisdictional issue from which the transfer request arises, knowing that the only answer to the jurisdictional issue is transfer to federal court – and that certification of the question to the Appellate Division, Third Department or the Court of Appeals would so-determine.

Third, its two paragraphs identifying AG James’ argument – the only place in the decision doing so – are each frauds, so-reflected by petitioners’ “legal autopsy”/analysis ([NYSCEF #85](#), at p. 12) and October 2, 2024 reply affirmation ([NYSCEF #93](#), at pp. 11-12). Thus, the first paragraph:

- “conceals...the jurisdictional issue pertaining to [Judiciary Law §14] and ‘Rule of Necessity’”;
- “rests on the Appellate Division, Third Department’s [2018 decision] in *CJA v. Cuomo...DiFiore* [which does not] identif[y] any jurisdictional issue pertaining to ‘Rule of Necessity’”;
- “conceals that the Appellate Division, Third Department’s decision in *CJA v. Cuomo...DiFiore* is a judicial fraud, so-pleaded by petitioners’ verified petition herein ([NYSCEF #1](#), at ¶¶7, 23, 29), substantiated by links to the full record and by petitioners’ ‘legal autopsy’/analysis of it ([NYSCEF #35](#)) and letter transmitting it to the Court of Appeals in support of their appeal of right ([NYSCEF #36](#)), both exhibits to their March 29, 2024 reply affidavit in further support of their order to show cause ([NYSCEF #33](#))”.

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As for the second paragraph, it:

- conceals that AG James did not contest that pursuant to Article IV, §4 of the U.S. Constitution transfer could be made to federal court;
- conceals that the availability of transfer to federal court pursuant to Article IV, §4, in and of itself, precludes invocation of “Rule of Necessity”, even if judges divested of jurisdiction by Judiciary Law §14 could invoke it; and
- conceals that any attorney general discharging his/her duties under Executive Law §63.1 and State Finance Law Article 7-A and not suffering from conflicts of interest, would have removed the case to federal court;

Fourth, its two annotating footnotes are each frauds:

- its footnote 2 quotes from petitioners’ “legal autopsy”, concealing what it is a “legal autopsy” of AND, rather than furnish its NYSCEF number reflecting that it is part of petitioners’ motion ([NYSCEF #85](#)), furnishes the NYSCEF number for petitioners’ September 12, 2024 notice of appeal to the Appellate Division, Third Department that includes it ([NYSCEF #89](#));
- its footnote 3 as to the Appellate Division, Third Department’s 2018 decision in *CJA v. Cuomo...DiFiore* is flagrant fraud and all the more so by its suggestion that the case might “be the basis for collateral estoppel of the issues litigated (again) here” and that there had been “a full and fair opportunity to contest the decision now said to be controlling”. As above-stated, quoting from petitioner’s “legal autopsy”/analysis ([NYSCEF #85](#), at p. 12):

“the Appellate Division’s decision in *CJA v. Cuomo...DiFiore* is a judicial fraud, so-pleaded by petitioners’ verified petition herein ([NYSCEF #1](#), at ¶¶7, 23, 29), substantiated by links to the full record and by petitioners’ “legal autopsy”/analysis of it ([NYSCEF #35](#)) and letter transmitting it to the Court of Appeals in support of their appeal of right ([NYSCEF #36](#)), both exhibits to their March 29, 2024 reply affidavit in further support of their order to show cause ([NYSCEF #33](#))”

Page 7 – Ordering/Judgment Paragraph:

“Therefore, it is hereby

ORDERED and ADJUDGED that the petition is dismissed and the relief requested therein is in all respects denied. Arguments of the parties not referenced herein have been reviewed and found to be without merit or otherwise disposed of by this decision/order/judgment.” (bold in original).

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This is fraud.

First, the “petition” was already dismissed and “the relief requested therein” already denied by Judge Sober’s August 14, 2024 “DECISION, ORDER, and JUDGMENT (Motion Sequence 1&2)” ([NYSCEF #79](#)) and “DECISION, ORDER, and JUDGMENT (Motion Sequence 4)” ([NYSCEF #81](#)).

Second, as this ordering paragraph should have been about the disposition of petitioners’ September 12, 2024 motion – not here mentioned, at all – Judge McGinty’s dismissal of an already-dismissed petition is, presumably, a *sub silentio* rectification of a dismissal that Judge Sober, not being an acting Supreme Court justice, could not lawfully effectuate.

Third, the “arguments” presented by appellants’ motion are meritorious, being substantiated by facts and law so overwhelming that Judge McGinty cannot and does not confront them, except by falsehood and concealment.

Page 7 – Concluding Paragraph, Etc.:

“This constitutes the Decision/Order/Judgment of the Court. This original Decision/Order/Judgment is being returned to the Petitioner. The below referenced original papers are being delivered to the Albany County Clerk. The signing of this Decision/Order/Judgment shall not constitute entry or filing under CPLR 2220. Petitioner and counsel are not relieved from the provision of that rule regarding filing, entry or notice of entry by the Albany County Clerk.

SO ORDERED.

ENTER.

Dated: November 13, 2024
Kingston, New York

s/

Sara W. McGinty
Acting Supreme Court Justice

Paper Considered:

NYSCEF Doc. No. 83: Notice of Motion by Petitioners filed September 12, 2024.
NYSCEF Doc. No. 84: Affidavit in Support of Motion, with Exhibits A-D
(NYSCEF Doc. Nos. 85-88) filed September 12, 2024.

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NYSCEF Doc. No. 92: Memorandum of Law in Opposition to Motion
filed September 27, 2024.

NYSCEF Doc. No. 93 Affidavit in Reply, with Exhibit A (NYSCEF Doc. No. 94)
filed October 2, 2024".

This is fraud.

First, no “original Decision/Order/Judgement” was ever “returned to the Petitioner”.

Second, “the below referenced original papers”, if “being delivered to the Albany County Clerk”, would mean that Judge McGinty not only had before her the record of the motion, in electronic format, from the NYSCEF docket, with its live hyperlinks, but, seemingly, hard copies of same.

Third, it remains to be seen if, in fact, Ulster County Surrogate Judge McGinty is an “Acting Supreme Court Justice”.

Fourth, the “Papers Considered” – constituting the record of petitioners’ motion – were “Considered” by Judge McGinty only for purposes of falsifying and concealing their content so as to render a decision that, from beginning to end, obliterates all adjudicative standards and is indefensible.

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The below reprints the Court of Appeals' Preliminary Appeal Statement, answering its relevant questions. Its live hyperlinks are accessible from the pdf that is part of appellants' Notice of Appeal, electronically filed on November 29, 2024, [Albany County Supreme Court #902654-24](#) (NYSCEF #99).

**NEW YORK STATE
COURT OF APPEALS**

Preliminary Appeal Statement

Pursuant to section 500.9 of the Rules of the Court of Appeals

1. Caption of Case (as the parties should be denominated in the Court of Appeals):

STATE OF NEW YORK COURT OF APPEALS

*CENTER FOR JUDICIAL ACCOUNTABILITY, INC.
and ELENA RUTH SASSOWER, individually and
as Director of the Center for Judicial Accountability, Inc.,
acting on their own behalf and on behalf of the People
of the State of New York & the Public Interest,*

Petitioners-Appellants,

-against-

*NEW YORK STATE COMMISSION ON LEGISLATIVE,
JUDICIAL AND EXECUTIVE COMPENSATION,*

*KATHY HOCHUL and ANTONIO DELGADO, in their official
capacities as GOVERNOR and LIEUTENANT GOVERNOR
OF THE STATE OF NEW YORK,*

*ROWAN WILSON and JOSEPH ZAYAS, in their official capacities
as CHIEF JUDGE and CHIEF ADMINISTRATIVE JUDGE
OF THE STATE OF NEW YORK,*

*ANDREA STEWART-COUSINS, in her official capacity
as TEMPORARY SENATE PRESIDENT and
THE NEW YORK STATE SENATE,*

*CARL HEASTIE, in his official capacity as
ASSEMBLY SPEAKER, and
THE NEW YORK STATE ASSEMBLY,*

*LETITIA JAMES, in her official capacity as
ATTORNEY GENERAL OF THE STATE OF NEW YORK,*

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THOMAS DiNAPOLI, in his official capacity as
COMPTROLLER OF THE STATE OF NEW YORK,

Respondents-Respondents

2. Name of court...where case originated, including county:

Supreme Court/Albany County

3. Civil index number...assigned to the matter in the court...of original instance:

[Index #902654-24](#)

4. Docket number assigned to the matter at the Appellate Division:

5. Jurisdictional basis for this appeal: [New York State Constitution, Article VI, §3\(b\)\(2\)](#)
comparable, but not identical, to your form option
“[CPLR 5601\(b\)\(2\)](#): constitutional ground (judgment of court of original instance)”

6. How this appeal was taken to the Court of Appeals (CPLR 5515[1]):

NOTICE OF APPEAL Date filed: November 29, 2024
Clerk's office where filed: Albany County/Supreme Court

7. Demonstration of timeliness of appeal in civil case (CPLR 5513, 5514):

Was appellant served by its adversary with a copy of the order, judgment or determination appealed from and notice of its entry? Yes

If yes, date on which appellant was served: November 25, 2024

If yes, method by which appellant was served: [NYSCEF #98](#) & mail

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8. Party Information:

No.	Party Name	Original Status	Court of Appeal Status
1.	Center for Judicial Accountability, Inc.	Petitioner/Plaintiff	Appellant
2.	Elena Ruth Sassower, individually and as Director	Petitioner/Plaintiff	Appellant
3.	New York State Commission on Legislative, Judicial and Executive Compensation	Respondent/Defendant	Respondent
4.	Governor Kathy Hochul	Respondent/Defendant	Respondent
5.	Lieutenant Governor Antonio Delgado	Respondent/Defendant	Respondent
6.	Chief Judge Rowan Wilson	Respondent/Defendant	Respondent
7.	Chief Administrative Judge Joseph Zayas	Respondent/Defendant	Respondent
8.	Temporary Senate President Andrea Stewart-Cousins	Respondent/Defendant	Respondent
9.	New York State Senate	Respondent/Defendant	Respondent
10.	Assembly Speaker Carl Heastie	Respondent-Defendant	Respondent
11.	New York State Assembly	Respondent/Defendant	Respondent
12.	Attorney General Letitia James	Respondent/Defendant	Respondent
13.	Comptroller Thomas DiNapoli	Respondent/Defendant	Respondent

9. Attorney Information:

***NOTE:** Parties Nos. 3-13 above – the eleven respondents/defendants in this hybrid Article 78 proceeding/declaratory judgment action/citizen-taxpayer action – are here, as below, all represented by the New York State Attorney General James, herself a respondent/defendant – and the lawfulness of that representation was and is contested by petitioners/plaintiffs.

For Parties Nos. 3-10 above:Law Firm Name: Attorney General of the State of New York Letitia JamesResponsible Attorney: Assistant Solicitor General Beezly Kiernan

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Street Address: The Capitol
City: Albany State: New York Zip: 12224
Telephone: 518-776-2023
E-Mail: Beezly.Kiernan@ag.ny.gov

10. Self-Represented Litigant Information:

***NOTE:** Parties Nos. 1-2 above – the two petitioners/plaintiffs in this hybrid Article 78 proceeding/declaratory judgment action/citizen-taxpayer action, expressly acting “on behalf of the People of the State of New York & the Public Interest” – are here, as below, unrepresented litigants and sought below the Attorney General’s representation/intervention, pursuant to Executive Law §63.1 and State Finance Law, Article 7-A [§123-a(3); §123-c(3); §123-d; §123-e(2)], to which they remain entitled.

For Party No. 1 above:

Party’s Name: Center for Judicial Accountability, Inc.
Street Address: (c/o Sassower) 10 Stewart Place, Apt. 2D-E
City: White Plains State: New York Zip: 10603
Telephone No.: 914-421-1200

For Party No. 2 above:

Party’s Name: Elena Ruth Sassower
Street Address: 10 Stewart Place, Apt. 2D-E
City: White Plains State: New York Zip: 10603
Telephone No.: 914-421-1200
E-Mail: elena@judgewatch.org

11. Related motions and applications:

Does any party to the appeal have any motions or applications related to this appeal pending in the Court of Appeals? Yes

If yes, specify:

- a. the party who filed the motion or application: Petitioners/Plaintiffs herein
- b. the return date of the motion: Dec 4, 2024 due date for response to jurisdictional inquiry for October 21, 2024 notice of direct appeal of right (APL# 2024-00149)
- c. the relief sought: direct appeal of right
(Article VI, §3(b)(2) of the NYS Constitution)

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Does any party to the appeal have any motions or applications in this case currently pending in the court from which the appeal is taken? No

Are there any other pending motions or ongoing proceedings in this case? No

12. **Set forth, in point-heading form, issues proposed to be raised on appeal**
(this is a nonbinding designation, for preliminary issue identification purposes only):

POINT I

**Chapter 60, Part E, of the Laws of 2015 is Unconstitutional
as Written, as Applied, & by its Enactment – & Must Be So-Declared,
Including Based on this Court’s Opinions in *Delgado v. New York State***

The appealed-from November 13, 2024 decision of Ulster County Surrogate Court Judge Sara McGinty reinforces the unconstitutionality of Chapter 60, Part E, of the Laws of 2015 that is the subject of [appellants’ October 21, 2024 notice of direct appeal, of right, to this Court \(APL# 2024-149\)](#) from the three August 14, 2024 decisions of Rensselaer County Court Judge Jennifer Sober.

Substantiating these two appeals are appellants’ “legal autopsy”/analyses of the decisions of both judges, establishing their obliteration of ALL adjudicative standards to AVOID according

“ANY scrutiny to the ‘force of law’ December 4, 2023 Report of the Commission on Legislative, Judicial and Executive Compensation, let alone the ‘heightened scrutiny’ that then Court of Appeals Associate Judge Wilson held to be required for a ‘force of law’ delegation of legislative power to be constitutional in his concurring opinion in [Delgado v. New York State](#), 39 NY3d 242 (2022), without which the three-judge plurality opinion would not have been a majority...”.

To no avail, appellants explicated *Delgado v. New York State* to both judges, in support of summary judgment, stating:

“There is NO difference between the plurality opinion, the concurring opinion, and dissenting opinion that statutory compliance is the *sine qua non* for any legislative delegation of power to a commission, agency, or other entity – of constitutional dimension even where the statutory legislative delegation does not bestow ‘force of law’ power. As to ‘force of law’ statutory delegations of legislative power, deemed unconstitutional by the dissenters, the majority’s holding of constitutionality is predicated on strict compliance to the statute by the entity to which the legislative

Appellants' November 29, 2024 Notice of Direct Appeal to the Court of Appeals [R.52-95]

delegation has been made, as the statute replaces the checks-and-balance safeguards of the constitutionally-ordained legislative process, dispensed with by the statute.

Respondent Wilson's dissent was for purposes of underscoring his constitutional concerns, which he stated to be overcome by the judiciary's strict scrutiny of compliance with the statute." ([NYSCEF #48](#), at pp. 10-11, italics and underlining in the original).

Both judges also wilfully concealed and ignored ¶34 of the verified petition ([NYSCEF #1](#)) as to unconstitutionality:

“Chapter 60, Part E, of the Laws of 2015 (§3, ¶7), required the COMMISSION to furnish its report ‘to the governor, the legislature and the chief judge’, to enable them to discharge their checks-and-balances, oversight duties with respect to salary increase recommendations that would otherwise have the ‘force of law’ and be unconstitutional in the absence of their oversight” (underlining in the original).

Chapter 60, Part E, of the Laws of 2015 is additionally unconstitutional *as written* and *by its enactment*, through the budget and by fraud – and this is particularized by the verified pleadings in the two lawsuits the verified petition highlights (¶¶4, 23), *CJA v. Cuomo...DiFiore* and its “continuation”, *CJA v. JCOPE, et al.*, each “thrown” by fraudulent judicial decisions.

13. Does appellant request that this appeal be considered for resolution pursuant to section 500.11 of the Rules of the Court of Appeals (Alternative Procedure for Selected Appeals)?

No

14. Notice to the Attorney General.

Is any party to the appeal asserting that a statute is unconstitutional? Yes

If yes, has appellant met the requirement of notice to the Attorney General in section 500.9(b) of the Rules of the Court of Appeals? Yes*

***NOTE:** The Attorney General is counsel to respondents/defendants, herself a respondent/defendant, and by her litigation fraud, *inter alia*, her bogus defense of prematurity and lack of standing – and so-demonstrated by petitioners/plaintiffs – procured the decisions that render Chapter 60, Part E, of the Laws of 2015 unconstitutional.

Appellants' November 29, 2024 Notice of Direct Appeal to the Court of Appeals [R.52-95]

15. ITEMS REQUIRED TO BE ATTACHED TO EACH COPY OF THIS STATEMENT:

A. A copy of the filed notice of appeal to the Court of Appeals (with proof of service)

A copy of the November 29, 2024 notice of appeal and proof of service is herewith attached

B. A copy of the signed order, judgment or determination appealed from to this Court

A copy of the signed November 13, 2024 “Decision/Order/Judgment” of Surrogate Court Judge McGinty is annexed to the November 29, 2024 notice of appeal as Exhibit 1

C. A signed copy of any order, judgment or determination which is the subject of the order appealed from, or which is otherwise brought up for review

A copy of the three August 14, 2024 “Decision(s), Order(s), and Judgment(s)” of Rensselaer County Court Judge Jennifer Sober, brought up for review, are annexed to [the October 21, 2024 notice of appeal herein](#), already furnished.

D. Copies of all decisions or opinions relating to the orders set forth in subsections B and C above

The only relevant decision is the [December 27, 2018 appellate decision in *CJA v. Cuomo...DiFiore*](#), relied upon and cited by Judge McGinty as “167 AD3d 1406...[3d Dept 2018], *lv den* 33 NY3d 993” and relied upon and cited to by Judge Sober as “167 AD3d 1406...[3d Dept., 2018]; *appeal dismissed*, 33 N.Y.3d 993 [2019]; *lv. dismissed & denied*, 34 N.Y. 3d 961 [2019]” – as to which, by five indefensible orders, unsigned by any judge, the Court dismissed and denied appellants’ appeals by right and by leave. The original papers are in the possession of the Clerk’s Office, having been retained beyond the five-year retention date, at appellants’ request, so as to be available for the Court in connection with the then-anticipated [appeal of right in *CJA v. JCOPE, et al*, now before the Court \(APL# 2024-00150\)](#) – and in connection with this further appeal of right.

Appellants' November 29, 2024 Notice of Direct Appeal to the Court of Appeals [R.52-95]

Date: November 29, 2024

Submitted by:

A handwritten signature in black ink, appearing to read "Elena Ruth Sassower", written over a horizontal line.

Elena Ruth Sassower, unrepresented Petitioner-Appellant, individually
and as Director of the Center for Judicial Accountability, Inc., acting on her
own behalf and on behalf of the People of the State of New York & the
Public Interest

Court of Appeals' March 18, 2025 Order Transferring Appellants' Two Direct Appeals [R.96-97]

State of New York

Court of Appeals

*Decided and Entered on the
eighteenth day of March, 2025*

Present, Hon. Jenny Rivera, *Senior Associate Judge, presiding.*

Mo. No. 2025-25

In the Matter of Center for Judicial
Accountability, Inc. et al.,
Appellants,

v.

New York State Joint Commission on Public
Ethics, et al.,
Respondents.

(Index No. 904235-22)
(APL-2024-150)

In the Matter of Center for Judicial
Accountability, Inc. et al.,
Appellants,

v.

New York State Commission on Legislative,
Judicial, and Executive Compensation, et al.,
Respondents.

(Index No. 902654-24)
(APL-2024-149 and APL-2024-175)

Appellants having appealed and moved for sanctions &c. in the above causes;

Upon the papers filed and due deliberation, it is

ORDERED, on the Court's own motion, that the appeals, insofar as taken on behalf of
Center for Judicial Accountability, Inc. by Elena Ruth Sassower, are dismissed, without costs,
upon the ground that Elena Ruth Sassower is not Center for Judicial Accountability, Inc.'s
authorized legal representative (*see* CPLR 321 [a]); and it is further

Court of Appeals' March 18, 2025 Order Transferring Appellants' Two Direct Appeals [R.96-97]

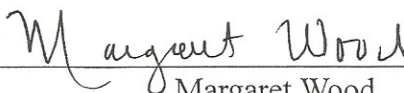
ORDERED, that the appeal in the first captioned matter insofar as taken by Elena Ruth Sassower on her own behalf, from the October 2024 Appellate Division order, is dismissed, without costs, upon the ground that the order appealed from does not finally determine the proceeding/action within the meaning of the Constitution and the appeal insofar as also treated as taken from the June 2024 Appellate Division order is dismissed, without costs, upon the grounds that (1) as to the portion of the order as affirmed the dismissal of the petition and the denial of sanctions, no substantial constitutional question is directly involved and (2) the order does not otherwise finally determine the proceeding/action within the meaning of the Constitution; and it is further

ORDERED, that the appeals in the second captioned matter insofar as taken by Elena Ruth Sassower on her own behalf, from the August 2024 Supreme Court orders and November 2024 Supreme Court order, is transferred, without costs, to the Appellate Division, Third Department, upon the ground that direct appeals do not lie when questions other than the constitutional validity of a statute are involved (*see* NY Const, art VI, §§ 3 [b] [2], 5 [b]; CPLR 5601 [b] [2]); and it is further

ORDERED, that the motion, on behalf of Center for Judicial Accountability, Inc. by Elena Ruth Sassower, for sanctions &c. is dismissed upon the ground that Elena Ruth Sassower is not Center for Judicial Accountability, Inc.'s authorized legal representative (*see* CPLR 321 [a]); and it is further

ORDERED, that the motion, by Elena Ruth Sassower on her own behalf, for sanctions &c. is denied.

Chief Judge Wilson took no part.


Margaret Wood
Deputy Clerk of the Court

Petitioners' March 18, 2024 Verified Petition/Complaint [R.98-225]

SUPREME COURT OF STATE OF NEW YORK
COUNTY OF ALBANY

----- X
CENTER FOR JUDICIAL ACCOUNTABILITY, INC.
and ELENA RUTH SASSOWER, individually and
as Director of the Center for Judicial Accountability, Inc.,
acting on their own behalf and on behalf of the People
of the State of New York & the Public Interest,

[Index # 902654-24](#)

**VERIFIED
PETITION/COMPLAINT**

Petitioners/Plaintiffs,

-against-

NEW YORK STATE COMMISSION ON LEGISLATIVE,
JUDICIAL AND EXECUTIVE COMPENSATION,

KATHY HOCHUL and ANTONIO DELGADO, in their official
capacities as GOVERNOR and LIEUTENANT GOVERNOR
OF THE STATE OF NEW YORK,

ROWAN WILSON and JOSEPH ZAYAS, in their official capacities
as CHIEF JUDGE and CHIEF ADMINISTRATIVE JUDGE
OF THE STATE OF NEW YORK,

ANDREA STEWART-COUSINS, in her official capacity
as TEMPORARY SENATE PRESIDENT and
THE NEW YORK STATE SENATE,

CARL HEASTIE, in his official capacity as
ASSEMBLY SPEAKER, and
THE NEW YORK STATE ASSEMBLY,

LETITIA JAMES, in her official capacity as
ATTORNEY GENERAL OF THE STATE OF NEW YORK,

THOMAS DiNAPOLI, in his official capacity as
COMPTROLLER OF THE STATE OF NEW YORK,

Respondents/Defendants.

-----X
TO THE SUPREME COURT OF THE STATE OF NEW YORK:

Petitioners/plaintiffs, as and for their verified petition/complaint, state:

Petitioners' March 18, 2024 Verified Petition/Complaint [R.98-225]

1. This combined [CPLR Article 78 proceeding](#), [CPLR §3001 declaratory judgment action](#), and [State Finance Law Article 7-A citizen-taxpayer action](#) seeks declaratory and equitable relief against public bodies and officers for violating their mandatory statutory and constitutional duties.
2. For simplicity, this petition/complaint will be referred to as the petition, petitioners/plaintiffs will be designated as petitioners, and respondents/defendants will be designated as respondents.
3. A Table of Contents follows:

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Petitioners' March 18, 2024 Verified Petition/Complaint [R.98-225]

* * *

VENUE

4. Pursuant to CPLR §7804(b), CPLR §506(b), and State Finance Law §123-c, this proceeding is venued in Albany County as this is where respondents are principally located, where they committed and are committing the complained-of violations of statutory and constitutional mandates, and where the taxpayer monies for the next round of “false instrument” judicial salary increases are poised to be distributed.

THE PARTIES

5. **Petitioner CENTER FOR JUDICIAL ACCOUNTABILITY, INC. [hereinafter “CJA”]** is a national, non-partisan, non-profit citizens’ organization, headquartered in White Plains, New York and incorporated in 1994 under the laws of the State of New York, specifically documenting how judges “throw cases” by fraudulent judicial decisions. As such conduct warrants removal from the bench, not pay raises, that is the origin of CJA’s involvement in the judicial pay raise issue, in 2011, and continuously to the present, so-reflected by CJA’s webpage: “[VIDEO & PAPER TRAIL CHRONOLOGY: The Corrupt Commission Scheme to Raise Salaries of Corrupt Public Officers](#)”.

6. **Petitioner ELENA RUTH SASSOWER [hereinafter “SASSOWER”]** is CJA’s director and co-founder, and a citizen, resident, elector, and taxpayer of the State of New York.

7. **Respondent NEW YORK STATE COMMISSION ON LEGISLATIVE, JUDICIAL AND EXECUTIVE COMPENSATION [hereinafter “COMMISSION”]** is the third incarnation of the seven-member entity established every four years pursuant to Chapter 60, Part E,

Petitioners' March 18, 2024 Verified Petition/Complaint [R.98-225]

of the Laws of 2015 ([Exhibit A](#))¹ – owing its existence to fraudulent judicial decisions “throwing” CJA’s previous lawsuits challenging prior and related incarnations and the state budget, all “brought in the public interest on behalf of the People of the State of New York”. Most important of these lawsuits, and highlighted by petitioner SASSOWER in testifying at the COMMISSION’s October 13, 2023 hearing ([VIDEO at 2 hrs/31 mins](#)) ([Exhibit B](#)), designating them as Exhibits A and B, respectively:

- [CJA v. Cuomo...DiFiore](#), challenging the constitutionality of Chapter 60, Part E, of the Laws of 2015, starting with its enactment “through the budget...and by fraud”, and seeking to void the “false instrument” December 24, 2015 Report of the (1st) Commission on Legislative, Judicial and Executive Compensation and the “false instrument” August 29, 2011 Report of the Commission on Judicial Compensation, “thrown” by fraudulent judicial decisions up to the Court of Appeals, on which was then sitting, as associate judges, the now COMMISSION Chair Eugene Fahey and now Court of Appeals Chief Judge Rowan Wilson;
- [CJA v. JCOPE, et al.](#), “the continuation of *CJA v. Cuomo...DiFiore*” involving complaints based thereon and related thereto, including against “Judge Fahey and his brethren on the Court of Appeals”, whose judicial odyssey establishes “once again, how the judiciary comports itself when the issue is its self-interest in pay raises and what has been going on”, presently at the Appellate Division, Third Department.

8. **Respondent KATHY HOCHUL [hereinafter “Governor HOCHUL”]** is the Governor of the State of New York. Pursuant to Chapter 60, Part E, of the Laws of 2015 ([§3, ¶1](#)), she appointed three of the COMMISSION’s members – Victor Kovner, Esq., R. Nadine Fontaine, Esq., and Robert Megna.

9. **Respondent ANTONIO DELGADO [hereinafter “Lt. Governor DELGADO”]** is the Lieutenant Governor of the State of New York, presumably assisting the Governor in discharging

¹ As annotated by Petitioner SASSOWER, with seven copies handed up to each of the seven commissioners before beginning her testimony at the COMMISSION’s October 13, 2023 hearing, prefaced by the words “We start with the statute...The starting point is always the statute”. ([VIDEO at 2 hrs/31 mins](#)) ([Exhibit B](#)).

Petitioners' March 18, 2024 Verified Petition/Complaint [R.98-225]

her duties under [Article IV, §3 of the New York State Constitution](#), such as “tak[ing] care that the laws are faithfully executed”. Pursuant to Article IV, §6, the Lieutenant Governor is also “the president of the senate”.

10. **Respondent ROWAN WILSON [hereinafter “Chief Judge WILSON”]** is Chief Judge of the State of New York. Pursuant to Chapter 60, Part E, of the Laws of 2015 ([§3, ¶1](#)), he appointed two of the COMMISSION’s members – Eugene Fahey, Esq. and Helene Blank, Esq. – designating Fahey as the COMMISSION’s chair.

11. **Respondent JOSEPH ZAYAS [hereinafter “Chief Administrative Judge Zayas”]** is Chief Administrative Judge of the State of New York, appointed by Chief Judge Wilson.

12. **Respondent ANDREA STEWART-COUSINS [hereinafter “Temporary Senate President STEWART-COUSINS”]** is Temporary Senate President of the New York State Senate. Pursuant to Chapter 60, Part E, of the Laws of 2015([§3, ¶1](#)), she appointed one COMMISSION member – former Judge Jeremy Weinstein.

13. **Respondent NEW YORK STATE SENATE [hereinafter “SENATE”]** is the Legislature’s upper house consisting of 63 members.

14. **Respondent CARL HEASTIE [hereinafter “Assembly Speaker HEASTIE”]** is Assembly Speaker of the New York State Assembly. Pursuant to Chapter 60, Part E, of the Laws of 2015, he appointed one COMMISSION member – Theresa Egan, Esq.

15. **Respondent NEW YORK STATE ASSEMBLY [hereinafter “ASSEMBLY”]** is the Legislature’s lower house consisting of 150 members.

16. **Respondent LETITIA JAMES [hereinafter “Attorney General JAMES”]** is State Attorney General, whose duty, as the state’s chief legal officer, is to “prosecute and defend all

Petitioners' March 18, 2024 Verified Petition/Complaint [R.98-225]

actions in which the state is interested” and to “protect the interest of the state”; where “in his opinion the interests of the state so warrant” ([Executive Law §63.1](#)). Consistent therewith, the citizen-taxpayer statute ([State Finance Law Article 7-A](#)) expressly contemplates the Attorney General’s role as plaintiff or on behalf of plaintiffs to ensure merits determination of wrongful, illegal and unconstitutional expenditures of taxpayer monies (§123-A, §123-C, §123-D, §123-E), expanding upon the requirement of [Article V, §1 of the New York State Constitution](#) of notice to the Attorney General “upon the suit of any taxpayer”.

17. **Respondent THOMAS DiNAPOLI [hereinafter “Comptroller DiNAPOLI] is** State Comptroller, whose duty, as the state’s chief fiscal officer, is to safeguard taxpayer monies, pursuant to Article V, §1 and §4 of the New York State Constitution. Consistent therewith, his website announces, on its homepage, that “Fighting Public Corruption” is among his “Key Priorities” and “If you suspect fraud, file a complaint online.”

FACTUAL ALLEGATIONS

18. On December 4, 2023, the COMMISSION voted to approve a so-called “Final Report on Judicial Compensation”, thereupon transmitting it to its four appointing authorities – Governor HOCHUL, Temporary Senate President STEWART-COUSINS, Assembly Speaker HEASTIE, and Chief Judge WILSON ([Exhibit C](#)).

19. Such December 4, 2023 Report, with “force of law” judicial salary increase recommendations, is, *on its face*, a “false instrument”, violating clear, unequivocal provisions of Chapter 60, Part E, of the Laws of 2015 ([Exhibit A](#)), mandating its voiding, *as a matter of law*.

20. To reinforce this obvious duty – and the imperative of other steps – petitioners presented the appointing authorities and the other respondents herein, excepting the COMMISSION,

Petitioners' March 18, 2024 Verified Petition/Complaint [R.98-225]

with a January 18, 2024 Opposition Report ([Exhibit E](#)),² analyzing, virtually line-by-line, the December 4, 2023 Report and its transmitting coverletter for the express purpose of assisting their:

“Discharge of Constitutional & Oversight Responsibilities:

- (1) to void the Commission’s ‘force of law’ December 4, 2023 Final Report on Judicial Compensation because it is statutorily-violative, fraudulent, and unconstitutional – and striking the \$34.6 million appropriation for judicial salary increases from the Governor’s Legislative/Judiciary Budget Bill #S.8301/A.8801;
- (2) to refer the Commission’s seven members for criminal prosecution – and for Attorney General James to herself bring such prosecution – based on penal law violations including:

Penal Law §175.35: ‘Offering a false instrument for filing in the first degree’;

Penal Law §195: ‘Official misconduct’;

Penal Law §105.15: ‘Conspiracy in the second degree’;

Penal Law §20.00: ‘Criminal liability for conduct of another’;

Penal Law Article 496: ‘PUBLIC TRUST ACT’

§496.06: ‘Public corruption’;

§496.05: ‘Corrupting the government in the first degree’;

- (3) to hold hearings on the corruption in New York’s judiciary to which the three judicial pay raise opponents attested, with evidence – involving the corruption of the Commission on Judicial Conduct, the Appellate Division attorney grievance committees, and the OCA Inspector General.”

21. None of the recipients denied or disputed the accuracy of the January 18, 2024 Opposition Report in any respect – nor their duty to take the rectifying steps the Opposition Report identified on its cover and by its further specifying conclusion (at pp. 37-38) which stated:

“Based on this Opposition Report, establishing the Commission’s December 4, 2023 Report to be statutorily-violative, fraudulent, and unconstitutional – the product of commissioners disqualified for interest and actual bias – the judiciary must promptly

² Pursuant to [CPLR §3014](#) “A copy of any writing which is attached to a pleading is a part thereof for all purposes.” Petitioners’ Opposition Report ([Exhibit E](#)) was furnished, electronically, in pdf format, with LIVE hyperlinks to facilitate verification. So, too, their written testimony for the Legislature’s January 25, 2024 and February 6, 2024 budget hearings ([Exhibit F](#), [Exhibit G](#)). Petitioners specifically incorporate and include in this verified petition All the LIVE evidentiary hyperlinks.

Petitioners' March 18, 2024 Verified Petition/Complaint [R.98-225]

notify the Governor that it is withdrawing the requested \$34,600,000 appropriation so that she can embody same in her '30-day amendments' and/or the Senate and Assembly must promptly strike the \$34,600,000 from #S.8301/A.8801. Otherwise, the Governor must 'recommend', in conjunction with her '30-day amendments', that the Senate and Assembly strike the \$34,600,000 and give notice that should they fail to do so she will strike it from such amended/unamended #S.8301/A.8801 as they pass."

22. Instead, they simply ignored the Opposition Report.

23. Petitioners recounted respondents' conduct – particularly that of the legislative respondents – by written testimony for the Legislature's January 25, 2024 budget hearing on "public protection" ([Exhibit F](#)) and by written testimony for the Legislature's February 6, 2024 budget hearing on "local government officials/general government" ([Exhibit G](#)), the latter also reciting the legislative respondents' simultaneous violations of mandatory constitutional, statutory, and legislative safeguards with respect to the FY2024-25 budget – another consequence of the fraudulent judicial decisions in *CJA v. Cuomo...DiFiore* and *CJA v. JCOPE, et al.*, torpedoing causes of action to enforce those mandates and end the Legislature's flagrantly unconstitutional manner of operating.³

24. On February 8, 2024, Petitioner SASSOWER gave live testimony before Temporary Senate President STEWART-COUSINS and Senators Shelley Mayer, Jamaal Bailey, and Pete Harckham at a local forum on the state budget held by Westchester's state senate delegation ([VIDEO at 1hr/59mins](#)). In the two minutes allotted, she stated:

"As you know, the budget is off the constitutional rails, rife with constitutional, statutory, and rule violations. This has been the subject of lawsuits that CJA has brought against you and you have survived because you have been defended by

³ These causes of action in the still live *CJA v. JCOPE, et al.* include, in addition to its tenth cause of action ([¶¶106-14](#)) as to the unconstitutionality of the Legislature's closed-door party conferences, substituting for deliberation in open legislative committee meetings ([R.94-96, R.411-421](#)), its sixth cause of action ([¶¶78-85](#)) as to the unconstitutionality of "non-appropriation" budget bills which the Legislature falsely purports as having been "submitted by the Governor pursuant to article seven of the Constitution", when, in fact, what the Governor submits are draft bills, requiring Senate and Assembly sponsors, because they cannot be submitted pursuant to Article VII – and so-demonstrated by the analysis embodied in CJA's March 18, 2020 letter to then Governor Cuomo, furnished simultaneously to the Legislature and repeatedly thereafter, on which that cause of action rests ([R.81-84, R.132-154](#)).

Petitioners' March 18, 2024 Verified Petition/Complaint [R.98-225]

litigation fraud of the Attorney General and rewarded by fraudulent judicial decisions.

The corruption that infests the judiciary, at trial, appellate, and supervisory levels, as to which all entities of oversight are dysfunctional and corrupted, makes the pay raises for judges unconstitutional.

As you know, in the budget this year, the legislative/judiciary budget bill, there's 34.6 million dollars [for judicial pay raises]. I have furnished you with a report, an Opposition Report, demonstrating that the Report of the Commission on Legislative, Judicial and Executive Compensation that is the basis for that appropriation is a false instrument and must be –

[Timekeeper: Time. Your time is up.]

– voided, stricken, and there must be investigation.”

25. In substantiation, Petitioner SASSOWER furnished three hard copies of the Opposition Report ([Exhibit E](#)), *in hand*, to Temporary Senate President STEWART-COUSINS and to Senate Judiciary Committee lawyer-Senators Mayer and Bailey.⁴ To non-lawyer Senator Harckham, she furnished, *in hand*, a hard copy of the Opposition Report's cover, table of contents, and introductory pages, additionally explaining to him, in conversation after the hearing, the relevance of the Opposition Report to the Senate Committee on Local Government, of which he is a member, *to wit*, that because of the statutory link between judicial salaries and district attorney salaries, district attorney salaries, which are paid by the counties, would rise as a result of the December 4, 2023 Report – constituting an unfunded mandate upon the counties.

26. Again, no response from respondents, who have continued to ignore the Opposition Report.

⁴ As Senator Bailey is, additionally, a member of the Senate Committee on Families and Children and Senator Mayer is formerly a member of the Assembly Committee on Families and Children, Petitioner SASSOWER also gave each of them the same further evidence of judicial corruption as she had furnished the COMMISSION, identified at pages 2-3 of the Opposition Report ([Exhibit E](#)), pertaining to the Monroe County Family Court case.

Petitioners' March 18, 2024 Verified Petition/Complaint [R.98-225]

27. Meanwhile, the \$34,600,000 appropriation remains in Governor HOCHUL's Legislative/Judiciary Budget Bill #S.8301/A.8801 ([Exhibit D](#)),⁵ which, with her Debt Service Bill #S.8302/A.8802, emerged unamended when, in completely "OFF THE CONSTITUTIONAL RAILS" fashion, the SENATE and ASSEMBLY sputteringly released their "one-house" budget proposals on March 11 and 12, 2024, with each of Governor's HOCHUL's other budget bills "amended" by legislative staff, behind closed doors, vastly increasing appropriations and adding and modifying substantive, non-revenue producing policy – ALL in flagrant violation of Article VII, §1-7 and Article III, §10 of the New York State Constitution, four copies of which Petitioner SASSOWER had handed up to Temporary Senate President STEWART-COUSINS and to Senators Mayer, Bailey, and Harckham, on February 8, 2024, before beginning her testimony – each copy appending a red strip on which was typed: "RED ALERT: The NYS Budget is OFF THE CONSTITUTIONAL RAILS – & the Legislature is NOT functioning at a constitutional level. *See*: www.judgewatch.org" ([Exhibit H](#)) and accompanied, in further substantiation, by four copies of petitioners' written testimony for the Legislature's February 6, 2024 "local government officials/general government" budget hearing ([Exhibit G](#)).

28. The Legislature's sham budget conference committee, not properly announced, is meeting today and its equally sham subcommittees, but they will quickly dissolve into behind-closed-doors "three person in the room" budget dealmaking between Governor HOCHUL, Temporary Senate President STEWART-COUSINS, and Assembly Speaker HEASTIE, culminating in more behind-closed-doors "amending" of bills, not voted on by legislators, and then all rushed to passage, on bogus "messages of necessity", excepting Governor HOCHUL's Debt Service Bill

⁵ The full bill – and "actions" thereon – is accessible from the Senate's webpage for the bill, [here](#), and the Assembly's webpage for the bill, [here](#).

Petitioners' March 18, 2024 Verified Petition/Complaint [R.98-225]

#S.8302/A.8802, which will presumably be passed by both houses sometime this week or next, after cursory posturing debate by the legislators on the floor of the SENATE and ASSEMBLY.

29. In short, all the fraud and flagrant constitutional, statutory, and legislative rule violations pertaining to the budget and how the Legislature operates that *CJA v. Cuomo...DiFiore* and *CJA v. JCOPE, et al.* stood to rectify by rock-solid causes of action to which CJA was entitled to summary judgment – and as to which the COMMISSION’s duty was to make findings of fact and conclusions of law, including with respect to budget-born Chapter 60, Part E, of the Laws of 2015 – have been and are being repeated – and even more egregiously.⁶

30. To AG JAMES, who has a Public Integrity Bureau, petitioners filed a January 19, 2024 complaint ([Exhibit I-1](#)), stating:

“Commission on Legislative, Judicial & Executive Compensation rendered a ‘false instrument’ ‘force of law’ December 4, 2023 Report on Judicial Compensation to steal taxpayer money for statutorily-violative, fraudulent & unconstitutional judicial pay raises – \$34.6 million for FY2024-25 (Legislative/Judiciary Budget Bill #S.8301/A.8801, at pp. 18-19).”

31. The sole response received, to date, has been a January 24, 2024 form-letter acknowledgment from her Public Integrity Bureau ([Exhibit I-2](#)). This is more than petitioners received from Comptroller DiNAPOLI’s Division on Investigations and Inspector General, to which they made a January 30, 2024 complaint, in writing and by calling the hotline number “#1-888-672-4555 ‘To report fraud outside of OSC’” ([Exhibit J](#)).

⁶ CJA’s website, www.judgewatch.org, chronicles how the FY2024-25 state budget has been unfolding – and how prior fiscal year budgets have unfolded – accessible from the prominent homepage center link: “[LEGISLATIVE SESSIONS – Comparing NY’s Legislature BEFORE & AFTER its Fraudulent Pay Raises: No Change: The Legislators are the SAME Posturing Fraudsters, Perpetuating a Legislature that Does NOT Function at a Constitutional Level](#)”. The direct link to CJA’s webpage of FY2024-25 Budget Documents & Proceedings is [here](#) and to CJA’s 2024 FOIL webpage is [here](#).

Petitioners' March 18, 2024 Verified Petition/Complaint [R.98-225]

CAUSES OF ACTION**FIRST CAUSE OF ACTION**

The December 4, 2023 Report of the Commission on Legislative, Judicial and Executive Compensation Must Be Voided, *as a Matter of Law*, as the Commission Failed to Perform the Duties Enjoined Upon it by Chapter 60, Part E, of the Laws of 2015 for Making “Force of Law” Judicial Salary Increase Recommendations – and the Other Respondents Have Failed to Discharge their Duties with Respect Thereto

32. Petitioners repeat, reiterate, and reallege ¶¶1-31, with the same force and effect as if more fully set forth herein.

33. Chapter 60, Part E, of the Laws of 2015 ([Exhibit A](#)) is unequivocal and mandatory as to what it requires for “force of law” salary increase recommendations by the COMMISSION. As these statutory predicates stood in the way of the COMMISSION members’ predetermined objective to raise judicial salaries, the seven members simply jettisoned them. Thus, as demonstrated by the Opposition Report:

(i) in violation of §2, ¶¶1, 2(a), the COMMISSION examined only judicial salary, not “compensation” apart from salary, and not “non-salary benefits”;

(ii) in violation of §2, ¶¶1, 2(a), the COMMISSION made no finding that current “compensation and non-salary benefits” or “pay levels and non-salary benefits” of New York State judges are inadequate ;

(iv) in violation of §2, ¶3, the COMMISSION did not “take into account” three of the six enumerated “appropriate factors” – these being the three that include “compensation and non-salary benefits”.

(iii) in violation of §2, ¶3, the COMMISSION did not “take into account all appropriate factors”, made no claim that it had, and concealed and made no findings as to petitioners’ assertion of “appropriate factors”, apart from the enumerated six – the most important and threshold being evidence that New York’s judiciary is systemically corrupt, “throwing cases” by fraudulent judicial decisions at trial and appellate levels, abetted by supervisory and administrative judges – rendering judicial pay raises unconstitutional,

Petitioners' March 18, 2024 Verified Petition/Complaint [R.98-225]

34. Chapter 60, Part E, of the Laws of 2015 (§3, ¶7), required the COMMISSION to furnish its report “to the governor, the legislature and the chief judge”, to enable them to discharge their checks-and-balances, oversight duties with respect to salary increase recommendations that would otherwise have the “force of law” and be unconstitutional in the absence of their oversight.

35. There is ZERO evidence that “the governor, the legislature and the chief judge” discharged ANY oversight. This, notwithstanding the violations of Chapter 60, Part E, of the Laws of 2015 are obvious from the most rudimentary comparison of the December 4, 2023 Report with the statute. Their failure to do so when presented with petitioners’ January 18, 2024 Opposition Report ([Exhibit E](#)) triggered the mandatory duties of Attorney General JAMES and Comptroller DiNAPOLI to have stepped in, which they have clearly not done ([Exhibit I-1](#), [Exhibit J](#)).

36. Respondents are all public officers who were required to, and did, take the oath mandated by [Article XIII, §1 of the New York State Constitution](#), to “support the constitution of the United States, and the constitution of the State of New York, and...faithfully discharge the duties of the[ir] office[s]”. Their knowing and deliberate failure to discharge those duties with respect to Chapter 60, Part E, of the Laws of 2015 ([Exhibit A](#)) must be so-declared – and, with it, the voiding of the COMMISSION’s December 4, 2023 Report by reason of the statutory violations, fraud, and unconstitutionality established by petitioners’ January 18, 2024 Opposition Report.

Petitioners' March 18, 2024 Verified Petition/Complaint [R.98-225]

SECOND CAUSE OF ACTION**The \$34,600,000 Line-Item Appropriation in Legislative/Judiciary Budget Bill #S.8301/A.8801 for Judicial Salary Increases Based on the December 4, 2023 Report Must Be Stricken as a Wrongful Expenditure, Misappropriation, Illegal, and Unconstitutional**

37. Petitioners repeat, reiterate, and reallege ¶¶1-36, with the same force and effect as if more fully set forth herein.

38. The \$34,600,000 line-item appropriation at pages 18-19 of Governor HOCHUL's Legislative/Judiciary Budget Bill #S.8301/A8801 ([Exhibit D](#)) reads:

“For expenses necessary to implement the recommendations of the commission on legislative, judicial and executive compensation pursuant to chapter 60 of the Laws of 2015, as amended by Part WW of chapter 55 of the Laws of 2020, for adjustment of the salaries of judges and justices of the unified court system effective April 1, 2024”.

39. As such “recommendations” are the product of fraud and flagrant violations of Chapter 60, Part E, of the Laws of 2015 that are conditions precedent for salary increase recommendations, so-proven by petitioners' January 18, 2024 Opposition Report ([Exhibit E](#)), the \$34,600,000 line-item is a wrongful expenditure, misappropriation, illegal, and unconstitutional – and must be stricken, as State Finance Law Article 7-A provides.

Petitioners' March 18, 2024 Verified Petition/Complaint [R.98-225]

PRAYER FOR RELIEF

WHEREFORE, petitioners seek the following:

As to the first cause of action: declarations, pursuant to CPLR Article 78 and CPLR §3001, that the New York State Commission on Legislative, Judicial and Executive Compensation failed to perform the duties enjoined upon it by Chapter 60, Part E, of the Laws of 2015 for making “force of law” judicial salary increase recommendations and that the highest constitutional officers of the state’s three government branches all failed to discharge their mandated checks and balances/oversight duties with respect thereto – and voiding the Commission’s December 4, 2023 Report as statutorily-violative, fraudulent, and unconstitutional, so-proven by petitioners’ January 18, 2024 Opposition Report.

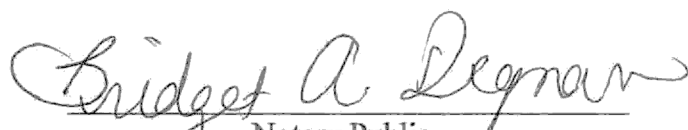
As to the second cause of action: for a declaration, pursuant to State Finance Law Article 7-A, that the \$34,600,000 line-item appropriation in Legislative/Judiciary Budget Bill #S.8301/A.8801 (at pp. 18-19) for judicial salary increases is a wrongful expenditure, misappropriation, illegal, and unconstitutional, so-proven by petitioners’ January 18, 2024 Opposition Report – and striking it;

For the other and further relief mandated by the record herein, and, specifically:

- i. referral of all respondents to criminal authorities for the corruption and collusion established by petitioners’ January 18, 2024 Opposition Report and their correspondence, complaints, and testimony relating thereto;
State Finance Law 123-9,
- ii. costs and expenses pursuant to CPLR §8601, and other applicable provisions (CPLR §8201, §8301).


ELENA RUTH SASSOWER

Sworn to before me this
18th day of March 2024


Notary Public

Bridget A. Degnan
Notary Public, State of New York
No. 04DE6246735
Qualified in Westchester County
Commission Expires August 15, 2027

Petitioners' March 18, 2024 Verified Petition/Complaint [R.98-225]

VERIFICATION

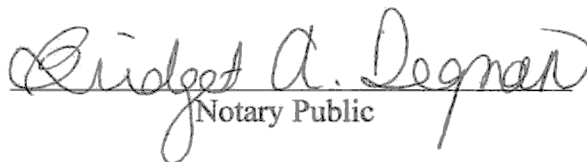
STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.:

I am the individual petitioner/plaintiff in the within Article 78 proceeding/declaratory judgment action/citizen-taxpayer action, and director of the corporate petitioner/plaintiff CENTER FOR JUDICIAL ACCOUNTABILITY, INC. I have written the annexed verified petition/complaint and attest that same is true and correct of my own knowledge, information, and belief.



ELENA RUTH SASSOWER

Sworn to before me this
18th day of March 2024


Notary Public

Bridget A. Degnan
Notary Public, State of New York
No. 04DE6246735
Qualified in Westchester County
Commission Expires August 15, 2027

Petitioners' March 18, 2024 Verified Petition/Complaint [R.98-225]**TABLE OF EXHIBITS**

- [Exhibit A:](#) Chapter 60, Part E, of the Laws of 2015, as annotated by Petitioner SASSOWER, with seven copies handed up to each of the seven members of the COMMISSION at the October 13, 2023 hearing
- [Exhibit B:](#) Transcript of Petitioner SASSOWER's testimony at the October 13, 2023 hearing
- [Exhibit C:](#) Respondent COMMISSION's December 4, 2023 "Final Report on Judicial Compensation"
- [Exhibit D:](#) Respondent HOCHUL's Legislative/Judiciary Budget Bill S.8301/A.8801 – pages 1, 18-19
- [Exhibit E:](#) Petitioners' January 18, 2024 Opposition Report
- [Exhibit F:](#) Petitioners' written testimony for the Legislature's January 25, 2024 budget hearing on "public protection"
- [Exhibit G:](#) Petitioners' written testimony for the Legislature's February 6, 2024 public hearing on "local government officials/general government"
- [Exhibit H:](#) Article VII, §§1-7 and Article III, §10 of the New York State Constitution – four copies of which Petitioner SASSOWER handed up before beginning her testimony at the February 8, 2024 local forum on the state budget to the four senators present: Temporary Senate President STEWART-COUSINS and Senators Mayer, Bailey, and Harkham, each with the annotating strip: "RED ALERT: The NYS Budget is OFF THE CONSTITUTIONAL RAILS – & the Legislature is NOT functioning at a constitutional level. See: www.judgewatch.org"
- [Exhibit I-1:](#) Petitioners' January 19, 2024 complaint to Respondent AG JAMES' Public Integrity Bureau
- [Exhibit I-2:](#) January 24, 2024 form-letter acknowledgment from the Public Integrity Bureau
- [Exhibit J:](#) Petitioners' January 30, 2024 complaint to Respondent Comptroller DiNAPOLI's Division of Investigations & Inspector General

Exhibit A to Petitioners' March 18, 2024 Verified Petition/Complaint [A-115-117]

Budget Bill S.4610-A/A.6721-A

**PART E – introduced on March 31, 2015 & adopted by the Senate late that evening
& adopted by the Assembly in the early morning hours of April 1, 2015**

COMMISSION ON LEGISLATIVE, JUDICIAL & EXECUTIVE COMPENSATION
Chapter 60 of the Laws of 2015

Section 1.

Chapter 567 of the laws of 2010 relating to establishing a special commission on compensation, and providing for their powers and duties; and to provide periodic salary increases to state officers is REPEALED.

Section 2.

1. On the first of June of every fourth year, commencing June 1, 2015, there shall be established a commission on legislative, judicial and executive compensation to examine, evaluate and make recommendations with respect to adequate levels of compensation and non-salary benefits for members of the legislature, judges and justices of the state-paid courts of the unified court system, statewide elected officials, and those state officers referred to in section 169 of the executive law.

2. (a) In accordance with the provisions of this section, the commission shall examine:

(1) the prevailing adequacy of pay levels and other non-salary benefits received by members of the legislature, statewide elected officials, and those state officers referred to in section 169 of the executive law; and

(2) the prevailing adequacy of pay levels and non-salary benefits received by the judges and justices of the state-paid courts of the unified court system and housing judges of the civil court of the city of New York and determine whether any of such pay levels warrant adjustment; and

(b) The commission shall determine whether: (1) for any of the four years commencing on the first of April of such years, following the year in which the commission is established, the annual salaries for the judges and justices of the state-paid courts of the unified court system and housing judges of the civil court of the city of New York warrant an increase; and (2) on the first of January after the November general election at which members of the state legislature are elected following the year in which the commission is established, and on the first of January following the next such election, the like annual salaries and allowances of members of the legislature, and salaries of statewide elected officials and state officers referred to in section 169 of the executive law warrant an increase.

3. In discharging its responsibilities under subdivision two of this section, the commission shall take into account all appropriate factors including, but not limited to: the overall economic climate; rates of inflation; changes in public-sector

Exhibit A to Petitioners' March 18, 2024 Verified Petition/Complaint [A-115-117]

spending; the levels of compensation and non-salary benefits received by executive branch officials and legislators of other states and of the federal government; the levels of compensation and non-salary benefits received by professionals in government, academia and private and nonprofit enterprise; and the state's ability to fund increases in compensation and non-salary benefits.

Section 3.

1. The commission shall consist of seven members to be appointed as follows: three shall be appointed by the governor; one shall be appointed by the temporary president of the senate; one shall be appointed by the speaker of the assembly; and two shall be appointed by the chief judge of the state, one of whom shall serve as chair of the commission. With regard to any matters regarding legislative or executive compensation, the chair shall preside but not vote. Vacancies in the commission shall be filled in the same manner as original appointments. To the extent practicable, members of the commission shall have experience in one or more of the following: determination of executive compensation, human resource administration or financial management.

* 2. The commission shall only meet within the state, may hold public hearings, at least one of which shall be open for the public to provide comments and shall have all the powers of a legislative committee pursuant to the legislative law. It shall be governed by articles 6, 6-A and 7 of the public officers law. 62-A →

3. The members of the commission shall receive no compensation for their services but shall be allowed their actual and necessary expenses incurred in the performance of their duties hereunder.

4. No member of the commission shall be disqualified from holding any other public office or employment, nor shall he or she forfeit any such office or employment by reason of his or her appointment pursuant to this section, notwithstanding the provisions of any general, special or local law, regulation, ordinance or city charter.

* 5. To the maximum extent feasible, the commission 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, commission, agency or public authority of the state or any political subdivision thereof as it may reasonably request to carry out properly its powers and duties pursuant to this section.

* 6. The commission may request, and shall receive, reasonable assistance from state agency personnel as necessary for the performance of its function.

7. The commission shall make a report to the governor, the legislature and the chief judge of the state of its findings, conclusions, determinations and recommendations, if any, not later than the thirty-first of December of the year in

Exhibit A to Petitioners' March 18, 2024 Verified Petition/Complaint [A-115-117]

which the commission is established for judicial compensation and the fifteenth of November the following year for legislative and executive compensation. Any findings, conclusions, determinations and recommendations in the report must be adopted by a majority vote of the commission and findings, conclusions, determinations and recommendations with respect to executive and legislative compensation shall also be supported by at least one member appointed by each appointing authority. Each recommendation made to implement a determination pursuant to section two of this act shall have the force of law, and shall supersede, where appropriate, inconsistent provisions of article 7-B of the judiciary law, section 169 of the executive law, and sections 5 and 5-a of the legislative law, unless modified or abrogated by statute prior to April first of the year as to which such determination applies to judicial compensation and January first of the year as to which such determination applies to legislative and executive compensation.

8. Upon the making of its report as provided in subdivision seven of this section, each commission established pursuant to this section shall be deemed dissolved.

Section 4.

Date of entitlement to salary increase. Notwithstanding the provisions of this act or of any other law, each increase in salary or compensation of any officer or employee provided by this act shall be added to the salary or compensation of such officer or employee at the beginning of that payroll period the first day of which is nearest to the effective date of such increase as provided in this act, or at the beginning of the earlier of two payroll periods the first days of which are nearest but equally near to the effective date of such increase as provided in this act; provided, however, the payment of such salary increase pursuant to this section on a date prior thereto instead of on such effective date, shall not operate to confer any additional salary rights or benefits on such officer or employee. The annual salaries as prescribed pursuant to this act whenever adjusted pursuant to the provisions of this act, shall be rounded up to the nearest multiple of one hundred dollars.

Section 5.

This act shall take effect immediately and shall be deemed to have been in full force and effect on and after April 1, 2015.

LEGISLATIVE LAW §62-A

The chairman, vice-chairman or a majority of a legislative committee may issue a subpoena requiring a person to attend before the committee and be examined in reference to any matter within the scope of the inquiry or investigation being conducted by the committee, and, in a proper case, to bring with him, a book or paper. The provisions of the civil practice law and rules in relation to enforcing obedience to a subpoena lawfully issued by a judge, arbitrator, referee or other person in a matter not arising in an action in a court of record apply to a subpoena issued by a legislative committee as authorized by this section. Any member of a legislative committee may administer an oath to a witness.

Exhibit B to Petitioners' March 18, 2024 Verified Petition/Complaint [A-118-126]

1

1 STATE OF NEW YORK

2 -----X

3 NEW YORK STATE COMMISSION on Legislative, Judicial
4 And Executive Compensation

5 -----X

6 New York City Bar Association

7 42 West 44th

8 New York, New York 10036

9 October 13, 2023

10
11 B E F O R E:

12 EUGENE M. FAHEY, Chair

13 JEREMY S. WEINSTEIN, Commissioner

14 VICTOR A. KOVNER, Commissioner

15 R. NADINE FONTAINE, Commissioner

16 THERESA EGAN, Commissioner

17 HELENE BLANK, Commissioner

18 ROBERT L. MEGNA, Commissioner

19 THERESA L. EGAN, Commissioner

20
21
22 Shanasia Ilgner

23 William Leone

24 Senior Court Reporters

25
sai

Exhibit B to Petitioners' March 18, 2024 Verified Petition/Complaint [A-118-126]

E. Sassower

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1 Our next speaker is Ellen Sassower.

2 MS. SASSOWER: Elena Sassower.

3 MR. FAHEY: Oh, I'm sorry, Elena Sassower, ~~the~~
4 Center for Judicial Accountability. And we have one more
5 speaker after that, Sebastian Doggart.

6 MS. SASSOWER: May I?

7 MR. FAHEY: Sure.

8 MS. BLANK: We'll pass them along ourselves.

9 MS. SASSOWER: We started with the statute, since
10 ~~six~~ ^{seven} of you are lawyers, one, a former judge of the Court
11 of Appeals and --

12 MR. WEINSTEIN: Why don't you speak at the
13 microphone.

14 MS. SASSOWER: Another one, a 25-year jurist. The
15 starting point is always the statute. Since you have power
16 under the legislative law would you like to swear me in to
17 give probative testimony under oath?

18 MR. FAHEY: That won't be necessary.

19 MS. SASSOWER: Well, as I said when I testified ~~in~~ ^{at}
20 past hearings, this hearing has been permeated by fraud by
21 the judges and by the judicial pay raise advocates. And it
22 starts with the statute. So I've handed up the statute,
23 which was enacted through the budget, unconstitutionally, and
24 by fraud, a ground for challenge. But let's start with the
25 language of the statute. ^{Aside} from the fact that you were

Exhibit B to Petitioners' March 18, 2024 Verified Petition/Complaint [A-118-126]

E. Sassower

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1 supposed to be established as of June 1st, months ago, and
2 you held your organizational meeting on October 2nd, *your*
3 charge is adequacy, adequate levels of compensation and non-
4 salary benefits. I refer you to Section 2 paragraph 1. I
5 refer you to Section 2 paragraph 2, A, 1 and 2.

6 Nobody here testified that -- well, inferentially
7 they implied that *their sal-* their salary is not adequate. In order to
8 make that outrageous inference, such as Chief Administrative
9 Judge Zayas, who can't afford to buy a new car, since 2013,
10 and his wife also can't afford -- okay, so what -- none of
11 them identified ~~their~~ salaries that they've been making,
12 that they've been paid.

13 So all of these judges are making upwards of 190,
14 200, 220, \$230,000 a year. They didn't identify their
15 salary. And you didn't identify their salary. Because that
16 salary is obviously -- nobody could look at that salary and say
17 it's not adequate, even in New York City. And of course they
18 don't just get salary, they get compensation. You are
19 ~~Commissioner~~ on Compensation. Compensation is larger than
20 salary, right. Pensions, social security, healthcare,
21 payments, which brings up the package \$20,000 a year?
22 30,000². What is it?

23 You didn't get any testimony about non-salaried ~~Y~~
24 benefits. And when you put forward your materials in
25 connection with your October 2nd organizational meeting you

Exhibit B to Petitioners' March 18, 2024 Verified Petition/Complaint [A-118-126]

E. Sassower

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1 only ^{posted} ~~put~~ them as to salary, knowing that that was a fraud.

2 And you knew that the 2011 report of the Commission on
3 Judicial Compensation and the 2015 report of the Commission
4 on Legislative, Judicial and Executive Compensation on which
5 you are relying and ^{the} pay raise, judicial pay raise advocates
6 and judges are ^{relying} ~~allowed~~ are false instruments.

7 Because none of those commissions, okay, and the
8 other incarnations examined anything but salary, in violation
9 expressly, directly, of the statute requiring examination,
10 evaluation of salary, compensation and non-salaried ^Y benefits
11 clearly, ^{no det-} made no findings, because they couldn't and raise
12 salary. The judges took and have known since 2011 and all
13 government officials in their highest levels have known that
14 these pay raise reports are false instruments, violative of
15 ^{a succession of federal laws} ~~-- appeals~~. They are a larceny of the public fisc, but
16 let's go further.

17 You allowed them to make claims for what they want.
18 They want higher salaries. We all want more money. We all
19 want more money. But that's not your charge, to give them
20 what they think they deserve, what they would like, what
21 they believe they're entitled to. Your charge is adequacy
22 and you haven't even inquired about non-salaried ^Y
23 compensation non-salaried ^{from} benefits, apart of them not
24 identifying them ^{the} identifying the salary figures -- ^{BT}

25 MR. FAHEY: Hold on. Are you okay with that

104

24 There needs to be findings of fact and conclusions
25 of law as to what has been going on. That case is Exhibit A

Exhibit B to Petitioners' March 18, 2024 Verified Petition/Complaint [A-118-126]

E. Sassower

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1 as to the corruption that ^{infests} effects the judiciary at all
2 levels. But I'm also going to leave with you where we're at
3 ^(lifting up other case records) now, B, Exhibit B is the continuation of that case which is
4 Center for Judicial Accountability against ^{JCOPE} Jacob et al and
5 involves among other things complaints that ^{JCOPE} Jacob sat on
6 involving the budget, involving the pay raises,
7 these commissions and over -- within the
8 jurisdiction of ^{JCOPE is} Jacob, the Commissioner on Judicial Conduct,
9 and one of the complaints that ^{JCOPE} Jacob sat on, okay, actually
10 purported to dismiss, was a complaint against Judge Fahey and
11 his brethren on the Court of Appeals for their fraud, for
12 their corruption ^{in Center} incentive for Judicial Accountability
13 against Cuomo, DiFiore. That case is now ^{at} the Appellate
14 Division Third Department.
15 I'm leaving ^{you} you with the appeal brief so you can
16 see, once again, how the judiciary comports itself when the
17 issue is it's self-interest in pay raises and what has been
18 going on. Your duty and you have subpoena power and you
19 must make findings of fact and conclusions of law with
20 respect to the, with what ^{your charge is} you are ~~charging~~ under the
21 statute, and the evidence. And the evidence in these two
22 major cases ^{brought in} broaden the public interest on behalf of the
23 People of the State of New York is wholesale corruption
24 within the judiciary at every level, which is exactly what I
25 said in 2011 when I testified before the Commission on

Exhibit B to Petitioners' March 18, 2024 Verified Petition/Complaint [A-118-126]

E. Sassower

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1 Judicial Compensation, and I said ~~that~~ the judiciary throws
2 cases by fraudulent judicial decisions and I gave the case
3 file evidence at that time, which was the lawsuit ^{brought} ~~broadened~~
4 the public interest on behalf of the People of State of New
5 York against the Commission on Judicial Conduct, which was
6 thrown --

7 MR. FAHEY: Ms. ~~Sassower~~, ms Sassower --

8 MS. SASSOWER: -- by fraudulent judicial decisions
9 going up to the Court of Appeals.

10 MR. FAHEY: ^{slow down.} You've gone 11 minutes. Everybody's
11 ^{Hold on.} got ten minutes. I'm going to give you a minute to wrap up.

12 MS. SASSOWER: Thank you. ^{Thank you}

13 MR. FAHEY: Go ahead.

14 MS. SASSOWER: So I will simply identify what I am
15 leaving you with just as I presented the evidence to your
16 predecessor commissions. I am leaving you with and the
17 original, this is the entire case ^(lifting box with case record) of Center for Judicial Accountability

18 MR. FAHEY: Just leave it there. ^{You don't have to carry it.}

19 MS. SASSOWER: -- against Cuomo, DiFiore, with causes
20 of action as to the unconstitutionality, the fraud, the
21 unlawfulness of what has gone on here with respect to these
22 pay commissions, which you are replicating, duplicating, I'm
23 leaving that with you. The original is at the Court of
24 Appeals, subpoena it. I am leaving you with the appellate
25 record in the lawsuit against ^{JCOPE} Jacob, et al, involving

(lifting it)

Exhibit B to Petitioners' March 18, 2024 Verified Petition/Complaint [A-118-126]

E. Sassower

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1 complaints filed with ~~Jacob~~ ^{SCOPE} involving these commissions,
2 this scheme, the corruption ~~and~~ ^{in the judge} -- involving the attorney
3 general, corrupting the judicial process.

4 ^(brings to the podium another document)
Lastly, I don't want you to believe that the
5 corruption infesting the judiciary is only in cases of
6 magnitude such as the cases that I have here presented. I
7 have a, a independent report that I wrote about a family
8 court case out of Monroe County, a mother called me in
9 distress because her child had been taken away from her.
10 And she begged me to assist her.

11 Without charge I, I examined ^{the record} -- and I wrote a
12 report that was, ^{furnished} first, it's a sealed file. I think you
13 should take a look at what goes on, and you should know this
14 is only the first piece of it. But the corruption involving
15 this report at the family court level, at the Appellate
16 Division Fourth Department from which you come, Chair Fahey,
17 you need to take testimony. You have subpoena power. You
18 need to -- you need to examine the corruption in the
19 judiciary --

20 ^{Ms. Sassower}
MR. FAHEY: I'm going to ask you to wrap it up now.

21 MS. SASSOWER: Thank you.

22 MR. FAHEY: Thank you for your presentation.

23 MS. SASSOWER: Thank you, again, Center for
24 Judicial Accountability, The website is www.judgewatch.org.

25 The documents substantiating my presentation are accessible

Exhibit B to Petitioners' March 18, 2024 Verified Petition/Complaint [A-118-126]

S. Doggart

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1 from the center link entitled New York's ~~Force of Law~~
2 ~~Commissions-Un~~constitutionality and ~~Fraud in Plain Sight~~.

3 MR. FAHEY: Thank you. Our next speaker is
4 Sebastian Doggart, executive director of the families civil
5 liberties union.

6 MR. DOGGART: Good afternoon, I feel a little like
7 a cockroach on a wedding cake here because I think I'm one
8 of the only non attorneys here, I'm not an attorney. I'm a
9 journalist and a filmmaker and the executive director of the
10 family civil liberties union and independent nonpartisan,
11 nonprofit group assisting families across the U.S. who have
12 been damaged by the court system. The application for pay
13 raises for judges should just be, should not just be denied.
14 There should be a complete suspension on any -- to judges
15 against whom there are legitimate complaints and until
16 effective judicial oversight is introduced.

17 Now over the last decade the FCOU has presented
18 ample evidence, at least 15 separate reports to see why the
19 New York Unified Court system is causing untold harm to our
20 families. It has done so to the New York assembly, to the
21 commission on judicial conduct, to the chief judge, to the
22 attorney grievance committee, to the OCA and to the
23 inspector general and nothing has been done. Now, all of
24 you but one of the commissioners are attorneys, all judges,
25 right, and --

COMMISSION ON LEGISLATIVE, JUDICIAL AND EXECUTIVE COMPENSATION

December 4, 2023

The Honorable Kathy Hochul
Governor of the State of New York
State Capitol
Albany, New York 12224

The Honorable President Pro Tem
Majority Leader Andrea Stewart-Cousins
State Capitol Building
Room 330
Albany, New York 12247

The Honorable Carl E. Heastie
Speaker of the New York State Assembly
Legislative Office Building, Room 932
Albany, New York 12248

The Honorable Rowan D. Wilson
Chief Judge of the State of New York
20 Eagle Street
Albany, New York 12207

Dear Governor Hochul, President Pro Tem, Majority Leader Stewart-Cousins, Speaker Heastie and Chief Judge Wilson:

I am pleased to submit this report on behalf of the Commission on Legislative, Judicial and Executive Compensation. Pursuant to Chapter 60 of the Laws of 2015, amended in the Laws of 2019 Chapter 59, Part VVV, this report sets forth the Commission's recommendations with respect to the compensation levels of judges and justices of the State-paid courts of the Unified Court System, fiscal years 2024 to 2027.

The Commission considered a broad range of data, beginning with the factors delineated in Part E of Chapter 60. The Commission held two (2) days of public hearings. All public meetings and hearings were broadcast live over the Internet. The Commission carefully reviewed the public testimony and written submissions received.

Exhibit C to Petitioners' March 18, 2024 Verified Petition/Complaint [R.127-144]

The recommendations of the Commission are based on our understanding of what is fair compensation for the judges of New York State. We believe that our recommendations are supported by the factual record. Most importantly, the Commission relied upon the criteria set out in L. 2015, Ch. 60 Part E§3:

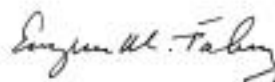
“[t]he Commission shall take into account all appropriate factors including, but not limited to: the overall economic climate; rates of inflation; changes in public-sector spending; the levels of compensation and non-salary benefits received by executive branch officials and legislators of other states and of the federal government; the levels of compensation and non-salary benefits received by professionals in government, academia and private and nonprofit enterprise; and the state’s ability to fund increases in compensation and non-salary benefits”

Further, the Commission reviewed the salary levels and systems of compensation for Federal Court Judges and other State Court Judges.

We believe our Judges are among the best in the nation. The recommended salary levels will help to attract and retain both the diversity and the excellence of the bench to ensure a strong and independent judiciary. This is what the people of New York deserve.

I would like to thank all the members of the Commission for their time, hard work, and dedication that they have given to our mission. As we move forward to the next phase of our responsibilities - determining appropriate levels of legislative and executive compensation - I look forward to working with them.

Respectfully,



Eugene M. Fahey
Chair

COMMISSION ON LEGISLATIVE, JUDICIAL AND EXECUTIVE COMPENSATION

FINAL REPORT ON JUDICIAL COMPENSATION

December 4, 2023

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**MEMBERS OF THE COMMISSION
ON LEGISLATIVE, JUDICIAL AND EXECUTIVE COMPENSATION**

Hon. Eugene M. Fahey (Ret.), Associate Judge of the Court of Appeals (Ret.), is from Buffalo, New York. He attended high school at St. Joseph's Collegiate Institute. Later, he graduated from the State University of New York with a B.A. in political science in 1974 (cum laude), a law degree in 1984 and an M.A. in European History in 1998. Judge Fahey was a member of the Buffalo Common Council from 1978 to 1983 and again from 1988 to 1994. He served as Law Clerk to Judge Edgar C. NeMoyer in the New York Court of Claims before entering private practice in 1985, serving as house counsel for Kemper Insurance Company until 1993. Judge Fahey was elected to Buffalo City Court in 1994.

He was elected to the Supreme Court in 1996, and was re-elected in 2010. As a Supreme Court Justice, Judge Fahey was assigned to handle a civil calendar as well as criminal Special Term and presided over a variety of cases in Erie County as well as the outlying counties in the Eighth Judicial District. He was assigned to the Commercial Division in Erie County in January 2005 until his appointment by Governor George E. Pataki to the Appellate Division, Fourth Department in December 2006. In January 2015, Judge Fahey was nominated to the Court of Appeals by Governor Andrew Cuomo. The New York State Senate unanimously confirmed that nomination on February 9, 2015. In 2021 Judge Fahey retired after reaching the mandatory age of 70. Presently he is an adjunct teacher at S.U.N.Y. at Buffalo School of Law. He and his wife, Colleen Maroney-Fahey live in Buffalo, New York. They are proud parents of Ann B.D. Fahey. Judge Fahey is an appointee of the Chief Judge as Chair of the Commission.

Helene E. Blank, graduated Magna Cum Laude from New York Law School in 1977. She was admitted to practice in New York in February 1978; admitted to practice in the Southern and Eastern Districts in 1980 and admitted to Practice before the Supreme Court of the United States in 1984.

She has been a litigator for most of her career. She has tried major personal injury lawsuits for both plaintiffs and defendants. Over the years, she has expanded her practice involving commercial and real estate matters as well as representing other attorneys in various matters affecting their practices. She has been appointed as a Receiver by Judges in both Kings County and New York.

She is presently a member of the OCA advisory panel on civil practice and has been on that panel for more than a decade. She has written and helped to write revisions of legislation and new legislation affecting civil practice in our Courts.

She was the President of the Brooklyn Women's Bar Association; member of the NYSBA civil practice committee; founding Member of the Brooklyn Women's Bar Foundation and helped establish a scholarship in the name of former associate justice of the appellate division and now corporation counsel Sylvia Hinds Radix; Board of Directors of New York State Trial Lawyers and a Dean of the New York State Trial Lawyers Institute, which oversees and directs its CLE programs. She was the President of the Kings County Inns of Court and one of its founding members; she has been the President of the Metropolitan Women's Bar Association; member of the New York State Bar Association, The New York State Women's Bar Association, The Jewish Lawyers Guild, the Brooklyn Bar Association, the Brooklyn Women's Bar Association, and The Brooklyn Chamber of

Exhibit C to Petitioners' March 18, 2024 Verified Petition/Complaint [R.127-144]

Commerce. As an attorney, she has been on numerous Office of Court Administration (OCA) committees. She has lectured for the New York State Supreme Court Judges Association, taught classes for Newly Elected Judges, lectured to Judges of the Civil Court of the City of New York and lectured for the following organizations; the State Bar, the Brooklyn Bar, New York County Lawyers, The Association of the Bar of the City of New York, the New York State Trial Lawyers Institute and the Columbian Lawyers. She has been appointed by various organizations to be their representative on Judicial Screening panels. She is the recipient of awards from the New York State Bar, the Brooklyn Women's Bar and the Civil Court Judges of Brooklyn. Ms. Blank is an appointee of the Chief Judge.

Theresa L. Egan, started her career as an attorney in 1987 with a small general practice law firm in Albany, and in November 1997 was elected the first woman Town Judge in town history. After 7 years on the bench, Terri was elected the first Democratic Town of Bethlehem Supervisor in over 130 years.

In April of 2007, she started her career with State government as a Deputy Commissioner for the Department of Motor Vehicles, and was promoted to Executive Deputy Commissioner and acting Commissioner of the DMV in 2015. While at DMV, she managed agency policy and oversaw all phases of operations of an agency which generated more than \$2 billion annually and had nearly 3,000 staff.

In October of 2020, she was asked to apply her operational abilities to assist the Department of Health during COVID managing all "people, places and money" and then retired from State service in October 2021.

Since her retirement, Terri has been serving as the President of Bethlehem Chamber of Commerce since July 2022, working with nearly 400 businesses to promote a robust business community within her home town and surrounding areas.

Terri has found that to be successful, throughout all of her endeavors, one must engage stakeholders to fully understand different perspectives, focusing on facts not rhetoric, and plainly communicate information, often and respectfully, through many channels. Ms. Egan is an appointee of the New York Assembly Speaker.

R. Nadine Fontaine, General Counsel to the Dormitory Authority of the State of New York, a statewide construction and financing public authority with a construction portfolio of over 1,000 projects valued at approximately \$9 billion, conduit debt bond issuer of approximately \$60 billion in bonds and notes, and other statutory program administration responsibilities. As DASNY's Chief Legal Officer, she is responsible for the management and oversight of all activities of the DASNY's Counsel's Office, which also includes oversight of the Office of Professional Integrity, Office of Diversity & Inclusion, and the FOIL, Ethics, and the Real Property Divisions.

Ms. Fontaine has over twenty-nine years of combined legal experience, including litigation of complex commercial disputes in both state and federal courts and extensive governmental experience. She most recently served as the First Assistant Counsel to the Governor overseeing a team of assistant counsels, agency/authority general counsels and other legal team members. Prior thereto, she served

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as the Assistant Counsel to the Governor for Economic Development, Public Finance & Procurement and the Assistant Counsel for Human Services. She holds a Bachelor of Arts degree in Social Sciences/Health & Society from the State University of New York at Stony Brook University and a Juris Doctor degree from Pace University School of Law. Ms. Fontaine is an appointee of the Governor.

Victor A. Kovner, Senior Counsel to Davis Wright Tremaine, where he has practiced law since that firm merged with his prior firm Lankenau Kovner. In 1990-1, he was the Corporation Counsel of the City of New York under Mayor David N. Dinkins. He has served as Chair of the Committee on the Judiciary and as Secretary of the New York City Bar Association. Pursuant to appointments by Governors Hugh L. Carey and Mario M. Cuomo, he served on the New York State Commission on Judicial Conduct from 1976 to 1990, concluding as the Commission's Chair.

He has been a member of the Board of Trustees of the Fund for Modern Courts from 1970 to the present, and was the Fund's chair for four years roughly a decade ago. While Chair of the Fund, he helped draft and advocate for the legislation signed by Governor Paterson in 2010 creating the first Commission on Judicial Compensation.

He has specialized in First Amendment Law, and for two decades was on the faculty of the annual Communications Law Seminar of the Practising Law Institute. Pursuant to appointment of President William J. Clinton, he was for eight years on the President's Commission on White House Fellowships. In recent years, he has served as the Trustee of the Liz Claiborne and Art Ortenberg Foundation, which supports community based wildlife preservation in many parts of the world. Mr. Kovner is an appointee of the Governor.

Robert Megna, President of the Rockefeller Institute of Government. Mr. Megna previously served as senior vice chancellor and chief operating officer of SUNY System Administration. In that role, he oversaw the operations of the chief information officer, the State University of New York (SUNY) Plaza business functions, capital facilities, campus energy management, and the Charter School Institute.

He joined SUNY System Administration from Stony Brook University, serving as senior vice president for finance and administration. Prior to joining Stony Brook, he served as executive director of the New York State Thruway Authority and New York State Canal Corporation.

Mr. Megna served as budget director for New York State Division of the Budget (DOB), during which time the state achieved its highest financial rating in 40 years from three major credit rating agencies and passed four on-time budgets for the first time since the 1970s. Mr. Megna has also served as commissioner for New York State Department of Taxation and Finance, assistant commissioner of the office of tax policy at the Virginia Department of Taxation, and director of tax studies at the New York State Department of Taxation and Finance.

Mr. Megna earned an M.S. in economics from the London School of Economics and Political Science at the University of London and received his B.A. in Economics and M.P.A. from Fordham University. Mr. Megna is an appointee of the Governor.

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Hon. Jeremy S. Weinstein (Ret.), he was born in New York City and is a graduate of Jamaica High School, York College of the City University of New York (where he was elected the first president of the school's student body), and Brooklyn Law School. He was admitted to the New York State Bar in March 1975.

Judge Weinstein served in 1975 and 1976 as a Deputy Assistant Attorney General of the State of New York. From 1976 until his election to the State Senate, he was an Associate Counsel to the Speaker of the New York State Assembly. He has been a member of his local community planning board in Queens and a member of many civic, fraternal and religious organizations. He has also served as an Adjunct Professor of Political Science at York College of the City University of New York.

In November 1978, he was elected a member of the New York State Senate. He served in the Senate from 1979 to 1992. In 1985, Senator Weinstein was appointed the Assistant Minority Whip, and in 1986 he was elevated to the position of Minority Whip. In 1991, he was further promoted to Assistant Minority Leader - Floor Operations. During his 14 years in the New York State Senate, then Senator Weinstein served on the Judiciary Committee, the Codes Committee, the Banking Committee, and the Crime and Corrections Committee. Senator Weinstein served as ranking member of the Crime and Corrections Committee and Chair of the Senate Democratic Task Force on Crime and sponsored numerous bills dealing with parole, probation, civil practice and the judiciary.

Judge Weinstein maintained a private practice of law until his election in 1993 as a Judge of the Civil Court of the City of New York. In January 1997, Judge Weinstein was appointed an Acting Supreme Court Justice, and the Supervising Judge of the Queens Civil Court. In November 1999, Judge Weinstein was elected a Justice of Queens Supreme Court.

In March 2007, Judge Weinstein was appointed as the Administrative Judge of Queens Supreme Court, Civil Term. From January 2008 through March 2009, he was also appointed Acting Administrative Judge of Queens Supreme Court, Criminal Term, along with his duties in Civil Term. In March 2009, he was appointed Administrative Judge for Civil Matters in the Eleventh Judicial District.

Judge Weinstein is currently a Neutral with National Arbitration and Mediation. Judge Weinstein is an appointee of the President Pro Tem of the Senate.

INTRODUCTION

The judiciary of New York State has a long and distinguished history. Our judges draw on the character and minds of jurists as varied as John Jay, Benjamin N. Cardozo, Irving Lehman, Stanley Fuld, and Charles Breitel. When Judge Cardozo passed, Judge Learned Hand stated “he was a great judge because he successfully reconciled the letter with the spirit of the law” (from the World of Benjamin Cardozo by Richard Pollenberg p. 240).

This spirit runs through to our current judges. We see it in our recent Chief Judges Judith Kaye and Jonathan Lippman through to our current Chief Judge Rowan D. Wilson. As New Yorkers, we expect the best from our legal system. It is one of the largest and the busiest in the world. In 2022, there were 2.1 million new cases filed in our courts (civil-criminal-family court). New York had more than twice the number of filings as the entire federal court system.¹

To fairly and efficiently provide justice to the people of the state, we need to ensure that our judges have the support and the resources they need to do the job. Part of that requires that they be properly compensated for the job we are asking them to do.

They have not seen any increase in pay for four and a half years. During this time the Federal Judiciary has seen a continuous rise in compensation. When compared to the judiciary of other states, New York is ranked ninth, behind Illinois, District of Columbia, California, Rhode Island, Washington, Hawaii, South Carolina and Pennsylvania. The buying power of a judge’s salary is now 20% less than it was in 2019. During this same time period, the other branches of New York government have received well-deserved pay raises. The same is true of employees whose pay is set by collective bargaining.

The Commission recognizes these realities. Our goal is to responsibly address these issues.

¹see uscourts.gov/federaljudicialcaseload 775,585 filings - statistics - 2022

STATUTORY MANDATE

In March of 2015, Part E of chapter 60 of the Laws of 2015 was enacted, providing for a quadrennial commission to “examine, evaluate and make recommendations with respect to adequate levels of compensation and non-salary benefits” for judges, members of the Legislature and certain Statewide elected officials and Executive Branch officers named in Executive Law § 169. The Commission is charged, first, with issuing “findings, conclusions, determinations and recommendations” to the Governor, the Legislature and the Chief Judge with regard to judicial compensation, by December 31, 2023. A separate report, relating to legislative and executive compensation, is due by November 15, 2024.

Chapter 60 sets forth a number of factors to guide the Commission’s work of determining appropriate judicial salary levels, including, but not limited to, the overall economic climate in New York; rates of inflation; changes in public sector spending; levels of compensation and non-salary benefits received by professionals in government, academia and private and nonprofit enterprise; and the state’s ability to fund increases in compensation.

The Commission is authorized to recommend adjustments in judicial salary levels during the four state fiscal years commencing on April 1, 2024. Pursuant to chapter 60, each recommendation of the Commission for a salary adjustment carries the force of law as of April 1st of the year for which the adjustment has been recommended, unless sooner modified or abrogated by statute.

As prescribed in chapter 60, the Commission consists of seven members appointed by the leaders of all three branches of New York State government. Three members are appointed by the Governor; two (including the Chair) by the Chief Judge; and one each by the President Pro Tem of the Senate and the Speaker of the Assembly. The findings and recommendations require a majority vote but they must also be supported “by at least one member appointed by each appointing authority.” The Commission’s Chair shall preside but not vote on matters relating to legislative and executive compensation.

The Commission may recommend up to two adjustments in legislative and executive salary levels, each commencing on January first, following a November general election of members of the Legislature. The Commission is deemed dissolved following issuance of the report due no later than November 15, 2024.

In furtherance of its statutory mission, the Commission held public meetings in New York City. It also held two days of public hearings; one on October 13, 2023 in New York City and one on October 31, 2023 in Albany. A total of 31 witnesses testified at the hearings. The public hearings and meetings were televised live on the Internet.

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In addition, the Commission invited written commentary and established post office and email addresses (nyscompensation@gmail.com) through which it received 30 written submissions from judicial associations, bar associations, good government groups, and other interested individuals and organizations. The witness lists, written submissions and other information about the work of the Commission including transcripts and videos of the Commission's public hearings and meetings, are all available on the website at: www.nyscommissiononcompensation.org.

FINDINGS

- 1) Since 1977 the State has assumed the funding of all the courts of the Unified Court System. At that time the State took full responsibility for the costs of all courts, other than town and village courts. Judges were moved from local payrolls to the State payroll.

The adjustment of salaries over the past fifty-six years has a long, and sometimes tortured, history. Since consolidation under State government, pay raises have been addressed ten times. While the issue has come up regularly, there have been significant time periods during which no raises were granted. The longest period of no increase was from February 1999 to March 2012, covering thirteen years. Since 2012, there has been one approved pay increase, in 2015. This took effect in 2016 for a four year period.²

The arbitrary manner by which judicial pay raises were addressed led to the creation of a Commission system by the Legislature. While this process has not always resulted in pay adjustments, it has guaranteed that the issue will be consistently addressed.

- 2) The inflation rate since 2019 has significantly eroded the purchasing power of all salaries. One dollar (\$1.00) in 2019 is equivalent to about a \$1.20 today, an increase of .20 over four (4) years. During this period, the dollar had an average inflation rate of 4.74% per year between 2019 and today. This has produced a cumulative price increase of 20.34% since the last time the Commission met.³

²see OCA Submission to 2023 Commission on Legislative Judicial & Executive Compensation - pp 8-9

³see Raw data comes from the Bureau of Labor Statistics, Consumer Price Index

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- 3) The erosion of the value of the salaries of State employees not covered by negotiated contracts is one of the reasons that the Commission was created. Nonetheless, well-deserved raises have recently been approved. Collective bargaining agreements have resulted in pay increases for State employees that will amount to almost 14% through April 2025. New York's Governor and Legislators have also received recent raises.
- 4) Further, the Commission specifically reviewed available data on current salaries for federal and other state judges.

New York ranks 12th among state courts of general jurisdiction, when adjusted for the cost of living index. It ranks 9th unadjusted. The first eight states are as follows:⁴

1.	Illinois	\$234,380
2.	District of Columbia	\$232,600
3.	California	\$231,174
4.	Rhode Island	\$223,031
5.	Washington	\$217,391
6.	Hawaii	\$215,100
7.	South Carolina	\$212,987
8.	Pennsylvania	\$212,495
9.	New York	\$210,900

Federal District Court judges currently earn \$232,600 per year. Since (*Beer v. U.S.*, 696 F.3d 1174 [Fed. Cir. 2012] *cert. denied* 133 S. Ct. [1997]) held that denial of cost-of-living adjustments violated the Compensation Clause and negated subsequent actions that barred judges from receiving additional compensation. In *Barker v. US* No.12-826 this claim (Fed. Cl filed 11-30-2012) was applied to all Article III Judges. They have

⁴see National Center for State Courts (2023)

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received cost-of-living adjustments provided to all federal government employees per Executive Order No. 13655.

- 5) Prior Commissions have drawn a connection between the ability to support a “strong well- qualified judiciary and a healthy state economy.”⁵ We endorse that prior finding.

The recognition of the reliance of New York’s business community on the state court’s ability to adjudicate complex commercial litigation is an important factor in deciding to do business here.

In order to maintain a judicial system worthy of New York’s status as one of the economic and cultural leaders in the world, we must attract lawyers to the bench that have the skill and experience to support that system.

- 6) The Commission Statute in its current form (L. 2019, Ch. 59, Part VVV and L. 2015, Ch. 60, Part E) provides the guidance necessary to fulfill our responsibilities by enumerating six factors to consider:

- the overall economic climate
- rates of inflation
- changes in public sector spending
- levels of compensation and non-salary benefits received by Executive Branch officials and legislators of other states and the Federal government
- levels of compensation and non-salary benefits received by professionals in government, academia, and private and non-profit enterprise
- the State’s ability to fund increases in compensation and non-salary benefits

⁵see Commission on Legislative, Judicial & Executive Report (December 2015 p. 7)

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- 7) The Commission finds that:
- A) The overall economic climate is strong:
- Nationally - there has been 33 consecutive months of job growth; 13.9 million new jobs since January 2021; the unemployment rate is 3.8% , below 4% for 20 months; and the largest share of workers in the workforce in 20 years.⁶
 - New York - 93% of jobs lost in the early pandemic have been recovered; unemployment is at 4% - down from 6% two years ago; labor force participation increased to 61.6% in September 2023.⁷
- B) Inflation Rate - Previously Discussed (See No. 2)
- C) Public Sector spending has increased faster than inflation -All Funds spending increased 33.4% from 2019-2020 to 2023-2024, from \$172 billion to \$229.4 billion. While these facts are not dispositive, they do show consistent upward trend in State revenue.⁸
- D) Comparable Salaries of other state and federal judges - Previously Discussed (See No. 4)
- E) Salaries of Professionals in government, academia, private and non-profit sectors greatly exceed judicial salaries.

⁶see OCA submission p. 10; Footnote 37

⁷see OCA submission p. 10; Footnote 38

⁸see OCA submission p. 11; Footnotes 43, 44 and 45

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- Below is a sampling from the hearing submission of the Office of Court Administration.⁹

New York City

Administrative Law Judge (Chief), Office of Administrative Trials and Hearings.....	\$227,786
Corporation Counsel.....	\$243,272
Director, Mayor's Office of Criminal Justice.....	\$227,786
Counsel to the Mayor.....	\$251,982
Commissioner, Mayor's Office to End Domestic and Gender-Based Violence.....	\$227,786
District Attorneys within New York City.....	\$212,800
New York City Commissioners.....	\$243,171
Chancellor, NYC Department of Education.....	\$363,346

Academia and Public Education

In New York, the salary range for a law school dean falls between \$326,811 and \$438,771, with the average salary equaling \$375,520.

The CUNY Chancellor's salary is \$670,000 and CUNY's General Counsel earns \$389,075.

SUNY's Chancellor's salary is \$750,000.

Many public-school administrators across the State earn significantly more than judges.

According to a 2022 survey, the average compensation for large law firm partners in New York City was over \$1.8 million.

⁹see OCA submission pp. 12-13

Non-Profit Sector

The average salary for a CEO of a not-for-profit in New York State is around \$200,000.

- 8) Ability to Fund - The main point is that the expense is minimal. This request is just 1% of the Judiciary's total budget and .028% of the State's general fund budget.

CONCLUSIONS

The Commission on Legislative, Judicial and Executive Compensation on November 13, 2023 unanimously approved changes to judicial salaries as outlined below:

- 1) Effective April 1, 2024, New York State Supreme Court Justices shall receive an annual salary of \$232,600.
- 2) The salaries of all other state judges (including Appellate and Administrative judges) shall be adjusted to reflect their present proportion to the salary of State Supreme Court Justices effective April 1, 2024.
- 3) Except that no County Court Judge, Family Court Judge or Surrogate's Court Judge shall earn less than 95% of a Supreme Court Justice's salary. Any such judicial position now being paid a percentage of a Supreme Court Justice's salary that is greater than 95% shall continue to be paid at that same percentage.
- 4) Judges of the New York City Civil Court, the New York City Criminal Court, District Court, Housing Court of New York City Civil Court and full-time City Court Judges (outside of New York City), shall earn 93% of a Supreme Court Justice's salary. Part-time City Court Judges shall earn the same proportion of the salaries of the full-time City Court Judges that they now earn.
- 5) Effective April 1, 2026, all judges will receive a salary increase of 2% of their April 1, 2024 salary.

STATE OF NEW YORK

~~Exhibit D to Petitioners' March 18, 2024 Verified Petition/Complaint [R-145-147]~~

S. 8301

A. 8801

SENATE - ASSEMBLY

January 16, 2024

IN SENATE -- A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

IN ASSEMBLY -- A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution -- read once and referred to the Committee on Ways and Means

AN ACT making appropriations for the support of government

(LEGISLATURE AND JUDICIARY BUDGET)

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The several amounts named in this section or so much thereof as shall be sufficient to accomplish the purposes designated by the
2 appropriations, are hereby appropriated and authorized to be paid as
3 hereinafter provided, to the respective public officers and for the
4 fiscal year beginning April 1, 2024.
5

6 GENERAL FUND / STATE OPERATIONS
7 STATE PURPOSES ACCOUNT

8 THE LEGISLATURE

9 OFFICE OF THE LIEUTENANT GOVERNOR

10 ADMINISTRATION PROGRAM 334,537
11

12 PERSONAL SERVICE

13 Personal service-regular 319,902
14

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [] is old law to be omitted.



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R.145

18

Exhibit D to Petitioners' March 18, 2024 Verified Petition/Complaint [R-145-147]

LEGISLATURE AND JUDICIARY 2024-25

1	Amount available for nonpersonal service	114,296
2		-----
3	Program fund subtotal	1,605,349
4		-----
5	Special Revenue Funds - Other / State Operations	
6	Judiciary Data Processing Offset Fund	
7	PERSONAL SERVICE	
8	Personal service - regular	3,558,434
9	Personal services - holiday / overtime	
10	compensation	19,000
11		-----
12	Amount available for personal service	3,577,434
13		-----
14	Program fund subtotal	3,577,434
15		-----
16	Special Revenue Funds - Other / State Operations	
17	Court Facilities Incentive Aid Fund	
18	PERSONAL SERVICE	
19	Personal service - regular	1,294,962
20		-----
21	Amount available for personal service	1,294,962
22		-----
23	NONPERSONAL SERVICE	
24	Supplies and Materials	4,500
25	Travel	2,500
26	Contractual Services	3,608
27		-----
28	Amount available for nonpersonal service	10,608
29		-----
30	Program fund subtotal	1,305,570
31		-----
32	JUDICIARY-WIDE MAINTENANCE UNDISTRIBUTED	34,600,000
33		-----
34	General Fund - State Operations	
35	State Purposes Account	
36	For expenses necessary to implement the	
37	recommendations of the commission on	
38	legislative, judicial and executive	
39	compensation pursuant to chapter 60 of the	
40	Laws of 2015, as amended by Part WW of	
41	chapter 55 of the Laws of 2020, for	
42	adjustment of the salaries of judges and	



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19

Exhibit D to Petitioners' March 18, 2024 Verified Petition/Complaint [R-145-147]

LEGISLATURE AND JUDICIARY 2024-25

1 justices of the unified court system
2 effective April 1, 2024.

3 PERSONAL SERVICE

4 Personal service - regular 34,600,000

5

6 Program account subtotal 34,600,000

7

8 LAWYERS' FUND FOR CLIENT PROTECTION 10,824,866

9

10 Special Revenue Funds - Other / State Operations

11 Lawyers' Fund for Client Protection of the State of New

12 York

13 For expenses associated with the operation

14 of the Lawyers' Fund for Client Protection

15 of the State of New York; provided that,

16 notwithstanding any other provision of law

17 to the contrary, and in accordance with

18 section 4 of the state finance law, the

19 state comptroller is hereby authorized and

20 directed to transfer, upon the request of

21 the chief administrator of the courts, up

22 to \$3,750,000 from the Special Revenue

23 Funds - Other / State Operations Attorney

24 Licensing Fund to the Lawyers' Fund for

25 Client Protection of the State of New York

26 on or before March 31, 2025.

27 PERSONAL SERVICE

28 Personal service - regular 680,636

29

30 Amount available for personal service 680,636

31

32 NONPERSONAL SERVICE

33 Supplies and Materials 17,500

34 Travel 18,000

35 Contractual Services 10,108,730

36

37 Amount available for nonpersonal service 10,144,230

38

39 Program fund subtotal 10,824,866

40



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R.147

CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101
White Plains, New York 10602

Tel. (914) 421-1200

E-Mail: mail@judgewatch.org
Website: www.judgewatch.org

January 18, 2024

Holding Government Accountable – The People Fight Back!

**OPPOSITION REPORT TO THE DECEMBER 4, 2023 FINAL REPORT
ON JUDICIAL COMPENSATION OF THE (3rd) COMMISSION ON LEGISLATIVE,
JUDICIAL AND EXECUTIVE COMPENSATION**

Presented to:

**Governor Kathy Hochul & Lieutenant Governor Antonio Delgado
All Senators: c/o Senate Leaders Andrea Stewart-Cousins & Robert Ort
All Assembly Members: c/o Assembly Leaders Carl Heastie & William Barclay
Chief Judge Rowan Wilson & Chief Administrative Judge Joseph Zayas, Etc.
Attorney General Letitia James & Comptroller Thomas DiNapoli**

To Assist Your Discharge of Constitutional & Oversight Responsibilities:

- (1) to void the Commission's "force of law" December 4, 2023 Final Report on Judicial Compensation because it is statutorily-violative, fraudulent, and unconstitutional – and striking the \$34.6 million appropriation for judicial salary increases from the Governor's Legislative/Judiciary Budget Bill #S.8301/A.8801;**
- (2) to refer the Commission's seven members for criminal prosecution – and for Attorney General James to herself bring such prosecution – based on penal law violations including:**

Penal Law §175.35: "Offering a false instrument for filing in the first degree";

Penal Law §195: "Official misconduct";

Penal Law §105.15: "Conspiracy in the second degree";

Penal Law §20.00: "Criminal liability for conduct of another";

Penal Law Article 496: "PUBLIC TRUST ACT"

§496.06: "Public corruption";

§496.05: "Corrupting the government in the first degree";

- (3) to hold hearings on the corruption in New York's judiciary to which the three judicial pay raise opponents attested, with evidence – involving the corruption of the Commission on Judicial Conduct, the Appellate Division attorney grievance committees, and the OCA Inspector General.**

Written & Sworn to be True by:



Elena Ruth Sassower, Director

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“...if we’re just weighing the evidence here today, there would be nothing to discuss really.
It would be easy because there is only evidence on one side.”
(Chair Fahey, Oct 31 Tr. 113)

“I think the testimony that we received by just about everybody,
minus, I think, three individuals that had testified provided overwhelming evidence
in regard to the state of the judiciary now, as well as really what their desires are going forward.”
(Commissioner Egan, Nov 4 Tr. 7-8)

“I want to say doing this confirms and vindicates the widespread judgment
that the New York State Judiciary is the premier state judiciary around the nation.
We ought to as a society recognize it appropriately.”
(Commissioner Kovner, Nov 13 Tr. 11-12)

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* Dedicated to my beloved father, [George Sassower, ESQ.](#), a legal giant and patriot, on this, the fifth anniversary of his last day of work, a full day’s work at his computer, battling judicial corruption and its enablers – Friday, January 18, 2019.

INTRODUCTION

The [December 4, 2023 Final Report on Judicial Compensation](#) of New York's third incarnation of its Commission on Legislative, Judicial and Executive Compensation is a fraud on the People of the State of New York and a grand larceny of taxpayer monies by its judicial pay raise "Conclusions", if these are deemed to be its "force of law" "recommendations".

This is readily proven. It requires nothing more than comparing the paltry Report to the statute pursuant to which it purports to be rendered – [Part E, Chapter 60 of the Laws of 2015](#) – to establish its facial statutory violations, mandating its voiding, as a matter of law. Such violations – "replicating, duplicating" those of the prior "force of law" compensation commission and committee Reports, each "false instruments"¹ – were anticipated by [CJA's testimony at the Commission's October 13, 2023 hearing](#),² itself preceded by [CJA's October 12, 2023 letter to the Commission](#) entitled "'History', Your Website – & Prepping for Tomorrow's Hearing".

The Commission's Report makes no mention of CJA's October 13th testimony and October 12th letter, let alone findings of fact and conclusions of law pertaining to them, as for instance, as identified by CJA in testifying,

- that the threshold and most important unenumerated "appropriate factor" that the statute requires the Commission to "take into account" is "whether judges are doing their job"; and
- that New York's judiciary is not "doing its job", but is "pervasively, systemically, corrupt at trial, appellate, supervisory levels", "throw[ing] cases by fraudulent judicial decisions", as evidentiarily established by:
 - *CJA v. Cuomo...DiFiore*, challenging, *inter alia*, the constitutionality of Part E, Chapter 60 of the Laws of 2015 and seeking to void the "false instrument" December 24, 2015 Report of the (1st) Commission on Legislative, Judicial and Executive Compensation and the "false

¹ Most relevant of these "force of law" Reports:

- the [August 29, 2011 Report of the Commission on Judicial Compensation](#), whose statutory violations, fraud, and unconstitutionality were particularized by [CJA's October 27, 2011 Opposition Report](#) and then expanded upon and embodied in causes of action by [CJA's March 30, 2012 verified complaint](#) in its declaratory judgment action, *CJA v. Cuomo...Lippman*;
- the [December 24, 2015 Report on Judicial Compensation of the \(1st\) Commission on Legislative, Judicial and Executive Compensation](#), whose statutory violations, fraud and unconstitutionality were summarized by [CJA's December 31, 2015 letter to then Chief Judge Nominee Janet DiFiore](#), thereafter expanded upon and embodied in causes of action by [CJA's March 23, 2016 verified second supplemental complaint](#) in its 1st citizen-taxpayer action, *CJA v. Cuomo, et al.*, and by the [September 2, 2016 verified complaint](#) in its 2nd citizen-taxpayer action, *CJA v. Cuomo...DiFiore*.

² The hyperlink is to the transcript excerpt of CJA's testimony (pp. 101-108). CJA's webpage for the October 13, 2023 hearing, posting the [VIDEO](#) and the documents handed up to the Commission, is [here](#).

instrument” August 29, 2011 Report of the Commission on Judicial Compensation – “thrown” by fraudulent judicial decisions up to the Court of Appeals, on which was then sitting, as associate judges, Commission Chair Eugene Fahey and now Court of Appeals Chief Judge Rowan Wilson – designated **EXHIBIT A**;

- ***CJA v. JCOPE, et al.***, which is “where we’re at now”, being “the continuation of *CJA v. Cuomo...DiFiore*” involving complaints based thereon and related thereto, including against “Judge Fahey and his brethren on the Court of Appeals”, whose judicial odyssey establishes “once again, how the judiciary comports itself when the issue is its self-interest in pay raises and what has been going on”, presently at the Appellate Division, Third Department – designated **EXHIBIT B**;
- **CJA’s lawsuit against the Commission on Judicial Conduct**, identified as having been furnished, in 2011, to the Commission on Judicial Compensation to substantiate CJA’s assertion, “at that time”, that “the judiciary throws cases by fraudulent judicial decisions”, itself “thrown by fraudulent decisions going up to the Court of Appeals”;
- **CJA’s Independent Expert Report pertaining to a sealed Family Court case from Monroe County**, identified as establishing that the judiciary’s corruption is not just “in cases of magnitude” and that it was “only the first piece” whose continuation involves the Appellate Division, Fourth Department.

As to all of these, CJA stressed, repeatedly, by its testimony, the necessity of investigation by the Commission, with findings of fact and conclusions of law and utilizing its subpoena power ([Tr. 104, 105, 106, 107](#)) – none of which was done.

The Commission’s Report likewise conceals, without mention, CJA’s three post-hearing submissions, furnishing the Commission with further evidence, and “in real time”, of the judiciary’s corruption involving the Commission on Judicial Conduct, the Appellate Division attorney grievance committees, the OCA Inspector General, and supervisory and administrative judges, headed by Chief Administrative Judge Joseph Zayas – the Commission’s first witness at the October 13th hearing:

- [CJA’s October 16, 2023 e-mail](#) entitled: “Furnishing the Commission on Legislative, Judicial & Executive Compensation with EVIDENCE, in real time, as to how the AD-1 Attorney Grievance Committee & OCA Inspector General Operate – AD-1 justices & OCA admin judges with respect thereto”;
- [CJA’s October 25, 2023 e-mail](#) entitled: “Monroe County Family & Supreme Courts & Fourth Dept Appellate Division – Follow-up to Testimony at Oct 13th Hearing of the Commission on Legislative, Judicial & Executive Compensation” – and [CJA’s October 26, 2023 e-mail](#) relating thereto entitled “The Unified Court

System's policy of uniformity for attorney disciplinary matters – to which the attorney grievance committees of the Appellate Division, Fourth Dept. have excepted themselves”.

These post-hearing submissions – to which the sole response was an acknowledgment from the Commission on Judicial Conduct to the second – are, additionally, not posted on the Commission's mishmash, a-chronological [webpage of “Submissions on Judicial Compensation”](#), which also does not post CJA's six FOIL requests to the Commission, not even [the first](#) which CJA handed up to each of the seven commissioners at the October 13th hearing, with four other documents, also not posted.³ To no avail, [on November 7th, CJA sent the Commission an inventory](#) of what it had furnished, asking that it be posted as “Inventory of Center for Judicial Accountability Submissions: Oct 12-Nov 6”.

CJA's website, www.judgewatch.org, posts everything in chronological sequence:⁴ CJA's written submissions,⁵ FOIL requests,⁶ the VIDEOS and transcripts of the Commission's meetings and

³ The five documents contained in seven sets for the seven commissioners consisted of:

- (1) [Part E, Chapter 60 of the Laws of 2015, with Legislative Law §62-A;](#)
- (2) [CJA's October 10, 2023 FOIL request](#) – “Appointments & Oaths of Office of the 7 Commissioners of the Commission on Legislative, Judicial & Executive Compensation, as Required by Public Officers Law §8 & §10, & Website & Other Info”;
- (3) [CJA's November 25, 2019 letter to Chief Administrative Judge Lawrence Marks](#) – “Demand that You Withdraw Your Unsworn November 4, 2019 Testimony before the Commission on Legislative, Judicial and Executive Compensation as FRAUD, as Likewise Your Submission on which it was Based, Absent Your Denying or Disputing the Accuracy of My Sworn Testimony”;
- (4) [CJA's August 29, 2023 letter to the Commission on Judicial Conduct](#) – “Request for Substantiation & Reconsideration...CJA's February 23, 2023 conflict-of-interest corruption complaint ... – CJA v. JCOPE et al (Albany Co. #904235-22)”;
- (5) [The New York Law Journal's front-page June 13, 2022 article](#) – “*Citizens' Groups Seeks to Void Repeal And Replacement of NY Ethics Watchdog*”, inscribed with CJA's homepage link for CJA v. JCOPE, et al.

⁴ See, the prominent homepage center link “[NY's Force of Law Commissions – Unconstitutionality & Fraud IN PLAIN SIGHT](#)”, identified by CJA in testifying (Tr. 108). The direct link for CJA's chronological webpage for the 2023 Commission is: <https://www.judgewatch.org/web-pages/searching-nys/force-of-law-commissions/part-e-chapter60-laws-2015/2023-24/3rd-commission-leg-jud-exec-compensation.htm> – and it culminates in a webpage for this Opposition Report, [here](#).

⁵ Because the Independent Expert Report pertains to a sealed Monroe County Family Court case, it and what occurred thereafter, recited by CJA's October 25, 2023 complaint, are posted on a publicly inaccessible webpage, [here](#).

⁶ The FOIL requests to the Commission additionally have their own separate webpage, [here](#).

hearings – and the written submissions of the two other non-lawyer citizen-witnesses who, like CJA’s director, Elena Sassower, testified in opposition to judicial pay raises, based on evidence of corruption within the judiciary:

- Sebastian Doggart, executive director of the New York Families Civil Liberties Union, the last witness to testify at the [October 13th hearing](#) ([Tr. 108-114](#)), following CJA’s testimony – and who substantiated his oral testimony with an “[Independent Report on Corruption and Waste in the Court System in 2023](#)” for the Commission’s investigation – and which itself stated:

“The report begins with a survey of the judges who have most egregiously failed to perform their constitutional and statutory duties over the last few years. The report then documents the agencies which have facilitated, and benefited from widespread judicial misconduct. In the interests of our children and families – and of the citizenry that pays their lofty salaries – they all need to be investigated, audited, and removed from the public payroll.” ([Independent Report, at p. 1](#)).

- Robert L. Schulz, founder and chairman of We, The People Foundation for Constitutional Education, the last witness to testify at the [October 31st hearing](#), whose testimony ([Tr. 83-96](#)) pertaining to “judicial repeal” of provisions of the New York State Constitution by New York’s judiciary, colluding in violations of the State Constitution by the executive and legislative branches,⁷ was particularized by an [inventory of 22 civil cases](#) he had

⁷ Mr. Schulz similarly testified on November 30, 2015 before the (1st) the Commission on Legislative, Judicial and Executive Compensation at its one and only hearing on judicial compensation: ([Tr. 59-63](#)) – [VIDEO \(at 1hr/32mins\)](#), stating, in pertinent part:

“It seems the judiciary in New York State is highly politicized and, to that extent, it has deviated from the standard becoming morally and legally unsound. My experiences are with State Supreme Court judges and justices at the lowest level on up through the Court of Appeals. I believe the judiciary is running interference for the leaders of the executive and legislative branches, protecting their rule of whim from the principles, prohibitions and mandates of the New York Constitution. In my experience, the Judiciary has accomplished this by dispossessing the Constitution of provisions essential to the freedoms, rights and liberties of the people. Including the article that prohibits the state and its municipalities from reoccurring debt without voter approval, Article 7, §11. And the articles that prohibit the state and its municipalities from giving or lending public money or credit in aid of private undertakings both Article 7, §8.1 and Article 8, §1. And the article that prohibits the state in the absence of an emergency from enacting a law that has not been on the desks of each of the legislatures for at least three days. Of course, I’m talking there about the three-day rule in Article 3, §14.

The article that prohibits the state from enacting a special law that affects the property affairs and government of a municipality unless two-thirds of the governing board of that municipality requests that extension. Of course, I’m talking there about Article 9, §2(b)(2). . . .

brought to the Court of Appeals, wherein it had subverted the standard for appeals of right guaranteed by Article VII §(3)(b)(1) of the State Constitution wherein “is directly involved the construction of the constitution of the state or the United States”, which he had satisfied, by orders, unsigned by any judge, dismissing the appeals “upon the ground that no substantial constitutional question is directly involved”, which he had also satisfied, as to which he had stated:

“I urgently request that the Commission not recommend any increase in judicial compensation until the Commission *undertakes and completes* an investigation of my complaint presented here today. I stand ready to assist the Commission. For instance, I have a full record of our cases that produced upwards of 175 decisions by the judicial departments of the State of New York.” (written testimony, at p. 4, italics in the original).

These establish not only the fraud and deceit that infuse virtually every sentence of the Commission’s scant Report and transmitting letter, but the fraud perpetrated by Chief Administrative Judge Zayas and other judicial pay raise proponents – these being judges and bar associations – fully embraced by the seven commissioners, four of whom were duty-bound to have disqualified themselves for direct interest, with the other three duty-bound to have disqualified themselves for interests less direct, but biasing them totally.

It is my experience that in the process of dispossessing the Constitution of these provisions the judiciary has issued conclusory judgments that ignore facts, law and Framers’ intent on serious constitutional challenges assisted by the top law enforcement agency in the state. In my estimation, the judiciary is anything but the great leveler here in New York State. It seems rewarding such behavior would not be in the interest of constitutional government carried out in decency and good order. For if you subsidize anything you get more of it.

The Constitution, in my opinion, is hanging by a thread. If judges are not abiding by their oaths of office to support the Constitution of the State of New York then it seems it would be unconstitutional to reward them with increased compensation for their time in office. The vitality of the Constitution as a set of rules to govern the government to constrain its power based on the will of the people is truly what is at stake here.”

THE COMMISSION'S DECEMBER 4, 2023 TRANSMITTAL LETTER

The Commission transmitted its Report to the four appointing authorities of its seven members by a December 4, 2023 letter signed by Commission Chair Fahey. Each of the letter's six paragraphs is fraudulent and deceitful.

The two-sentence **FIRST PARAGRAPH** states, by its second sentence:

“Pursuant to Chapter 60 of the Laws of 2015, as amended in the Laws of 2019 Chapter 59, Part VVV, this report sets forth the Commission's recommendations with respect to compensation levels of judges and justices of the State-paid courts of the Unified Court System, fiscal years 2024 to 2027.” (underlining added).

This is fraud. Pursuant to the statute – and as highlighted by CJA's testimony – the Commission's recommendations are required to be predicated on “adequate levels of compensation and non-salary benefits”, which this sentence does not state to have been done. Moreover, in disregard of the statute, the Report does not set forth “recommendations”, but, rather, by its last page entitled “Conclusions” (p. 10), furnishes what it identifies as “unanimously approved changes”.

The four-sentence **SECOND PARAGRAPH** states, by its first sentence:

“The Commission considered a broad range of data, beginning with the factors in Part E of Chapter 60.” (underlining added).

This is also fraud. Pursuant to the statute – and as highlighted by CJA's testimony – the Commission was required to “take into account all appropriate factors”, which this sentence does not state to have been done.

The remaining three sentences read:

“The Commission held two (2) days of public hearings. All public meetings and hearings were broadcast live over the Internet. The Commission carefully reviewed the public testimony and written submissions received.” (underlining added).

The first sentence is materially misleading as the Commission's “two (2) days of public hearings” were not, as might be inferred, day-long hearings, but were of approximately 3 hours and 2 hours, respectively – and Chair Fahey conducted them as if the priority was to make them as short as possible. Nor did the Commission ensure, by adequate outreach, that the public was alerted to its opportunity to testify at the hearings or by written submissions – as may be seen from the Commission's response to [CJA's November 1, 2023 FOIL request \(#2\)](#) entitled “Records of the Commission's public outreach: Oct 2nd meeting & Oct 13th & Oct 31st hearings on judicial compensation”, accessible [here](#). As a result, only three members of the public testified at the hearings – all three in opposition.

As to the second sentence, it does not disclose that the live broadcasts of the Commission's meetings and hearings were recorded and posted on its website, along with “written submissions

received” – enabling verification of the fraud of the third sentence: “The Commission carefully reviewed the public testimony and written submissions received.”

There was no “careful review” of anything. Rather, as the VIDEOS and transcripts make evident, there was an agenda to raise judicial salaries that dictated abandoning the Commission statute. CJA stated this in testifying, demonstrating that only cursory review of the statute was needed to discern the fraud being committed by Chief Administrative Judge Zayas, the judicial pay raise advocates, and the Commission.

The three-sentence **THIRD PARAGRAPH** states, by its first sentence:

“The recommendations of the Commission are based on our understanding of what is fair compensation for the judges of New York State.” (underlining added).

This is fraud. The statute does not authorize the Commission to base its recommendations on its “understanding of what is fair compensation”, but on “adequate levels of compensation and non-salary benefits” and CJA’s testimony highlighted this.

The remaining two sentences are also fraud:

“We believe that our recommendations are supported by the factual record. Most importantly, the Commission relied upon the criteria set out in L. 2015, Ch. 60 Part E §3:

‘[t]he Commission shall take into account all appropriate factors including, but not limited to: the overall economic climate; rates of inflation; changes in public-sector spending; the levels of compensation and non-salary benefits received by executive branch officials and legislators of other states and of the federal government; the levels of compensation and non-salary benefits received by professionals in government, academia and private and nonprofit enterprise; and the state’s ability to fund increases in compensation and non-salary benefits.” (underlining added).

Apart from the “We believe” hedging that the “factual record” supports the Commission’s recommendations – reflective of the Commission’s knowledge that it does not – the Commission did not rely on the statutory criteria it quotes. Three of the six enumerated “appropriate factors” expressly include “compensation and non-salary benefits”, as to which the Commission’s only “factual record” is as to salary. As for the unenumerated “appropriate factors” that the statute expressly “includ[es]”, CJA’s testimony identified that “The most appropriate factor, the threshold factor, is whether judges are doing their job” (Tr. 104), thereupon furnishing evidentiary proof of the judiciary’s flagrant and systemic corruption, which the Report conceals, with no findings of fact and conclusions of law as to it, or as to the evidentiary submissions of the two other witnesses testifying in opposition.

The single-sentence **FOURTH PARAGRAPH** states:

“Further, the Commission reviewed the salary levels and systems of compensation for Federal Court Judges and other State Court judges” (underlining added).

This is more fraud. The Commission did not review “systems of compensation for Federal Court Judges and other State Court judges” at any of its meetings or hearings – and none is reflected by its Report, whose single closest “finding” on the subject, its Number 4 (at pp. 5-6), is confined to “current salaries for federal and other state judges” (underlining added).

The three-sentence **FIFTH PARAGRAPH** states, by its first sentence:

“We believe our Judges are among the best in the nation.”

Again, fraud – and no less so by the hedging “We believe”. The Commission’s duty, pursuant to the statute, was not to operate by “belie[f]”, but on evidence – which is why the statute’s §2.1 provided it with ample time and §3.2, §3.5, and §3.6 equipped it with ample resources including subpoena power. CJA’s testimony emphasized this and furnished case file evidence proving New York’s judges as the very opposite of “the best”, being “pervasively, systemically corrupt” (Tr. 104). The evidence of the other two citizen witnesses, also in opposition, was further reinforcing and dispositive.

The second sentence is also fraud, stating:

“The recommended salary levels will help to attract and retain both the diversity and the excellence of the bench to ensure a strong and independent judiciary.”

The “recommended salary levels” are not based on any finding that current “salary levels” are inadequate – because they are not – or that they impede attracting a pool of diverse, qualified candidates – because they do not – or that even a single judge left the bench due to “salary levels” – because none have.

Indeed, as to the issue of “diversity”, nauseatingly trumpeted by judicial pay raise advocates, not only does the Report make no mention of it, anywhere, but the above-sentence, in the original [November 9, 2023 drafted letter](#) had not included it. It read:

“The recommended salary levels will help to attract and retain the exceptional lawyers necessary to ensure a strong and independent judicial system.”

In other words, it was an afterthought, thrown in for effect.

The third sentence is a further fraud, stating:

“This is what the people of New York deserve.”

This is outrageous. “[What] the people of New York deserve” is not to be defrauded of their money and deceived by assertions about “excellence of the bench” and “a strong and independent judicial system” whose falsity the judicial pay raise opponents proved with evidence. As to that evidence, “the people of New York deserve” the findings of fact and conclusions of law that was the Commission’s duty to have made, but did not – with further findings of fact and conclusions of law as to the fraudulent claims shamelessly put forward by judicial pay raise advocates at the hearings and by their written submissions, and by the commissioners at their meetings that did not make it into either the Commission’s [Final Report](#) or [Draft Report](#).⁸

The two-sentence **SIXTH PARAGRAPH** is also fraud, by both its sentences, stating:

“I would like to thank all the members of the Commission for their time, hard work, and dedication that they have given to our mission. As we move forward to the next phase of our responsibilities – determining appropriate levels of legislative and executive compensation – I look forward to working with them.”

The Commission’s “mission” is defined by the statute, which the seven commissioners violated knowingly and deliberately, while commending themselves for “their time, hard work and dedication”. Based on this Opposition Report, there can be no “next phase” of “responsibilities” for these commissioners – and such, moreover, is not about “determining appropriate levels of legislative and executive compensation”, but, as with the first phase, “adequate levels of compensation and non-salary benefits”.

⁸ This includes the gem, repeated from past commissions, that staffing shortages should result in giving judges higher salaries – rather than using the money to hire additional staff. (Nov 6 Tr. 27, 34-35).

THE COMMISSION'S DECEMBER 4, 2023 FINAL REPORT**“MEMBERS OF THE COMMISSION
ON LEGISLATIVE, JUDICIAL AND EXECUTIVE COMPENSATION”
(at the 4 unnumbered pages preceding the “Introduction”)**

This four-page section, immediately following the Report's cover and “Table of Contents”, consists of bios of the seven commissioners, presented alphabetically, except for Chair Fahey, whose bio is first. These are the same commissioner bios as are accessible from the 2023 Commission's homepage.

The prominence given to these bios is itself a fraud, designed to foster the belief that credentialled individuals appointed by New York's four highest constitutional officers of its three government branches can be trusted to have faithfully discharged statutory duties they have brazenly violated.

Six of the commissioners are attorneys, with two of these former judges. CJA identified this at the outset of its October 13th testimony, further specifying that one of the commissioners was “a former judge of the Court of Appeals and another one a 25-year jurist” (Tr. 101). This, while handing to each commissioner a set of five documents, the first being the statute, and stating “We start with the statute” – and then, upon returning to the speaker's podium, continuing “The starting point is always the statute”.

These six commissioners are:

- former Court of Appeals Associate Judge Fahey and Helene Blank, Esq., appointed by Chief Judge Wilson;
- Victor Kovner, Esq. and R. Nadine Fontaine, Esq., appointed by Governor Hochul;
- former Judge Jeremy Weinstein, appointed by Temporary Senate President Stewart-Cousins;
- Theresa Egan, Esq., appointed by Assembly Speaker Heastie.

Yet notwithstanding the bread-and-butter of their professional careers is analyzing and interpreting statutes, not one saw fit – at the [Commission's October 2nd organizational meeting](#) – to pull out the short Commission statute – and to suggest reviewing it, paragraph by paragraph, so that the public might understand: (1) what the statute expressly required of them; (2) the tools the statute gave them to discharge their duties; and (3) the seven-month time frame the statute gave them to discharge their duties pertaining to judicial compensation.

As for the seventh commissioner, Robert Megna, appointed by Governor Hochul – the sole commissioner who was not present at the October 2nd organizational meeting – he was no less familiar with the importance of statutory language. Indeed, he was already familiar with the operative provisions of the Commission statute and of the history of past commissions and their

“force of law” judicial pay-raise Reports. Most recently, in 2019-2020, he had been a member of the (2nd) Commission on Legislative, Judicial and Executive Compensation.

Tellingly, Commissioner Megna’s bio does not identify that he was a member of the 2019-2020 (2nd) Commission on Legislative, Judicial and Executive Compensation, or that, in November 2016, he had been parachuted in as a member of the (1st) Commission on Legislative, Judicial and Executive Compensation, or that, in 2011, as state budget director, he had testified before the Commission on Judicial Compensation, in opposition to judicial pay raises.

All this relevant biographic information about Commissioner Megna’s involvement with three prior compensation commissions – serving as a member of two – is entirely omitted from his bio.⁹

By contrast, Commissioner Kovner’s bio furnishes the relevant fact that:

“He has been a member of the Board of Trustees of the Fund for Modern Courts from 1970 to the present, and was the Fund’s chair for four years roughly a decade ago. While Chair of the Fund, he helped draft and advocate for the legislation signed by Governor Paterson in 2010 creating the first Commission on Judicial Compensation.”

Yet Commissioner Kovner’s bio also omits that, like Commissioner Megna, he had testified before the Commission on Judicial Compensation in 2011 – though in favor of judicial pay raises.

Common to both Commissioners Megna and Kovner is that both were disqualified for interest from serving on the 2023 Commission. This, because the corruption and unconstitutionality of the prior compensation commissions are traceable to them.

The specifics of Megna’s collusion in the “false instrument” August 29, 2011 Report of the Commission on Judicial Compensation are recited and reflected by CJA’s correspondence to him, as state budget director, starting with [CJA’s November 1, 2011 letter](#), furnishing him with [CJA’s October 27, 2011 Opposition Report](#) for his corrective action. This and the subsequent correspondence are itemized by [CJA’s July 11, 2013 complaint against him to the State Inspector General](#) – and it incorporates [CJA’s June 27, 2013 complaint against him to JCOPE](#) and CJA’s April 15, 2013 complaint to then U.S. Attorney Preet Bharara that is part thereof.

The specifics of Megna’s collusion in the corruption of the (2nd) Commission on Legislative, Judicial and Executive Compensation, of which he was a member – and, additionally, in the “false instrument” December 10, 2018 Report of the Committee on Legislative and Executive Compensation, are recited by [CJA’s August 31, 2020 complaint to JCOPE against him](#) as SUNY’s then vice-chancellor and chief operating officer, materially quoted in [CJA’s November 2, 2021 complaint against him to the State Inspector General](#).

⁹ Up until the Commission’s final meeting, on December 4th (Tr. 10-11), there was no reference by Megna or the other commissioners about his involvement with prior commissions – and he himself acted as if he had no knowledge of what he should have known by reason thereof (See Nov 6 Tr. 9, 41).

The foregoing five complaints are all exhibits to the June 6, 2022 verified petition in *CJA v. JCOPE, et al* [[R.50-421](#)], whose first and fifth causes of action [[R.65-70](#); [R.74-80](#); [R.651-654](#)] seek mandamus and other relief with respect to the complaints. All are contained in the *CJA v. JCOPE, et al.* record on appeal that CJA furnished, with the appeal brief, to the Commission at the October 13th hearing.¹⁰

As for Kovner, who, as his bio identifies, was a member of the Commission on Judicial Conduct “from 1976 to 1990, concluding as [its] chair”, the specifics of his collusion in the “false instrument” August 29, 2011 Report of the Commission on Judicial Compensation and, prior thereto, in that commission’s embrace of the frauds of the judiciary and judicial pay raise advocates, Kovner among them, is evidenced by the contemporaneous correspondence CJA sent him, *to wit*,

- (1) [CJA’s August 8, 2011 e-mail](#), transmitting its [August 8, 2011 letter to the Commission on Judicial Compensation](#), entitled “Protecting the People of this State from Fraud: The Commission on Judicial Compensation’s Duty to Identify the Case Presented by Opponents of ANY Judicial Pay Raises & to Make Findings with Respect Thereto, in Discharge of its Statutory Responsibilities”, which stated (at p. 5), in pertinent part:

“By copy of this letter to...Victor Kovner, Chair of the Fund for Modern Court, who...testified [at the July 20, 2011 hearing]..., CJA calls upon [him] to justify – if [he] can - the succession of fraudulent judicial decisions particularized by the final two motions in CJA’s lawsuit against the Commission on Judicial Conduct for which the taxpayers of this State should be rewarding the judiciary with pay raises”;

- (2) [CJA’s August 17, 2011 e-mail](#), transmitting [CJA’s August 17, 2011 letter to him, among others](#) entitled “Protecting the People of this State from Fraud: The Commission on Judicial Compensation’s Duty to Identify the Case Presented by Opponents of ANY Judicial Pay Raises & to Make Findings with Respect Thereto, in Discharge of its Statutory Responsibilities” and [identically-titled August 17, 2011 letter to the Commission on Judicial Compensation](#);

- (3) [CJA’s August 23, 2011 e-mail](#), transmitting [CJA’s August 23, 2011 letter to then Chief Administrative Judge Ann Pfau](#) entitled “Ensuring that the Commission on Judicial Compensation is Not Led into Constitutional Error: Clarification of the Office of Court Administration’s ‘Memorandum discussing constitutional considerations in establishing judicial pay levels’ – and the Substantiating Evidence”;

- (4) [CJA’s August 26, 2011 e-mail](#), transmitting [CJA’s August 26, 2011 letter to Chief Administrative Judge Pfau](#) entitled “Part 2: Ensuring that the Commission on Judicial Compensation is Not Led into Constitutional Error: Clarification of the Office of Court

¹⁰ Nor was the October 13th hearing the first that Megna was apprised of *CJA v. JCOPE, et al.* [and its record](#). More than seven months earlier, following Governor Hochul’s appointing Megna to be acting budget director for the 2023-24 state budget, CJA had sent a [March 2, 2023 e-mail](#) to the office of the Division of the Budget for transmittal to him.

Administration's 'Memorandum discussing constitutional considerations in establishing judicial pay levels' – and the Substantiating Evidence” ;

(5) [CJA's October 28, 2011 e-mail](#), transmitting [CJA's October 28, 2011 letter to him, among others](#) entitled “[Holding Government Accountable: CJA's October 27, 2011 Opposition Report in Support of Legislative Override of the Commission on Judicial Compensation's Judicial Pay Recommendations & Other Relief](#)” and transmitting the Opposition Report and a link to [CJA's evidentiary webpage](#) for it.

Based thereon, and other facts known by Commissioners Megna and Kovner, each knew they were disqualified by interest from serving on the 2023 Commission. Their failure, as commissioners, to ensure that the Commission discharged its duty to make findings of fact and conclusions of law with respect to CJA's October 12th letter and October 13th testimony makes that manifest.

So, too, did Chair Fahey and Commissioner Weinstein each know they were disqualified for interest from serving on the 2023 Commission – and the only way they did not know this is if they were unaware of the “history” of the prior compensation commissions and committee, culminating in *CJA v. Cuomo...DiFiore* at the Court of Appeals, as recounted by CJA's October 12th letter.

With respect to Chair Fahey, he was one of the six associate judges of the Court of Appeals whose five unsigned-by-any-judge orders dismissed and denied appellate review by right and by leave and all other relief in *CJA v. Cuomo...DiFiore* – all five orders purporting that the only judge who had “[taken] no part” was then Chief Judge DiFiore. For Chair Fahey to have been unaware of those orders, he would have had to be unaware of [CJA's published letter to the editor in the August 21, 2019 New York Law Journal](#), highlighted by CJA's October 12, 2023 letter as having been concealed by the 2019 commission. The October 12th letter itself furnished, by its links, ready-access to [the record of *CJA v. Cuomo...DiFiore*, at the Court of Appeals](#) from which Chair Fahey could easily verify, if he did not already know, that [the Court's February 18, 2020 order](#) denying [CJA's final November 25, 2019 motion therein](#) was its imprimatur to the collusive fraud between the 2019 commission, the judiciary, and judicial pay raise advocates particularized by the motion and further reinforced by [CJA's culminating January 9, 2020 letter](#).

Moreover, if, prior to the [October 13th hearing](#), Chair Fahey did not know about [CJA's February 7, 2021 complaint to the Commission on Judicial Conduct](#) against him and his former Court of Appeals brethren arising from *CJA v. Cuomo...DiFiore*, he and his fellow commissioners all learned of it from CJA's testimony and that the record in *CJA v. JCOPE, et al.* contained it. Indeed, the copy of the [CJA v. JCOPE, et al. record on appeal](#) (& [here](#) & [here](#)) that CJA exhibited in testifying and handed to Chair Fahey, after the hearing ended, flagged the complaint [R.251] by a post-it.¹¹

¹¹ Also flagged by post-its were CJA's November 24, 2021 complaint to JCOPE against the Commission on Judicial Conduct [R.185] and February 11, 2021 complaint to the Appellate Division Attorney Disciplinary Committees [R.241].

Whether from the record of *CJA v. Cuomo...DiFiore*, with which Chair Fahey is presumed familiar, having participated in the Court of Appeals' five indefensible, fraudulent orders therein – or so purported by each order – or from the record on appeal of *CJA v. JCOPE, et al.*, with its accompanying [appellants' brief](#), Chair Fahey would have seen that he and Commissioner Weinstein had huge direct financial interests because, as then judges and now by their pensions, they are beneficiaries of the judicial pay raises resulting from the “false instrument” August 29, 2011 Report of the Commission on Judicial Compensation and the “false instrument” December 24, 2015 Report of the (1st) Commission on Legislative, Judicial and Executive Compensation, and that findings of fact and conclusions of law with respect to the Reports and lawsuits would establish this – and their liability for claw-backs on the order of three quarters of a million dollars, each.¹² CJA told this to Chair Fahey on October 13th, in handing him the *CJA v. JCOPE, et al.* appeal brief and record – and further reminded him of his presence at the Senate Judiciary Committee's April 17, 2023 “meeting” to confirm then Associate Judge Wilson as chief judge, at which CJA had requested to testify about Wilson's participation in *CJA v. Cuomo...DiFiore* and the related *Delgado v. New York State*, and the conversation they had afterward, outside the meeting room, pertaining to the *CJA v. Cuomo...DiFiore* sixth cause of action challenging the constitutionality of Part E, Chapter 60 of the Laws of 2015, *as written* [[R.109-110](#); [R.187-192](#)], which quoted Fahey's dissent, as an Appellate Division, Fourth Department justice, in *St. Joseph Hospital v. Novello, et al.*, 43 A.D.3d 139 (2007), in substantiation of the statute's unconstitutionality.

Commissioner Weinstein would have independently seen his own huge financial and other interests – and by no later than CJA's October 13th testimony before him, if he had not already reviewed CJA's October 12th letter, which he may be presumed to have done.

As for Commissioners Blank, Egan, and Fontaine, Esq., all were disabled by undisclosed interests and relationships, biasing them totally. This is manifest from their acquiescence and participation

¹² CJA's February 7, 2021 complaint to the Commission on Judicial Conduct particularized Fahey's direct financial interest in *CJA v. Cuomo...DiFiore* and that of his then fellow Court of Appeals associate judges by quoting from CJA's May 31, 2019 motion for reargument of the Court's May 2, 2019 order dismissing the appeal of right, stating:

“29. Undisclosed by the Court's May 2, 2019 Order (Exhibit A-1) – and itself demonstrative of the disqualifying facts – is that each associate judge has, at present, a \$82,200 a year salary interest in the commission-based judicial salary increases challenged by appellants' sixth, seventh, and eighth causes of action as unconstitutional, unlawful, and fraudulent [[R.109-114](#) ([R.187-213](#))]. Such declarations, to which appellants have a summary judgment entitlement,^{fn14} bring down the salary of each associate judge from the commission-based \$233,400 it presently is to the \$151,200 fixed by Judiciary Law §221.^{fn15}

30. On top of this are the ‘claw-backs’ that each associate judge will be liable for, whose amounts vary. In the case of Senior Associate Judge Rivera, the sole associate judge whose name appears on the May 2, 2019 Order (Exhibit A-1) and who first became a judge on February 11, 2013, when she was confirmed to the Court, the ‘claw-back’ is well over \$300,000 as of this date and will top \$400,000 by the April 1, 2020 start of the next fiscal year.”

in the Commission's frauds – and not only by its December 4, 2023 Report, but by their conduct at the hearings and at the subsequent meetings, not revealed by the Report. This includes purporting, in tandem with their fellow commissioners, that the witnesses favoring judicial pay raises had presented “overwhelming evidence” – a charade that began immediately after Mr. Schulz' testimony at the [October 31st hearing](#). Disregarding that he had furnished for the Commission's investigation, a list of 22 cases in which the Court of Appeals had subverted the New York Constitution – cases which could reasonably involve, and did, dismissal orders in which Chair Fahey, as a Court of Appeals associate judge from February 2015 to December 2021 had participated¹³ – they made no objection to Chair Fahey asking whether the commissioners were “comfortable saying yes or no” for the raises. (Tr. 102). Upon Commissioner Kovner's response: “We were listening to overwhelming testimony now at two hearings with a broad range of witnesses. It is compelling and bears a case for a raise. I would go on but I don't expect that there's going to be substantial disagreement within this Commission”, Commissioner Blank chimed in “I think that he said it eloquently based on the evidence that we heard, it's compelling, all this testimony.” Chair Fahey then agreed: “It has been strong. It has been strong”. Commissioner Megna also piped in with his agreement about the supposedly “compelling evidence” (Tr. 104).

At the [November 6th meeting](#), Commissioner Kovner reiterated: “As I said up in Albany, I found the evidence that we received at our two hearings compelling in terms of the need for a raise.” (Tr. 3). Commissioner Egan thereafter joined: “I think the testimony that we received by just about everybody, minus, I think three individuals that had testified provided overwhelming evidence in regard to the state of the judiciary now, as well as really what their desires are going forward.” (Tr. 7-8).

At the [November 13th meeting](#), Commissioner Blank reiterated: “we have heard overwhelming evidence” (Tr. 5). Likewise Commissioner Egan: “As our fellow Commissioners have noted, there's been ample evidence presented to support a raise.” (Tr. 8).

These were flagrant lies. The testimony of Chief Administrative Judge Zayas and the other judicial pay raise advocates was unsworn and suffused with readily-discernable fraud, so-highlighted by CJA's testimony at the [October 13th hearing](#) and it remained true at the [October 31st hearing](#). Their testimony would have been demolished by the most basic cross-examination of any remotely competent attorney – as Commissioners Blank, Egan, and Fontaine are presumed to be. This includes as to “retention attrition” about which Commissioner Fontaine herself stated on October 31st, in the discussion following the hearing: “we haven't gotten any specific numbers” (Tr. 106).

¹³ The listed cases included three from 2016, identified as:

- “19. Schulz, et al., v. N.Y. Exec., 2016 N.Y. LEXIS 249
- 20. Schulz, et. al., v. Cuomo, 2016 N.Y. LEXIS 371
- 21. Schulz, et. al., v. Silver, SSD 35, decided March 31, 2016”.

Chair Fahey and his fellow commissioners may be presumed to have recognized that investigation of Mr. Schulz' testimony as to the Court of Appeals subversion of the State Constitution with respect to appeals of right was reinforcing of what *CJA v. Cuomo...DiFiore* had documented with respect to appeals of right – and, additionally with respect to appeals by leave and by direct appeal. CJA's appended Exhibit A furnishes the *CJA v. Cuomo...DiFiore* record references.

To this, her fellow commissioners gave disgraceful, laughable responses, starting with Chair Fahey who, upon confirming that she meant “attrition because they don’t get pay raises”, stated:

“I don’t know of any numbers. I’m sure we would have heard them by now. So much of that kind of information is anecdotal. I talked to so and so and he said I can’t afford to run for judge because my kind wants to go to Georgetown and I can’t afford it on a judge’s salary. That, of course, I believe is totally real, but there’s no quantification of it that I saw. I’m not familiar with anything.” ([Tr. 106-107](#)),

Commissioner Fontaine nonetheless stated:

“I want to renew my request for the data. I think it would be helpful in demonstrating, there has to be a way Judge Zayas can provide information from the period from 2011 to the present, the number of judges, whether there has been a decrease in the number of minority judges.” ([Tr. 114](#)).

Presumably Chief Administrative Judge Zayas was unable to provide substantiating “data” because at the [November 6th meeting](#) no mention was made about it, including by Commissioner Fontaine who stated, at the outset, in support of pay raises, without reference to any “data”:

“I feel that the salary issue does come to bear when we’re talking about retention, the tradition of retention recruitment, and I think it’s imperative that we do recognize the need for an increase so we can continue to retain good talent and attract additional talent to come work in the government and continue the commitment to public service” ([Tr. 4-5](#)).

Similarly, at the [November 13th meeting](#), Commissioner Fontaine, without referencing any “data”, stated:

“Again, we did talk about the need to provide increases in salary so we maintain and retain judges and to reduce attrition from judges...We have had a lot of testimony with regard to that.” ([Tr. 10](#)).¹⁴

As with the members of the 2019 commission, whose disqualifications born of interest and relationships CJA set forth by a [webpage](#) posting the pertinent documents in the weeks after testifying at its [November 4, 2019 hearing \(VIDEO, at 1 hr/35 mins\)](#), so, too, CJA constructed a

¹⁴ Illustrative of the non-probative and hearsay testimony on this subject (Oct 31 Tr. 64) was Commissioner Blank’s statement at the November 6th meeting embracing it:

“And I don’t remember who it was, but I do think [s]he actually was the president of the women’s bar who pointed out that one of the women who belonged to the women’s bar is a member of the judiciary, basically can’t really make ends meet because of the pressures on her salary. She is a single mother taking care of a family and it’s just not working. And we can’t have somebody like that looking for private employment if she’s really an asset...” ([Tr. 6](#)).

comparable webpage for the members of the 2023 Commission, in the weeks after testifying at its October 13, 2023 hearing, [here](#).

Finally, but threshold, [on October 10, 2023, by CJA's first FOIL request](#) – the same as CJA additionally handed up to each of the seven commissioners at the October 13th hearing before commencing to testify – CJA alerted them to the oaths they were required to take and file with the Department of State, pursuant to [Public Officers Law §10](#).

The oaths for each of the seven commissioners that [the Commission sent CJA on November 15, 2023](#)¹⁵ – and then only after [CJA's November 1, 2023 reminder e-mail](#) – stated:

“I do solemnly swear (or affirm) that I will support the constitution of the United States, and the constitution of the State of New York, and that I will faithfully discharge the duties of the office of [Member of Commission] [Chair of Commission] according to the best of my ability.

I, the Appointee named above, hereby acknowledge receipt of a copy of sections 73, 73-a, 74, 75, 76, 77 and 78 of the Public Officers Law, together with such other material related thereto as may have been prepared by the Secretary of State, and I acknowledge that I have read the same and that I undertake to conform to the provisions, purposes and intent thereof and to the norms of conduct for members, officers and employees of the legislature and state agencies.”

[Public Officers Law §74](#)¹⁶ pertains to conflicts of interest, the appearance of which all seven commissioners had and manifested brazenly,¹⁷ abandoning any semblance of neutrality by their own incessant advocacy, on behalf of the judges, as if they themselves were testifying.

¹⁵ All seven were dated October 31, 2023 and none reflected filing with the Secretary of State. And yet [FOIL production by the Department of State, on November 9, 2023](#), in response to [CJA's October 19, 2023 FOIL request](#) to it, reiterated on [November 7, 2023](#), reveals that four commissioners, [Weinstein](#), [Kovner](#), [Fontaine](#), and [Megna](#), had signed and filed earlier “Public Office Oaths of Office” for their service on the Commission.

¹⁶ In pertinent part, Public Officers Law §74.2 states:

“No officer...should have any interest, financial or otherwise, direct or indirect...which is in substantial conflict with the proper discharge of his duties in the public interest.”

§74.3(h) states, in pertinent part:

“An officer...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.”

¹⁷ Mr. Doggart's October 13th testimony touched on the “appearance” issue, stating, with respect to the Commission's composition and the location of the hearing:

**THE “INTRODUCTION” SECTION
OF THE COMMISSION’S REPORT (at p. 1)**

Virtually everything in this five-paragraph section is deceitful, fraudulent, and improper.

The “Introduction” is where the Report should have properly provided a background recital of the prior compensation commissions and committee identified by CJA’s October 12th letter. Most important of these:

- the 2011 Commission on Judicial Compensation, rendering an August 29, 2011 Report;
- the 2015 (1st) Commission on Legislative, Judicial and Executive Compensation, rendering a December 24, 2015 Report;
- the 2019 (2nd) Commission on Legislative, Judicial and Executive Compensation, rendering a December 26, 2019 Report and then a November 11, 2020 Report.

A proper “Introduction” would have summarized the similarities and differences of these Reports – particularly the 2011 and 2015 Reports which had brought judicial salaries to levels that are concealed, entirely, by the supposedly superseded, but still extant, [Judiciary Law Article 7-B entitled “Compensation of Judges and Justices of the Unified Court System”](#).

Indeed, a proper “Introduction” would have also revealed the “longer history” of judicial compensation commissions from decades earlier, as, for instance, the [Temporary State Commission on Judicial Compensation whose June 1982 Report](#) is twice quoted by CJA’s October 27, 2011 Opposition Report:

at page 20:

“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

“Now, all of you but one of the commissioners are attorneys.... I do question whether this is a reassuring indicator of your impartiality or independence. Does the makeup of this commission really represent the population of New York? Why are there no social workers, no psychologists, no journalists on this commission? What you think are the optics to the public that six of you are zealous members of the Bar Association where we happen to be standing right now? It’s a beautiful building, but the Bar Association is a major engine of the whole judiciary racket and you are charged with deciding whether your fellow bar colleagues should get a raise. Do you really think that holding the commission here helps your credibility? So I ask you at least to put aside your natural allegiance to your fellow bar and to oppose these obscene funding requests... and to help establish genuine oversight.” ([Tr. 108-9](#)).

pay level which is fair to State taxpayers; any higher pay would require unnecessarily higher taxes.”;

and at page 30:

“...there are significant differences in the cost of living in various areas of the State; and [] it makes much more sense to adjust the salaries of judges who reside where it is more expensive to live to reflect that fact, rather than to establish a single salary for each office, which, while perhaps adequate in part of the State, might be inadequate or excessive in the rest of the State.”

Also relevant, the different [Temporary Commission on Judicial Compensation whose January 1993 Report](#), among other things, rejected “parity” with surging federal judicial salaries, stating:

“The Federal government's ability to pay and to incur debt is fundamentally different from New York's constitutionally-imposed requirement for a balanced budget.” (at p. 8).

Yet, the Commission’s “Introduction” makes NO reference to the relevant “history” of prior judicial compensation commissions. Instead, its **FIRST PARAGRAPH** substitutes a different “history”, one extolling the excellence of New York’s judiciary that it then brings to the present by the first two sentences of its **SECOND PARAGRAPH**:

“The judiciary of New York State has a long and distinguished history. Our judges draw on the character and minds of jurists as varied as John Jay, Benjamin N. Cardozo, Irving Lehman, Stanley Fuld, and Charles Breitler. When Judge Cardozo passed, Judge Learned Hand stated ‘he was a great judge because he successfully reconciled the letter with the spirit of the law’ (from the World of Benjamin Cardozo by Richard Pollenberg p. 240).

This spirit runs through to our current judges. We see it in our recent Chief Judges Judith Kaye and Jonathan Lippman through to our current Chief Judge Rowan D. Wilson. ...”

It is not until the final **FIFTH PARAGRAPH** that there is even a reference to the 2023 Commission. Its two sentences state:

“The Commission recognizes these realities. Our goal is to responsibly address these issues.”

The referred-to “realities” as pertains to a judiciary that does its “job” of delivering justice by “reconcil[ing] the letter with the spirit of the law” – implied, but not stated – are not “realities”. And proving this is the testimony and evidence of the three witnesses opposing the judicial pay raises, rebutting:

- that “our current judges” embody the supposed “long and distinguished history” of New York’s judiciary;
- that “our recent Chief Judges Judith Kaye and Jonathan Lippman through to our current Chief Judge Rowan D. Wilson” are exemplars of this.

Tellingly, the recited sequence of “recent Chief Judges” omits Janet DiFiore, whose corruption as the yet-to-be-confirmed nominee for chief judge in January 2016, gave rise, eight months later, to CJA’s citizen-taxpayer action that would bear her name – *CJA v. Cuomo...DiFiore*.¹⁸

The corruption infesting the judiciary, established by the evidence-supported testimony of the three opposition witnesses, renders unconstitutional any increase in judicial salaries and irrelevant the assertions in the **SECOND PARAGRAPH** that:

“[New York’s]...legal system [] is one of the largest and the busiest in the world. In 2022, there were 2.1 million new cases filed in our courts (civil-criminal-family court). New York had more than twice the number of filings as the entire federal court system”,

and in the **FOURTH PARAGRAPH** that:

“[New York judges] have not seen any increase in pay for four and a half years. During this time the Federal Judiciary has seen a continuous rise in compensation. When compared to the judiciary of other states, New York is ranked ninth...The buying power of a judge’s salary is now 20% less than it was in 2019. During this same time period, the other branches of New York government have received [] pay raises. The same is true of employees whose pay is set by collective bargaining.”

Indeed, the unconstitutionality of conferring pay raises to judges who should be removed from the bench for corruption, but are not because ALL mechanisms for removing them are corrupted, has been asserted by CJA throughout the past dozen years:

- It was first set forth by [CJA’s August 8, 2011 letter to the Commission on Judicial Compensation \(at pp. 3-4\)](#), based on an analysis of the Court of Appeals’ [February 23, 2010 decision in *Maron v. Silver*](#), and [Article VI of the New York State Constitution](#).
- It was then quoted, *verbatim*, by [CJA’s August 23, 2011 letter to then Chief Administrative Judge Ann Pfau \(at pp. 2-4\)](#);

¹⁸ This history is concisely summarized by [CJA’s November 25, 2019 letter to then Chief Administrative Judge Lawrence Marks](#), furnished to the 2019 commission – a letter so important that CJA included it in the addendum to its October 12, 2023 letter and handed up seven copies to each of the seven commissioners before commencing to testify on October 13th.

- Thereafter, it was quoted, *verbatim*, by [CJA's October 27, 2011 Opposition Report to the Commission on Judicial Compensation's August 29, 2011 Report \(at pp. 10-13\)](#), which ADDITIONALLY highlighted it, by its own separate page, after the cover, stating:

“The appellate, administrative, disciplinary, and removal provisions of Article VI are safeguards whose integrity – or lack thereof – are not just ‘appropriate factors’, but constitutional ones. Absent findings that these integrity safeguards are functioning and not corrupted, the Commission cannot constitutionally recommend raising judicial pay.^{fn4}”

^{fn4} Such safeguards are properly viewed as comparable to the ‘good Behaviour’ provision of the U.S. Constitution, immediately preceding – and in the same sentence as – the prohibition against diminishment of federal judicial compensation [U.S. Constitution, Article III, §1].’ .

(concluding paragraph of analysis of Article VI of the New York State Constitution, based on the Court of Appeals’ February 23, 2010 decision in the judicial compensation lawsuits, presented by the Center for Judicial Accountability’s August 8, 2011 letter to the Commission on Judicial Compensation (at pp. 3-4) and August 23, 2011 letter to Chief Administrative Judge Ann Pfau (pp. 2-4) – whose accuracy is uncontested by them and other judicial pay raise advocates.)”

This was thereafter embodied in CJA’s three *CJA v. Cuomo* lawsuits:

- [the CJA v. Cuomo...Lippman declaratory judgment action](#), whose [March 30, 2012 verified complaint](#) featured the above-quote on its page 1, quoted the analysis *verbatim* at ¶98, followed by a cause of action entitled “Systemic Judicial Corruption is an ‘Appropriate Factor’ Having Constitutional Magnitude” (¶¶161-162);
- [the CJA v. Cuomo, et al. first citizen taxpayer action](#), most directly by its [March 23, 2016 verified second supplemental complaint](#), whose thirteenth causes of action entitled “Chapter 60, Part E, of the Laws of 2015 is Unconstitutional, *As Written* – and the Commission’s Judicial Salary Increase Recommendations are Null & Void by Reason Thereof”, contained a section B entitled “Chapter 60, Part E, of the Laws of 2015 Unconstitutionally Delegates Legislative Power Without Safeguarding Provisions” (¶400);
- [the CJA v. Cuomo...DiFiore second citizen-taxpayer action](#), whose [September 2, 2016 verified complaint](#) incorporated the above thirteenth causes of action as a sixth cause of action, quoting its section B as follows:

“400. It is unconstitutional to raise the salaries of judges who should be removed from the bench for corruption or incompetence – and who, by

reason thereof, are not earning their current salaries. Consequently, a prerequisite to any judicial salary increase recommendation must be a determination that safeguarding appellate, administrative, disciplinary and removal provisions of Article VI of the New York State Constitution are functioning.

401. Likewise, it is unconstitutional to raise the salaries of other constitutional officers and public officials who should be removed from office for corruption – and who, by reason thereof, are not earning their current salaries. *Consequently, a prerequisite to any salary increase recommendation as to them must be a determination that mechanisms to remove such constitutional and public officers are functional, lest these corrupt public officers be the beneficiaries of salary increases.*

402. The absence of explicit guidance to the Commission that corruption and the lack of functioning mechanisms to remove corrupt public officers are ‘appropriate factors’ for its consideration in making salary recommendations renders the statute unconstitutional, as written.” (underlining and italics in the original March 23, 2016 verified second supplemental complaint).

All three lawsuits were “thrown” by fraudulent judicial decisions – none identifying, nor determining, the constitutional issue, whose correctness was never challenged by anyone, in court or out. Of these three lawsuits, only the culminating *CJA v. Cuomo...DiFiore*, incorporating the prior two, went up on appeal – and the particulars as to the fraud by which the Appellate Division, Third Department disposed of its sixth cause of action, section B, are recited by [CJA’s “legal autopsy”/analysis of its December 27, 2018 decision \(at pp. 13-17\)](#), accompanying its [March 26, 2019 letter to the Court of Appeals in support of its appeal of right](#).

The **THIRD PARAGRAPH**, by its inference that the Commission’s function is to ensure that New York’s judges are “properly compensated for the job we are asking them to do” is another fraud. The statute mandates that the Commission’s recommendations to increase salary be based on “adequate levels of compensation and non-salary benefits”.

The **FOURTH PARAGRAPH**, above-quoted (at p. 20, *supra*) is fraudulent by each of its six sentences – with all but the fifth sentence repeating frauds that CJA exposed in 2011 before the Commission on Judicial Compensation, culminating in its October 27, 2011 Opposition Report:

- As to its first sentence: New York’s judges have no entitlement, constitutional or statutory, to pay raises, absent a showing of inadequacy;
- As to its second sentence: the “continuous rise in compensation” of “the Federal Judiciary” results from a federal statute – the 1989 Ethics Reform Act – giving COLAs to them and to other federal officers, and agency heads and which mandated that a quadrennial commission’s salary recommendations for federal district court judges and members of Congress be equal and, likewise, that its salary recommendations for the chief justice, vice-

president, speaker, majority and minority leaders and cabinet secretaries be equal¹⁹ – statutory provisions with no parallel to any New York statute;

- As to its third sentence: that New York’s judiciary ranks “ninth” in pay in comparison to other states does not make the pay of New York’s judges inadequate;²⁰
- As to its fourth sentence: the decrease in “buying power” of New York’s judges since 2019 by reason of inflation does not render their salaries inadequate;
- As to its fifth sentence: its reference to “well-deserved pay raises” that “other branches of New York government” received since 2019 is fraudulent. The unidentified “other branches” are the executive branch, whose constitutional officers are the governor, lieutenant governor, attorney general, and comptroller, and the legislative branch, whose constitutional officers are the legislators – all sued for corruption in *CJA v. Cuomo...DiFiore* and *CJA v. JCOPE, et al.*, excepting the lieutenant governor. Pay raises for them are not “well-deserved”. Rather, they are unconstitutional for the reasons stated by the above-quoted ¶¶401-402, arising from their corrupting of constitutional, lawful state governance, as documented by those two lawsuits and by CJA’s predecessor lawsuits, also suing them for corruption.

In March 2018, the fraudulent Supreme Court decisions in *CJA v. Cuomo...DiFiore* and its predecessors led directly to the supposed “well-deserved pay raises” for the legislators and governor, *et al.*, as they enabled the governor, temporary senate president, and assembly speaker to continue their unconstitutional “three men in a room” behind-closed-doors budget deal-making and insert a Part HHH into the revenue budget bill. This established the Committee on Legislative and Executive Compensation, which then rendered a “false instrument” December 10, 2018 Report to confer pay raises. CJA’s July 15, 2019 analysis of the December 10, 2018 Report documents this – and it underlies CJA’s March 5, 2021 complaint to JCOPE [R.207-286] and subsequent three complaints, for which investigation is sought by CJA v. JCOPE, et al., now on appeal at the Appellate Division, Third Department, after having been “thrown” by two fraudulent Supreme Court decisions.

The direct legal challenge to Part HHH, Chapter 59 of the Laws of 2018 and the Committee on Legislative and Executive Compensation’s December 10, 2018 Report was Delgado v.

¹⁹ See footnote 9 of CJA’s October 27, 2011 Opposition Report, quoting “How to Pay the Piper: It’s Time to Call Different Tunes for Congressional and Judicial Salaries” (Russell R. Wheeler and Michael S. Greve, Governance Studies, April 2007), part of the record on appeal, at the Court of Appeals, in *Larabee, et al. v Governor, Senate, Assembly, and State of New York*.

²⁰ See footnote 35 of CJA’s October 27, 2011 Opposition Report, quoting then Governor Cuomo’s December 7, 2007 reply memorandum of law in *Larabee, et al. v Governor, Senate, Assembly, and State of New York* in support of defendants’ motion to dismiss it for failure to state a cause of action:

“New York’s judiciary can only be assessed in relation to New York’s Executive and Legislative branches, not in relation to circumstances in foreign states which have no impact on judges and justices here.”

New York State – and it was “thrown” by a fraudulent June 7, 2019 Supreme Court decision that rested on the fraudulent December 27, 2018 decision of the Appellate Division, Third Department in *CJA v. Cuomo...DiFiore*. By then, CJA v. Cuomo...DiFiore was at the Court of Appeals seeking review both by right and by leave, identifying that it was dispositive of the unfolding *Delgado* case. By unsigned October 21, 2019 orders, with Chief Judge DiFiore allegedly “[taking] no part”, the Court of Appeals, with *Delgado* before it on a direct appeal, denied review by right and by leave to *CJA v. Cuomo...DiFiore*. The Court then denied the *Delgado* direct appeal by an unsigned November 21, 2019 order. CJA detailed this in its final November 25, 2019 motion in *CJA v. Cuomo...DiFiore* – simultaneously furnishing the motion to the 2019 (2nd) Commission on Legislative, Judicial and Executive Compensation, on which Commissioner Megna sat.

Over a year later, the Appellate Division, Third Department “threw” the *Delgado* appeal by a fraudulent March 18, 2021 decision which – like the Supreme Court decision it affirmed – rested on its own fraudulent *CJA v. Cuomo...DiFiore* decision. This is also embraced by *CJA v. JCOPE, et al.*, as what the Appellate Division did in *Delgado*, thereafter covered up by the Commission on Judicial Conduct, is part of CJA’s November 24, 2021 complaint against the Commission on Judicial Conduct to JCOPE [R.185-206], to which CJA referred in testifying at the October 13th hearing (Tr. 105).

The *Delgado* case then continued to the Court of Appeals, which, in May 2021, granted an appeal of right. On November 17, 2022, the then six judges of the Court of Appeals rendered three opinions, two of which were to affirm the constitutionality of Part HHH, one to disaffirm – all three materially fraudulent.²¹ Notwithstanding the affirmance meant that the largely identical Part E, Chapter 60 of the Laws of 2015 was not struck down, the “lame duck” legislators – with Governor Hochul’s approval – opted to forgo waiting for the 2023 Commission and spent about \$50,000 in taxpayer money²² for a December 22, 2022 special session of the legislature, for the sole purpose of giving themselves a further pay raise, effective January 1, 2023.

- As to its sixth sentence: about “employees whose pay is set by collective bargaining”, it is a deceit as New York’s judges are not “employees”, but the constitutional officers of New York’s judicial branch – a fact CJA has pointed out for more than 12 years, including prior to and by its October 27, 2011 Opposition Report (at pp. 14, 36-37).²³

²¹ Summarizing this is CJA’s April 16, 2023 e-mail to the Senate Judiciary Committee, sent again on April 17, 2023, requesting to testify in opposition to Senate confirmation of then Court of Appeals Associate Judge Wilson as chief judge. This was referred to by CJA’s director at the Senate Judiciary Committee’s “meeting” on the confirmation, attended by retired Court of Appeals Judge Fahey, at which she reiterated her requests to testify, to which there had been no response. CJA’s April 18, 2023 e-mail to the Secretary of the Senate, for distribution to all 63 senators prior to their Senate vote, transcribes from the video what CJA’s director said.

²² “You Paid For It: Special session for lawmaker raise cost taxpayers thousands”, CBS6 News/Albany (Greg Floyd).

²³ The accuracy of CJA’s assertions that judges are not “employees” has never been denied or disputed by judicial pay raise advocates or anyone else, yet all have persisted in purporting or implying that

**THE “STATUTORY MANDATE” SECTION
OF THE COMMISSION’S REPORT (at pp. 2-3)**

This seven-paragraph section is another fraud, beginning with the first sentence of its **FIRST PARAGRAPH**, stating:

“In March of 2015, Part E of chapter 60 of the Laws of 2015 was enacted.”

Here concealed is that Part E of Chapter 60 of the Laws of 2015 “was enacted through the budget, unconstitutionally, and by fraud, a ground for challenge”, so-stated by CJA in testifying at the October 13th hearing (Tr. 101). Concealed, too, is that *CJA v. Cuomo...DiFiore* was that challenge, “thrown” by fraudulent judicial decisions, at every level, up to the Court of Appeals²⁴ – and that *CJA v. JCOPE, et al.* both continues and expands upon the constitutional challenge.²⁵

Although the balance of the **FIRST PARAGRAPH** correctly quotes the Commission’s statutory charge to “examine, evaluate and make recommendations with respect to adequate levels of compensation and non-salary benefits”, the **SECOND PARAGRAPH** transmogrifies it to falsely purport that the Commission is to determine “appropriate judicial salary levels”. This is fraud. The statute’s use of the word “appropriate” is part of its directive that the Commission “shall take into account all appropriate factors, including but not limited to...”

they are. The 2023 Commission is no exception. *See, inter alia*, Nov. 6th meeting: Chair Fahey (Tr. 14): “other government employee issues”; “other government employees”; Commissioner Egan: (Tr. 18): “other employees in state government”; Commissioner Weinstein (Tr. 21): “the rest of the state employees”; Commissioner Kovner (Tr. 26-7): “all other state employees.”; “almost all other employees.”; Nov. 13th meeting: Weinstein (Tr. 6): “mirroring raises that the rest of the state workers have gotten over the last four to five years.”; (Tr. 8): “mirroring what state employees have gotten”.

²⁴ *See*, in particular, sections D and E of the sixth cause of action in *CJA v. Cuomo...DiFiore* (§§67-68), resting on sections D and E of the thirteenth cause of action in the predecessor *CJA v. Cuomo, et al.* citizen taxpayer action (§§407-423). *CJA’s March 27, 2019 letter to the Court of Appeals in support of its appeal of right* furnishes the particulars (at pp. 17-20) as to the fraud of the Appellate Division, Third Department’s December 27, 2018 decision with respect to sections D and E, covering up the fraudulence of the appealed-from Supreme Court decision, set forth by *CJA’s July 4, 2018 appeal brief*.

²⁵ *See*, in particular, the sixth cause of action in *CJA v. JCOPE, et al.* (§§78-85) [R.81-84], specifically §§81, 82, 85 pertaining to CJA’s March 18, 2020 letter to then Governor Cuomo [R.132-154] as to the unconstitutionality of non-tax, non-revenue-producing policy legislation, inserted into the budget, based on an analysis of the Court of Appeals’ 2004 plurality, concurring, and dissenting opinions in *Pataki v. Assembly/Silver v. Pataki*, 4 NY3d 75. The fraudulent dismissal of that sixth cause of action by a November 23, 2022 Supreme Court decision, including by its reliance on the Appellate Division, Third Department’s December 27, 2018 decision in *CJA v. Cuomo...DiFiore*, is particularized by *CJA’s “legal autopsy”/analysis thereof* [see R.882-884], now before the Appellate Division, Third Department. Its dispositive nature is focally presented by *CJA’s August 15, 2023 appellants’ brief* – and CJA gave a copy to Chair Fahey, *in hand*, together with the three-volume record on appeal containing it, twice [R.9-39, R.856-886].

Neither of these two paragraphs assert that the Commission, in fact, examined and made findings as to “adequate levels of compensation and non-salary benefits” and that it had taken “into account all appropriate factors”.

The **THIRD, FOURTH, and FIFTH PARAGRAPHS** pertain to non-substantive procedural aspects of the statute, following which – and by skipping over the June 1st date on which the Commission was supposed to have been established (§2.1) and the resources with which the statute equipped the Commission for its task (§3.2, §3.5, §3.6) – the **SIXTH and SEVENTH PARAGRAPHS** state:

“In furtherance of its statutory mission, the Commission held public meetings in New York City. It also held two days of public hearings; one on October 13, 2023 in New York City and one on October 31, 2023 in Albany. A total of 31 witnesses testified at the hearings. The public hearings and meetings were televised live on the Internet.

In addition, the Commission invited written commentary and established post office and email addresses (nyscompensation@gmail.com) through which it received 30 written submissions from judicial associations, bar associations, good government groups, and other interested individuals and organizations. The witness lists, written submissions and other information about the work of the Commission including transcripts and videos of the Commission’s public hearings and meetings, are all available on the website at: www.nyscommissiononcompensation.org.”

These two paragraphs are the sum total of what the Report says about how the Commission went about its work. No mention of investigation of the hearing testimony and the “30 written submissions”, no mention of the resources employed to ascertain their relevancy, accuracy, and truth – no mention even of divergence between the testimony or, for that matter, that there was opposition testimony and submissions. Tellingly, there is not even repetition of the sentence from Chair Fahey’s transmittal letter: “The Commission carefully reviewed the public testimony and written submissions received” – because, in fact, it did not.

THE “FINDINGS” SECTION
OF THE COMMISSION’S REPORT (at pp. 4-9)

Individually and collectively, the Report’s findings, numbered 1-8, are statutorily insufficient to support judicial pay raise recommendations, as comparison to the statute readily reveals. They also replicate identical violations of the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation,²⁶ itself replicating identical violations of the August 29, 2011 Report of the Commission on Judicial Compensation:²⁷

- **In violation of the statute, specifically §2.1 and §2.2(a)(2)**, there are no findings as to “compensation and non-salary benefits”, let alone that they are “inadequate”;
- **In violation of the statute, specifically, §2.3**, three of the six enumerated factors required to be “take[n] into account” were not, as they include “compensation and non-salary benefits”, as to which there are no findings;
- **In violation of the statute, specifically §2.3**, there is no finding that “all appropriate factors” were “take[n] into account”, including the unenumerated factors and what they consist of, as, for instance, as set forth in the:

²⁶ See, ¶434 of the fifteenth cause of action of [CJA’s March 23, 2016 verified second supplemental complaint in 1st citizen-taxpayer action CJA v. Cuomo, et al.](#) entitled:

“The Commission’s Violation of Express Statutory Requirements of Chapter 60, Part E, of the Laws of 2015 Renders their Judicial Salary Increase Recommendations Null & Void”,

incorporated by ¶78 of the identically-titled eighth cause of action of [CJA’s September 2, 2016 verified complaint in 2nd citizen taxpayer action CJA v. Cuomo...DiFiore](#).

Also, ¶¶74, 75, and 76 of the seventh cause of action of [CJA v. Cuomo...DiFiore](#) entitled:

“Chapter 60, Part E, of the Laws of 2015 is Unconstitutional, As Applied – & the Commission’s Judicial Salary Increase Recommendations are Null & Void by Reason Thereof”,

incorporating ¶¶433-452 of the identically-titled fourteenth cause of action of the March 23, 2016 verified second supplemental complaint of the *CJA v. Cuomo, et al.* 1st citizen taxpayer-action.

²⁷ See, ¶¶167-172 of the fourth cause of action of [CJA’s March 30, 2012 verified complaint in the CJA v. Cuomo...Lippman declaratory judgment action](#) entitled:

“The Commission’s Judicial Pay Raise Recommendations are Statutorily Violative”

and incorporated by the [March 28, 2014 verified complaint in the CJA v. Cuomo, et al.](#) 1st citizen taxpayer action and part of its second cause of action (¶¶99-108) entitled:

“The Judiciary’s Proposed Budget for 2014-2015, Embodied in Budget Bill #S.6351/A.8551, is Unconstitutional & Unlawful”.

Appropriate Factor #1: systemic judicial corruption;

Appropriate Factor #2: fraud perpetrated upon the Commission by the judicial pay raise advocates – including the complete absence of ANY evidence that judicial compensation and non-salary benefits are inadequate;

Appropriate Factor #3: citizen input and opposition to judicial pay raises;

Appropriate Factor #4: the statutory link between supreme court justice salaries and district attorney salaries.

As for the eight numbered findings of the December 4, 2023 Report, they are frauds, as hereinbelow particularized:

NUMBER 1 (at p. 4) is not a finding that existing judicial salaries are inadequate. It also properly belongs in the “Introduction”, as it states:

“Since 1977 the State has assumed the funding of all the courts of the Unified Court System. At that time the State took full responsibility for the costs of all courts, other than town and village courts. Judges were moved from local payrolls to the State payroll.

The adjustment of salaries over the past fifty-six years has a long, and sometimes tortured, history. Since consolidation under State government, pay raises have been addressed ten times. While the issue has come up regularly, there have been significant time periods during which no raises were granted. The longest period of no increase was from February 1999 to March 2012, covering thirteen years. Since 2012, there has been one approved pay increase, in 2015. This took effect in 2016 for a four year period.^{fn2}

The arbitrary manner by which judicial pay raises were addressed led to the creation of a Commission system by the Legislature. While this process has not always resulted in pay adjustments, it has guaranteed that the issue will be consistently addressed.” (underlining in the original, at p. 4).

Moreover, the “one approved pay increase, in 2015” is a deceit, concealing that the first “approved pay increase” was in 2011 by the Commission on Judicial Compensation – and so-reflected by the annotating fn2:

“see OCA Submission to 2023 Commission on Legislative Judicial & Executive Compensation – pp 8-9”.

The cited “pp 8-9” is section III of Chief Administrative Judge Zayas’ submission entitled “[A Brief History of Judicial Compensation in New York State](#)”.

NUMBER 2 (at p. 4) is not a finding that inflation has rendered existing judicial salaries inadequate. It is also superfluous because “rates of inflation” is one of the six enumerated factors that the Commission is statutorily required “to take into account” – which is why Finding Number 7B (at p. 7) reads “Inflation Rate – Previously Discussed (see No. 2)”.

NUMBER 3 (at p. 5) is four sentences, each fraudulent, and all irrelevant to whether current judicial salaries are inadequate.

- The first sentence reads:

“The erosion of the value of the salaries of State employees not covered by negotiated contracts is one of the reasons that the Commission was created.”

This is fraud. Firstly, “reasons that the Commission was created” belong in the “Introduction”. Secondly, New York’s judges are not “State employees, but constitutional officers.

- The second sentence reads:

“Nonetheless, well-deserved raises have recently been approved.”

This, too, is fraud. Whose raises are being referred-to and where are the facts justifying the value judgment that they are “well-deserved”?

- The third sentence reads:

“Collective bargaining agreements have resulted in pay increases for State employees that will amount to almost 14% through April 2025.”

Again fraud. Judges are not “State employees” – and there are no facts here presented from which any relevant comparative, contextual evaluation can be made.

- The fourth sentence reads:

“New York’s Governor and Legislators have also received recent raises.”

This is also fraud and not only are there no facts here presented to enable relevant, contextual evaluation – but the evidence CJA furnished to the Commission, including by the *CJA v. JCOPE, et al.* record [R.207-240], establishes that the December 10, 2018 Report of the Committee on Legislative and Executive Compensation, by which the “Governor and Legislature” received raises was a “false instrument”, so-proven by [CJA’s July 15, 2019 analysis of it](#).

NUMBER 4 (at pp. 5-6) is fraud – and is, by its own admission, “available data on current salaries for federal and other state judges”. In other words, it does not include their “compensation and non-salary benefits”, apart from salary. It also falsely implies, by its gratuitous reference to the

“Compensation Clause” for the COLAs given to federal judges that New York judges have a comparable constitutional entitlement – which they do not, and so-set forth by CJA, in 2011, to the Commission on Judicial Compensation, thereafter embodying it in its [October 27, 2011 Opposition Report](#) (at pp. 34-35, also fn. 9; p. 12, fn. 30).

NUMBER 5 (at p. 6) is fraud – and the ONLY place in the Report that references “[p]rior commissions”. Its four sentences read:

“Prior Commissions have drawn a connection between the ability to support a ‘strong well-qualified judiciary and a healthy state economy.’^{fn28} We endorse that prior finding.

The recognition of the reliance of New York’s business community on the state court’s ability to adjudicate complex commercial litigation is an important factor in deciding to do business here.

In order to maintain a judicial system worthy of New York’s status as one of the economic and cultural leaders in the world, we must attract lawyers to the bench that have the skill and experience to support that system”,

This is not a finding that current judicial salary levels are insufficient for attracting skilled and experienced lawyers, nor that New York has a “strong well-qualified judiciary”.

NUMBER 6 (at p. 6) is fraud – and *sub silentio* repudiates the statute’s §3.2, to which it does not cite, in stating:

“The Commission Statute in its current form (L. 2019, Ch. 59, Part VVV and L. 2015, Ch. 60, Part E) provides the guidance necessary to fulfill our responsibilities by enumerating six factors to consider...”

§3.2 expressly requires that the Commission “take into account all appropriate factors, including”, thereby expressly contemplating factors additional to the six enumerated ones. The Commission’s “responsibilities” are not fulfilled without a finding that it has taken into account “all appropriate factors”, which it does not here do and which, by its concealment of that language, it concedes it has not.²⁹

²⁸ Annotating footnote 5 is not to “Prior Commissions”, but only a single one, as it reads: “see Commission on Legislative, Judicial & Executive Report (December 2015 p. 7)” – and replicates [footnote 25 of Chief Administrative Judge Zayas’ submission](#).

²⁹ The *CJA v. Cuomo...DiFiore* sixth and seventh causes of action particularized that the unenumerated factors are not only “appropriate”, but of constitutional magnitude – which, if not “take[n] into account”, render the statute unconstitutional:

- sixth cause of action challenging the constitutionality of the statute, as written, in failing to specify judicial corruption as an “appropriate factor” [¶64]; and

NUMBER 7 (at pp. 7-9) is a fraud. Although stating “The Commission finds”, implying that it is doing so with respect to the six enumerated factors that its Number 6 correctly recites, its subsections D and E remove “compensation and non-salary benefits” from the two enumerated factors to which they impliedly correspond.³⁰ It also omits any subsection F – the sixth enumerated factor that, like the two that preceded it, contains “compensation and non-salary benefits”.

NUMBER 8 (at p. 9) is a final fraud. It takes the sixth enumerated factor that its above Number 7 omits and transmogrifies what its Number 6 correctly recites into “Ability to Fund”, thereby omitting the statutory continuation “increases in compensation and non-salary benefits”.

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- seventh cause of action challenging the constitutionality of the statute, as applied, (1) when a commission conceals and does not determine whether judicial corruption is an “appropriate factor”; (2) when a commission conceals and does not determine the fraud before it – including the absence of ANY evidence that judicial compensation and non-salary benefits are inadequate; and (3) when a commission suppresses and disregards citizen input and opposition [¶¶74-76].

³⁰ Thus, whereas Number 6 recites: “levels of compensation and non-salary benefits received by Executive Branch officials and legislators of other states and the Federal government”, Subsection D responds: “Comparable Salaries of other state and federal judges – Previously Discussed (See No. 4)” (underlining added). Likewise, whereas Number 6 recites: “levels of compensation and non-salary benefits received by professionals in government, academia, and private and non-profit enterprise”, Subsection E responds: “Salaries of Professionals in government, academia, private and non-profit sectors greatly exceed judicial salaries” (underlining added).

**THE “CONCLUSIONS” SECTION
OF THE COMMISSION’S REPORT (at p. 10)**

The final section of the Commission’s Report is titled “Conclusions” – a word that appears in the statute’s §3.7, as amended, as follows:

“The commission shall make a report to the governor, the legislature and the chief judge of the state of its findings, conclusions, determinations and recommendations, if any, not later than the thirty-first of December of the year in which the commission is established for judicial compensation and the fifteenth of November the following year for legislative and executive compensation. Any findings, conclusions determinations and recommendations in the report must be adopted by a majority vote of the commission and shall also be supported by at least one member appointed by each appointing authority. Each recommendation made to implement a determination pursuant to section two of this act shall have the force of law, and shall supersede, where appropriate, inconsistent provisions of article 7-B of the judiciary law, section 169 of the executive law, and sections 5 and 5-a of the legislative law, unless modified or abrogated by statute prior to April first of the year as to which such determination applies to judicial compensation and January first of the year as to which such determination applies to legislative and executive compensation.” (underlining added).

The statute contains no section of definitions. However, “findings” are, presumably, findings of fact, “conclusions” are, presumably, conclusions of law, and “determinations” are presumably, pursuant to its §2.2(b), whether an increase in salary is “warrant[ed]”, upon which a “recommendation, if any” is then made, having “the force of law...unless modified or abrogated”.

The single prefatory sentence beneath the title of this section does not use the word “conclusions”, does not use the word “determinations”, and does not use the word “recommendations”. It states:

“The Commission on Legislative, Judicial and Executive Compensation on November 13, 2023 unanimously approved changes to judicial salaries as outlined below:” (underlining added).

As such, the denominated “changes”, under a title “Conclusions”, have no “force of law” power to supersede “inconsistent provisions of article 7-B of the judiciary law” – even were they supported by the statutorily-mandated examination and evaluation of “adequate levels of compensation and non-salary benefits”, which they are not, and after having “take[n] into account all appropriate factors”, which they are not.

As to the five listed “unanimously approved changes”, each is completely unexplained:

As to the first “unanimously approved change”:

“1) Effective April 1, 2024, New York State Supreme Court Justices shall receive an annual salary of \$232,600.”

This \$232,600 figure is not based on any finding in the Report that it represents an “adequate” salary based on a determination of “adequate levels of compensation and non-salary benefits”, as the Commission statute requires.

Nor is this “change” identified as to either its dollar amount increase or percentage, namely, an increase of \$21,700 or 10.28% over the current \$210,600 Supreme Court justice salary, which the Commission had not found to be “inadequate”, let alone when evaluated with other “compensation and non-salary benefits”.

As to the second “unanimously approved change”:

“2) The salaries of all other state judges (including Appellate and Administrative judges) shall be adjusted to reflect their present proportion to the salary of State Supreme Court Justices effective April 1, 2024.”

None of the “present proportion(s)” are identified, nor what will be the corresponding salaries for any of the referred-to “other state judges (including Appellate and Administrative judges)”. Nor is there any finding in the Report that these “adjusted” salaries are the “adequate” amounts, but not the current salary amounts, let alone when evaluated with other “compensation and non-salary benefits”.

As to the third “unanimously approved change”:

“3) Except that no County Court Judge, Family Court Judge or Surrogate’s Court Judge shall earn less than 95% of a Supreme Court Justice’s salary. Any such judicial position now being paid a percentage of a Supreme Court Justice’s salary that is greater than 95% shall continue to be paid at that same percentage.”

Not identified is why this “Except[ion]” is necessary, as 95% is the “present proportion” for the referred-to judges – making this “change” superfluous. Nor is there any identification as to who the referred-to judges are who are “now being paid...greater than 95%”.³¹

As to the fourth “unanimously approved change”:

“4) Judges of the New York City Civil Court, the New York City Criminal Court, District Court, Housing Court of New York City Civil Court and full-time City Court Judges (outside of New York City), shall earn 93% of a Supreme Court

³¹ The uniform rate of 95% or greater was the result of the [December 24, 2015 Report](#) of the (1st) Commission on Legislative, Judicial and Executive Compensation, but this is nowhere identified by the December 4, 2023 Report, nor the basis upon which the 2015 commission did so.

Justice's salary. Part-time City Court Judges shall earn the same proportion of the salaries of the full-time City Court Judges that they now earn."³²

Concealed, entirely, is what is being changed, namely, an increase to 93% for both New York City Housing Court judges and full-time City Court judges outside New York City from the current 90%.³³ The Report makes no finding that the current salary, produced by the 90%, is inadequate as to either category, let alone when evaluated with other "compensation and non-salary benefits".

As to the fifth "unanimously approved change":

"5) Effective April 1, 2026, all judges will receive a salary increase of 2% of their April 1, 2024 salary."

The Report makes no finding that salary levels that it has raised, effective April 1, 2024, will have become inadequate by April 1, 2026, let alone when evaluated with other "compensation and non-salary benefits" – and that a 2% increase, effective April 1, 2026, will rectify the inadequacy. Nor is the basis of the 2% calculation identified, or what it is in monetary terms for a Supreme Court justice salary, which is a \$4,652 increase.

³² See [page 26 of the 2015 submission of Chief Administrative Judge Marks to the \(1st\) Commission on Legislative, Judicial and Executive Compensation](#).

³³ The current 90% had resulted from the [December 24, 2015 Report](#) of the (1st) Commission on Legislative, Judicial and Executive Compensation, which raised what had been 84% for New York City Housing Court judges and raised to that same 90% – and uniformly – percentages for City Court judges outside New York City that had ranged from 80% to 88%. The December 4, 2023 Report does not identify this or the basis for the 2015 commission having eliminated these calibrated percentages.

ADDITIONAL COMMENT

The Final Report on Judicial Compensation was approved by a unanimous vote of the commissioners at a [December 4, 2023 meeting](#), without discussion, but with compliments to one another for their time and hard work in getting it done. Three weeks earlier, on [November 13th](#), the commissioners had met to discuss a [November 9th Draft Report](#), which Chair Fahey purported to be his work-product and as to which he explained “the findings are not complete, and that’s why the report is still in its draft stage” (Tr. 3).

In fact, there were no “findings”, at all, in the section of his Draft Report for “Findings”. Nonetheless, Commissioner Weinstein was not ashamed to respond: “excellent draft report, and one that I could support wholeheartedly” (Tr. 7).

Not a single commissioner dissented or questioned how Chair Fahey could have drafted recommendations for them to vote on when he – and they – had not first made findings based on evidence that, according to them, was “compelling”, “overwhelming”, and “ample”. (*see pp. 15-16, supra*).

Instead, at the November 13th meeting, the commissioners all voiced approval for Chair Fahey’s draft recommendation A – the same as would be “changes” 1-4. This was reiterated following a “bathroom break”, at which point, for no apparent reason, Chair Fahey announced that he was modifying his recommendation C by eliminating 2% increases for 2025 and 2027, leaving only the 2% for 2026, thereupon stating “I think we should take a vote on this”. Without discussion – indeed notwithstanding that before the “bathroom break” five of the commissioners had seemingly aligned themselves with Chair Fahey’s original recommendation C – all the commissioners then voted to approve his modified recommendation C (Tr. 13-15), not even inquiring as to the basis for the modification that would be “change” 5 in the Final Report. That done, Chair Fahey repeated:

“...the report needs findings put in....I will get you my proposed finalized version for the findings of the Commission.” (Tr. 15).

Yet, the findings that Chair Fahey would thereafter supply for the Final Report – and which, at the December 4, 2023 meeting, elicited no discussion – are wholly disconnected from, and furnish no factual or legal basis for, its five listed “changes”.

Notably, just as the Report makes no mention of the word “evidence”, although “evidence” was referred to by the commissioners in their post-hearing discussions, so it makes no mention of “parity” of a Supreme Court Justice salary with the salary of a federal district court judge, nor of COLAs, although both were discussed by the commissioners, post-hearing and were focal to the advocacy of Chief Administrative Judge Zayas, the judges, and the bar association pay raise proponents – relying, of course, on the prior 2011, 2015, and 2019 commission reports which had endorsed “parity” and COLAs. The Report makes a single mention of the 2015 commission report, in its footnote 5, but not relating to “parity” or COLAs.

Notably, too, notwithstanding Chair Fahey had stated:

“I think the aim here is to have a decent life, a normal middle class house, you own a house, you own a car, you can pay for your kids to go to school. That’s all a judge should really expect” (Oct 31 Tr. 112),

and thereafter reiterated:

“The remuneration that you receive for the job should simply be in accordance with what it takes, as I’ve said before, to live a middle class life...” (Nov 6 Tr. 10),

the Report he drafted and that the commissioners approved makes no mention of “middle class” or “middle class life” – and contains zero data germane to the issue, such as:

- the average or median household income in New York, and differences between the 62 counties;
- the average or median income of New York attorneys, and differences between the 62 counties;
- differences in the cost of living in the 62 counties.

Assumedly, this is because current judicial salaries, hovering at just below and well above \$200,000, are already substantially beyond “middle class” for most of New York’s 62 counties, and not “inadequate” for New York City, and especially when taken together with other “compensation and non-salary benefits” – and CJA’s October 13th testimony stated as much.

Tellingly, Chief Administrative Judge Zayas, the judges, and the bar associations provided the Commission with none of the above relevant statistics, knowing that they exposed that there was no basis for judicial pay raises, pursuant to the statute. This the Commission could have requested from them, but did not. Nevertheless, it had relevant statistics from a dozen years ago, furnished by CJA to the 2011 Commission on Judicial Compensation and thereafter embodied in its [October 27, 2011 Opposition Report](#). These not only showed a [wide divergence between New York’s 62 counties](#), but that the then Supreme Court salary of \$136,700 was “roughly three times greater than New York’s median household income” and that U.S. Census Bureau statistics placed New York’s judges “at the highest income levels – as high as the top 5%. ...” (see pp. 15 (fn. 21), 30 (fn. 36).

CONCLUSION

The cost of the judicial pay raises, for FY2024-25, is not included in the Commission's [December 4, 2023 Report on Judicial Compensation](#) – though it was known to the commissioners.³⁴

On November 14, 2023, the same day as they unanimously approved “recommendations” for the without-findings Draft Report that Chair Fahey purported as his work-product, the seven judges of the Court of Appeals approved, and Chief Judge Wilson certified, “attached itemized estimates of the financial needs of the judiciary for the fiscal year beginning April 1, 2024” – stating this to be pursuant to [Article VII, §1 of the New York Constitution](#), which reads, in pertinent part:

“Itemized estimates of the financial needs of the legislature, certified by the presiding officer of each house, and of the judiciary, approved by the court of appeals and certified by the chief judge of the court of appeals, shall be transmitted to the governor not later than the first day of December in each year for inclusion in the budget without revision but with such recommendations as the governor may deem proper. Copies of the itemized estimates of the financial needs of the judiciary also shall forthwith be transmitted to the appropriate committees of the legislature.”

[On December 1, 2023](#), Chief Administrative Judge Zayas transmitted the Court of Appeals' November 14, 2023 “Approval” and “Certification” to Governor Hochul, to the Senate and Assembly majority and minority leaders, to the chairs and ranking members of the Senate and Assembly fiscal committees, and to the chair and ranking members of the Senate and Assembly judiciary committees. The “attached” was a [“FY2025 Judiciary Budget”](#). Its “Introduction” identified the “Judicial salary increases that have been recommended by the Commission on Legislative, Judicial & Executive Compensation, pursuant to Chapter 60 of the Laws of 2015, as amended by Chapter 55 of the Laws of 2020” (at p. ii), specifying this (at p. iii) as “\$34.6 million”. A line item for “34,600,000” was part of its “Judiciary Appropriation Bill” (at p. 8), stated as:

“For expenses necessary to implement the recommendations of the commission on legislative, judicial and executive compensation pursuant to chapter 60 of the Laws of 2015, as amended by Part WW of chapter 55 of the Laws of 2020, for adjustment of the salaries of judges and justices of the unified court system effective April 1, 2024”.

This same appropriation would appear at pages 18-19 of [Governor Hochul's January 16, 2023 Legislative/Judiciary Appropriation Bill #S.8301/A.8801](#) – a bill seemingly unaccompanied by any “recommendations” by her.³⁵

Based on this Opposition Report, establishing the Commission's December 4, 2023 Report to be statutorily-violative, fraudulent, and unconstitutional – the product of commissioners disqualified for interest and actual bias – the judiciary must promptly notify the Governor that it is withdrawing

³⁴ See [Chief Administrative Judge Zayas' submission](#) (at pp. 13, 17) and [November 9, 2023 letter](#).

³⁵ See [CJA's January 17, 2024 FOIL request](#) for the Governor's “recommendations”, if any”.

the requested \$34,600,000 appropriation so that she can embody same in her “30-day amendments” and/or the Senate and Assembly must promptly strike the \$34,600,000 from #S.8301/A.8801. Otherwise, the Governor must “recommend”, in conjunction with her “30-day amendments”, that the Senate and Assembly strike the \$34,600,000 and give notice that should they fail to do so she will strike it from such amended/unamended #S.8301/A.8801 as they pass.

As the December 4, 2023 Report violates – and by an enacted \$34,600,000 appropriation will violate – a succession of penal laws including:

[Penal Law §175.35](#): “Offering a false instrument for filing in the first degree”;

[Penal Law §195](#): “Official misconduct”;

[Penal Law §105.15](#): “Conspiracy in the second degree”;

[Penal Law §20.00](#): “Criminal liability for conduct of another”;

[Penal Law Article 496: “PUBLIC TRUST ACT”](#)

[§496.06](#): “Public corruption”;

[§496.05](#): “Corrupting the government in the first degree”;

[Penal Law §110.00](#): “Attempt to commit a crime”;

[Penal Law §195.20](#): “Defrauding the government”;

[Penal §190.65](#): “Scheme to defraud in the first degree”;

[Penal Law §155.42](#): “Grand larceny in the first degree”;

[Penal Law §460.20](#): “Enterprise corruption”,

the commissioners must be referred to appropriate district attorneys and/or U.S. attorneys for criminal prosecution, if Attorney General James does not herself bring such criminal prosecutions based on the evidence here presented.

Meantime, this Opposition Report is being filed with New York’s “public protection”/ethics entities having ethics jurisdiction over the commissioners, *to wit*, the Commission on Ethics and Lobbying in Government and, as to the six attorney-commissioners, the Appellate Division attorney grievance committees, in support of complaints against them for their conflict-of-interest-driven statutory violations, fraud, and intended “grand larceny of the public fisc”.

Finally, there must be hearings as to the corruption infesting New York’s judiciary to which the three judicial pay raise opponents attested, with evidence – involving the corruption of the Commission on Judicial Conduct, the Appellate Division attorney grievance committees, and the OCA Inspector General. Pay raises for New York judges – and for complicit and colluding

legislative and executive officers – are unconstitutional until that evidence is confronted and the situation rectified (see pp. 20-22, *supra*).

EXHIBIT A

At the Commission's [October 31, 2023 hearing](#), We the People Foundation for Constitutional Education Chairman Robert L. Schulz testified ([Tr. 83-96](#)) about "judicial repeal" of provisions of the New York State Constitution by New York courts, colluding in the violations of the State Constitution by the executive and legislative branches – and that, at the Court of Appeals, this had been manifested not only by a fraudulent judicial decision upon an appeal taken of right,¹ but that, thereafter, in 22 cases in which he had met the standard for appeals of right guaranteed by Article VI §(3)(b)(1) wherein "is directly involved the construction of the constitution of the state or the United States", which he had satisfied, the Court had dismissed his appeals "upon the ground that no substantial constitutional question is directly involved", which he had also satisfied.

The commissioners were already fully familiar with this scenario and the evidence substantiating it, from CJA's testimony at the [October 13, 2023 hearing](#) ([Tr. 101-108](#)) identifying, as **EXHIBIT A** for its investigation, [CJA v. Cuomo...DiFiore](#) and, as **EXHIBIT B**, [CJA v. JCOPE, at al.](#) These lawsuits each sued the executive and legislative branches for constitutional violations with respect to the New York State budget and pay raises, with the *CJA v. Cuomo...DiFiore* lawsuit, also suing the judicial branch and having completed its appellate journey at the Court of Appeals, on which was then sitting Associate Judge Eugene Fahey and Associate Judge Rowan Wilson.

The [record of CJA v. Cuomo...DiFiore at the Court of Appeals](#) is an overwhelming, open-and-shut evidentiary record of precisely what Mr. Schulz would separately testify about concerning appeals of right at the Court of Appeals, based on his own decades of experience – and the list of 22 cases, annexed to his [written testimony](#). Indeed, *CJA v. Cuomo...DiFiore* goes way beyond chronicling the Court's subversion of Article VI, §3(b)(1) for appeals of right. It also chronicles – and just as decisively – the Court's subversion of Article VI, §3(b)(6) for appeals by leave, and Article VI, §3(b)(2) for direct appeals.

Below are excerpts from the most important documents of the *CJA v. Cuomo...DiFiore* record at the Court of Appeals² – preceded by a Table of Contents.

¹ [Schulz v. New York State](#), 84 NY2d 231 (1994). This Court of Appeals decision is routinely invoked, on the floor of the Senate and Assembly, by the majority in opposing the minority's posturing as to unconstitutionality of the state's debt. Illustrative are the March 31, 2023 Senate floor proceedings on Governor's debt service budget bill for FY2023-24: [VIDEO -- 3-31-2023 \(at 27mins\)](#) & [transcript: pp. 2136-7](#) and the March 31, 2020 Assembly floor proceedings on the Governor's debt service budget bill for FY2020-21: [VIDEO – 3-31-2020 \(at 45-52 mins\)](#) (4x) & [transcript: pp. 27-35](#).

² The record includes the succession of lawsuits then being litigated in state and federal court, challenging the "force of law" December 10, 2018 Report of the Committee on Legislative and Executive Compensation and the constitutionality of Part HHH, Chapter 59, of the Laws of 2018 that established the Committee – materially identical to Part E, Chapter 60, of the Law of 2015 that established the Commission on Legislative, Judicial and Executive Compensation. Mr. Schulz, who had testified at the Committee's November 28, 2018 hearing – [the video of which disappeared while its website was still operative](#) – brought a federal lawsuit. [CJA's April 11, 2019 letter in further support of its appeal of right](#) identified (at fn. 15) Mr. Schulz' federal lawsuit, annexing an extract of his January 15, 2019 verified complaint as [Exhibit D](#).

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A.

CJA's March 26, 2019 letter in support of its appeal of right, pursuant to Article VI, §3(b)(1), responding to the *sua sponte* jurisdictional inquiry of the Court's Clerk's Office

Two sections of [CJA's March 26, 2019 letter](#) are particularly here relevant – the second being the summarizing last section of the letter (at pp. 21-22), which was, as follows:

"In Conclusion:**New York's Constitution Has Been Undone by Collusion of Powers**

No fair and impartial tribunal, constitutionally charged, as this Court is, with reviewing appeals wherein is 'directly involved the construction of the constitution of the state', could fail to discharge that duty here.

What is before the Court, on this appeal of right, is catastrophic. Gone is the constitutional design of separation of executive and legislative powers – replaced by collusion of powers that has undone our State Constitution. And more than the budget is at issue. It is the very governance of this State, as the budget has become a pass-through for policy having nothing to do with the budget – the 'proposed legislation, if any' of Article VII, §3 having become separated from its meaning in Article VII, §2: 'proposed legislation, if any, which the governor may deem necessary to provide moneys and revenues sufficient to meet such proposed expenditures [of the budget]',^{fn11} further foisted by constitutionally unauthorized "non-appropriation" Article VII budget bills.^{fn12}

The first particularly relevant section (at pp. 8-9) was this:

“Appellants Meet the Constitutional Requirements
Entitling Them to an Appeal of Right,
Pursuant to Article VI, §3(b)(1) of the New York State Constitution,
Reiterated by CPLR §5601(b)(1)

The constitutional requirements for appeals of right, pursuant to Article VI, §3(b)(1) of the New York State Constitution, reiterated by CPLR §5601(b)(1), which appellants meet, are:

‘a judgment or order entered upon the decision of an appellate division of the supreme court which finally determines an action or special proceeding wherein is directly involved the construction of the constitution of the state or of the United States...’

For this reason, appellants’ notice of appeal expressly invoked Article VI, §3(b)(1) and CPLR §5601(b)(1) – with the basis for their doing so evident from the Appellate Division Memorandum itself, appended thereto. *On its face*, the Memorandum makes apparent that appellants’ sixth cause of action, as well as their fifth and ninth, ‘directly involve[] the construction of the constitution of the state’ and that each was so-decided by the Appellate Division. ...

Now that the Court has before it the three-volume record on appeal, the appeal briefs, and appellants’ four appellate motions, the Court can further verify the foregoing. Indeed, from appellants’ September 2, 2016 verified complaint [R.87-392] and March 29, 2017 supplemental verified complaint [R.671-743], the Court can discern what is not revealed by the face of the Memorandum, namely, that appellants’ first, second, third, and fourth causes of action also ‘directly involve[] the construction of the constitution of the state...’, if not, additionally, the seventh, eighth and tenth causes of action.

By reason thereof, appellants have an appeal of right, which they here seek to enforce. And relevant thereto is the dissent of former Court of Appeals Associate Judge Robert Smith in *Kachalsky v. Cacace*, 14 N.Y.3d 743 (2010), candidly confessing that the Court’s addition of the word ‘substantial’, such as appears in [the] March 4, 2019 letter [of the Court’s Deputy Clerk], is without constitutional or statutory warrant and that its effect is to *sub silentio* convert the Court’s mandatory jurisdiction to one that is discretionary. Consequently, if the largely boilerplate March 4, 2019 letter is a prelude to the Court’s completely boilerplate second letter ‘Appeal dismissed, without costs, by the Court of Appeals, sua sponte, upon the ground that no substantial constitutional question is directly involved’, that is itself a

further ‘substantial constitutional question...directly involved’ – and appellants are here asserting it.^{fn3} (at p. 9, italics and underlining in the original).

The annotating footnote 3 read:

“See, *inter alia*, ‘*An Illusionary Right of Appeal: Substantial Constitutional Questions at the New York Court of Appeals*’, 31 Pace Law Review 583 (2011) (Meredith R. Miller); ‘*What Does It Mean If Your Appeal of Right Lacks A ‘Substantial’ Constitutional Question in the New York Court of Appeals?*’, 75 Albany Law Review 899 (2012) (Alan J. Pierce).”

The Court’s response to CJA’s appeal of right, on a record showing that the accuracy of its presentation of fact and law was uncontested by the Attorney General, was a [May 2, 2019 order \(SSD-23\)](#), unsigned by any judge, dismissing the appeal “*sua sponte*...upon the ground that no substantial constitutional question is directly involved”.

B.

CJA’s May 31, 2019 motion for reconsideration of the Court’s May 2, 2019 order dismissing the appeal of right “upon the ground that no substantial constitutional question is directly involved”

Expressly sought by [CJA’s May 31, 2019 notice of motion](#) was an order, *inter alia*:

“2. Determining the threshold issues which the May 2, 2019 Order neither identifies nor determines – or certifying same to the United States Supreme Court, *to wit*:

...

c) Is this Court’s substitution of the language of Article VI, §3(b)(1) of the New York State Constitution and CPLR §5601(b)(1), granting appeals of right ‘wherein is directly involved the construction of the constitution of the state or of the United States’, with a *sua sponte* ground to dismiss because ‘no substantial constitutional question is directly involved’ unconstitutional, *as written, as unwritten, and as applied?*” (underlining and italics in the original).

[CJA’s May 31, 2019 moving affidavit](#) then quoted the above quoted portion of its March 26, 2019 letter stating that it “did not go far enough” – and furnished the following facts and legal argument in substantiation:

“19. ...not only is there no ‘constitutional or statutory warrant’ for the Court’s *sua sponte* ground ‘no substantial constitutional question...directly involved’, but the Court has not set it forth in any rule provision: 22 NYCRR Part 500.

20. To cover up that there is no constitutional, statutory, or rule authority for what it is doing, the Court has created a 41-page ‘Civil Jurisdiction and Practice

Outline', from which it has all but vanquished the New York State Constitution, citing it only at pages 19 and 28, as if it is were quite subsidiary to the plenteously-cited CPLR, rather than the other way around. Neither those two pages nor any others quote the language of Article VI, §3(b)(1) or CPLR §5601(b)(1) for appeals of right 'wherein is directly involved the construction of the state or of the United States'. In a section entitled 'Constitutional Question – CPLR 5601(b)(1) – Appeal from Final Appellate Division Order' (at pp. 4-5) is a subsection on 'Substantiality' whose single paragraph is prefaced by 'see Karger, §7:5, at 226-228'. The paragraph offers up no justification for the Court's 'substantiality' requirement – and the justification in the cited 'Powers of the New York Court of Appeals...[3d ed rev 2005]' by Arthur Karger, is Karger's own:

'It is an obviously necessary safeguard against abuse of the right to appeal on constitutional questions, for otherwise the right to appeal would turn on the ingenuity of counsel in advancing arguments on constitutional issues however fanciful they might be. A similar requirement is applied by the United States Supreme Court on certiorari petitions to review State court decisions.' (at p. 226).

21. Surely this Court knows that Article III of the U.S. Constitution does not confer a right of appeal to the U.S. Supreme Court – just as none is conferred by the federal statute governing U.S. Supreme Court review, 28 U.S.C.S. §1257, providing for discretionary review by certiorari. For this reason, the U.S. Supreme Court's 'substantiality' add-on does not violate the U.S. Constitution nor the federal statute. By contrast, this Court's 'substantiality' add-on violates the appeal of right conferred by Article VI, §3(b)(1) of the New York State Constitution and reiterated by CPLR §5601(b)(1).

22. As for 'substantiality' being 'an obviously necessary safeguard against abuse of the right to appeal on constitutional questions', what the Court has been doing, in fact, is using it, in tandem with burying the Court's pre-eminent function to safeguard and interpret the state and federal constitutions – embodied in Article VI, §§3(b)(1) and 3(b)(2) – to destroy 'the right to appeal on constitutional questions'. And epitomizing this is the Court's own 2018 Annual Report, whose third sentence, under the heading 'The Work of the Court' states:

'The State Constitution and applicable jurisdictional statutes provide few grounds for appeals as of right; thus, the Court hears most appeals by its own permission, granted upon civil motion or criminal leave application.' (at p. 2, underlining added).

In other words, the Court blames the paucity of its mandatory docket on the 'State Constitution and applicable jurisdictional statutes', concealing what it has done to them.

23. As the May 2, 2019 Order (Exhibit A-1) implicitly found 'no substantial constitutional question...directly involved' in using such objected-to *sua sponte* ground to dismiss what is doubtless among the most monumental appeals of

right to come before the Court, ever – appellants are, by this motion, directly challenging its constitutionality, framing the issue, as follows:

‘Is this Court’s substitution of the language of Article VI, §3(b)(1) of the New York State Constitution and CPLR §5601(b)(1), granting appeals of right ‘wherein is directly involved the construction of the constitution of the state or of the United States’, with a *sua sponte* ground to dismiss because ‘no substantial constitutional question is directly involved’ unconstitutional, as written, as unwritten, and as applied?’ (appellants’ notice of motion (at ¶(c)).”

The Court’s response, by an [October 24, 2019 order](#), unsigned by any judge, on a record showing that the accuracy of CJA’s presentation was uncontested by the Attorney General, was to deny, without reasons, the requested reconsideration of its May 2, 2019 order dismissing CJA’s appeal of right – and without identifying its challenge to the Court’s insertion of a substantiality requirement.

C.
CJA’s June 6, 2019 motion for leave to appeal
pursuant to Article VI, §3(b)(6)

[By a June 6, 2019 motion, CJA moved for leave to appeal pursuant to Article VI, §3\(b\)\(6\)](#), stating, in pertinent part (at pp. 5-10):

“Questions Presented for Review
(22 NYCRR §500.22(b)(4))

Whether this Court, having dismissed, *sua sponte*, the appeal of right, taken pursuant to Article VI, §3(b)(1) of the New York State Constitution ‘upon the ground that no substantial constitutional question is directly involved’, is of the ‘opinion’ that there is an appeal by leave, pursuant to Article VI, §3(b)(6), because the Appellate Division, Third Department’s December 27, 2018 Memorandum and Order in this citizen-taxpayer action:

- (a) involves ‘question[s] of law... which ought to be reviewed by the court of appeals’; and/or
- (b) is so totally devoid of any semblance of justice as to ‘require[]’ that the appeal ‘shall be allowed...in the interest of substantial justice.’”

...

p. 5: ‘...As the Court does not appear to have rendered any interpretive decision about this [section b] mandatory leave to appeal, contained within the last sentence of Article VI, §3(b)(6), here’s some rudimentary analysis:

Article VI, §3(b)(6) reads:

‘3...b. Appeals to the court of appeals may be taken in the classes of cases hereafter enumerated in this section:

...

In civil cases and proceedings as follows:

...

(6) From a judgment or order entered upon the decision of an appellate division of the supreme court which finally determines an action or special proceeding but which is not appealable under paragraph (1) of this subdivision where the appellate division or the court of appeals shall certify that in its opinion a question of law is involved which ought to be reviewed by the court of appeals. Such an appeal may be allowed upon application (a) to the appellate division, and in case of refusal, to the court of appeals, or (b) directly to the court of appeals. Such an appeal shall be allowed when required in the interest of substantial justice.’ (underlining added).

The rules of construction pertaining to the New York State Constitution are the same as for statutes and written instruments:

‘The starting point for any constitutional question must be the language of the constitution itself. The same general rules that govern the construction and interpretation of statutes and written instruments generally apply to, and control in, the interpretation of written constitutions.

... there is no room for application of rules of construction so as to alter a constitutional provision that is not ambiguous...’

20 New York Jurisprudence 2nd, §17 ‘Mode of construction: applicability of principles of statutory construction’.

‘...When the language of a constitutional provision is plain and unambiguous, full effect should be given to the intention of the framers as indicated by the language employed and approved by the people.

The courts should not permit explicit language of the constitution to be rendered meaningless, and, in its construction of clear constitutional and statutory provisions, a court may not read out any requirement.’

20 New York Jurisprudence 2nd, §25 ‘Conformity to language’.

The meaning of ‘shall’ is mandatory, as opposed to ‘may’ which is discretionary – and the distinction between them is reinforced because they both appear in Article VI, §3(b)(6):

‘...When different terms are used in various parts of a statute or rule, it is reasonable to assume that a distinction between them is intended. McKinney’s Consol. Laws of N.Y., Book 1, Statutes, Sec. 236 at 403...

Generally, it is presumed that the use of the word ‘shall’ when used in a statute is mandatory, while the word ‘may’ when used in a statute is permissive only and operates to confer discretion, especially where the word ‘shall’ appears in close juxtaposition in other parts of the same statute. *Metro Burak, Inc. v. Rosenthal & Rosenthal, Inc.*, 51 A.D.2d 1003, 380 N.Y.S.2d 758 (2nd Dept. 1976); 82 C.J.S. Statutes, Sec. 380.’

D’Elia on behalf of Maggie M. v. Douglas B., 524 N.Y.S.2d 616, 620 (Fam. Ct. 1983).

And there are additional principles of construction regarding ‘Peremptory or permissive language’:

‘Language peremptory in form is usually given a peremptory meaning^{fn24} and the power of courts to disregard the provisions of a statute as directory only should be exercised with great caution.^{fn25} Especially is this true where acts of common justice are involved or where officers are commanded to do an act which concerns public interests or the rights of individuals.^{fn26}

McKinney’s Consolidated Laws of New York Annotated, Book 1 (Statutes), §177, 2019 Cumulative Pocket Part.

Suffice to say in 1967, this Court’s newly installed Chief Judge, Stanley Fuld, in advocating for the changes he hoped would be achieved through that year’s constitutional convention – and which would be effectuated 18 years later by the 1985 changes to CPLR §5602 that would to give the Court a more discretionary docket, described the Court’s caseload, responsibilities, and practices in the 18 years he had been on the Court:

‘Our underlying philosophy has been that, although we should devote ourselves primarily to questions of significance in the development and clarification of the general body of law, we may not shirk our responsibility to remedy plain injustice in individual controversies, even though the immediate decision may not have any impact on the State’s jurisprudence.

...

Concern has been expressed that under a system of discretionary jurisdiction, such as I have suggested, some meritorious appeals might be denied a hearing in the Court of Appeals. The fear seems to be that, on a motion for leave to appeal, a case will not receive as full and thorough a study as it would be accorded on oral argument. I would assure the Bar, however, that all cases passed upon by the Court or its judges, whether on motion for leave or on oral argument, are subjected to careful and searching scrutiny. Indeed, we have a liberal practice under which the affirmative

votes of only two of the seven judges of the Court are required for the granting of leave to appeal.

Nor has our Court ever been deaf to a plea of injustice. A number of cases come to mind: one recent example will suffice ...

As this and many other of our cases attest, there need be little fear that the Court will refuse any appeal which merits review. ...” (at pp. 101, 103-104).

Chief Judge Fuld’s January 27, 1967 address at the annual meeting of the New York State Bar Association, printed in New York State Bar Journal, Volume 39, April 1967, under the title ‘*The Court of Appeals and the 1967 Constitutional Convention*’.

The Court’s Rule 500.22 makes no mention of the ‘interest of substantial justice’ ground for the granting of leave – and the 2005 edition of Powers of the New York Court of Appeals by Arthur Karger reflects as much. Under the §10:3 heading ‘Appeal by leave of Court of Appeals from final determination’, with a footnote 17 citing Judge Fuld’s above New York State Bar Journal article, Karger struggles with his own interpretation, as follows:

‘...the primary, though not the sole, function of the Court of Appeals is conceived to be that of declaring and developing an authoritative body of decisional law for the guidance of the lower courts, the bar and the public, rather than merely correcting errors committed by the courts below.’^{fn17}

Indeed, the Court stated in an early case that leave to appeal would not be granted unless that case involved a question of public interest or conflict between departments or an error of law ‘which, if permitted to pass uncorrected, will be likely to introduce confusion into the body of law.’^{fn18} However, that [1896] case was decided long before the adoption in 1925 of the revised Judiciary Article of the State Constitution from which the present Judiciary Article was basically derived.^{fn19} That Article made clear that the Court of Appeals sits, not only to settle and develop the law, but also to correct errors committed in individual cases, even to the extent of reviewing questions of fact in certain situations pursuant to enlarged powers conferred on it in that regard by the new Article.^{fn20}

The precise procedure for making a motion in the Court of Appeals for leave to appeal to that Court is set forth in section 500.11(d) of its Rules of Practice. That section requires the movant to show, *inter alia*, ‘why the questions presented merit review by the court,’ and it then specifies, as examples of such a showing, that the questions ‘are novel or of public importance, or involve a conflict with decisions of this court, or there is a conflict among the Appellate Divisions.’^{fn21}

The movant should therefore attempt to show, if possible, that the case involves questions of the kind mentioned in the foregoing

rule. However, the rule does not provide that the examples mentioned therein are the only instances in which leave to appeal may be granted, and leave would appear to be warranted if a strong showing is made of reversible error on the part of the Appellate Division, even in the absence of any novel or important question of law.

Thus, the constitutional provisions governing the granting of leave to appeal to the Court of Appeals from a final determination of the Appellate Division provide that '[s]uch an appeal shall be allowed when required in the interest of substantial justice.'^{fn22} Moreover, a showing of reversible error of law in the particular case would itself come directly within the ambit of one of the examples specified in the rule if the error represented 'a conflict with prior decisions' of the Court of Appeals.

Though the power of review of the Court of Appeals is in general limited to questions of law, it is authorized to review questions of fact where the Appellate Division, on reversing or modifying a final or interlocutory determination, has expressly or impliedly found new facts and a final determination pursuant thereto is entered.^{fn23} It is uncertain what approach the Court of Appeals would take on a motion for leave to appeal in such a case if the only showing in support of the motion, though very strong, related to error on the part of the Appellate Division in deciding the questions of fact.

CPLR 5602(a) provides, by way of codification of the Court's prior practice, that leave to appeal shall be granted upon the approval of two of the Judges of the Court of Appeals.' (at pp. 331-332).

At bar, this is not an appeal where the 'only showing' is 'error on the part of the Appellate Division in deciding the questions of fact'. There are, however, an avalanche of factual 'errors' ...

p. 11: This is also not an 'individual case' involving private parties and with no public impact – as was the 'recent example' Judge Fuld described in January 1967 to the New York State Bar Association in support of his assertion 'Nor has our Court ever been deaf to a plea of injustice'. Nor is this a case where the 'reversible error[s] of law' do not "conflict with prior decisions" of the Court of Appeals'. Consequently, none of these scenarios negate the appeal which Article VI, §3(b)(6) mandates 'in the interest of substantial justice'.

Indeed, before the Court on this appeal is, doubtless, one of the most monumental cases to come before it, ever: a citizen-taxpayer action, expressly 'on behalf of the People of the State of New York & the public interest', suing New York State's highest constitutional officers of its three governmental branches for corruption, on a record establishing that appellants have an open-and-shut, prima facie entitlement to declarations that the state budget and commission-based judicial salary increases it embeds are unconstitutional, unlawful, and fraudulent – and where

the ‘reversible error[s] of law’ of the Appellate Division are so profound that, except where there are no ‘prior decisions’ of this Court on a given subject – as, for instance, the ‘interest of the state’ predicate for the Attorney General’s litigation posture pursuant to Executive Law §63.1 – the so-called ‘errors of law’ are ALL in diametric conflict with ALL ‘prior decisions’ of this Court. As illustrative of an endless list: ...

p. 15: As the most cursory examination of appellants’ ten causes of action reveal [R.99-130 (R.159-224); R-731-741], ALL are of statewide significance, involving government accountability and vast sums of taxpayer money. They particularize tens of ‘novel’ issues never previously addressed by this Court, presented on a fully-developed, perfectly-preserved record, in a posture of summary judgment for appellants for the declarations of unconstitutionality and unlawfulness they seek...

p. 16: These causes of action additionally expose deficiencies in this Court’s ‘settled law’ relating to the budget, demonstrating the necessity that the Court revisit its decisions so as to refine and, in some respects, overturn them. ...

p. 19: On top of this, there is the ‘unsettled law’ concerning the constitutionality of the Legislature’s ‘force of law’ delegation of legislative powers to the Commission on Legislative, Judicial and Executive Compensation by Part E of Chapter 60 of the Laws of 2015, the subject of the first two sections of appellants’ sixth cause of action [R.109-111 (R.187-193)]...” (underlining in the original).

The Court’s response, by an [October 24, 2019 order \(Mo. No. 2019-646\)](#) unsigned by any judge – and on a record showing that the accuracy of CJA’s presentation was uncontested by the Attorney General, was to deny CJA’s June 6, 2019 motion for leave to appeal, without reasons.

D.

**CJA’s November 25, 2019 motion to vacate and pertaining to
the Court’s November 21, 2019 order in *Delgado v. New York State*
denying a direct appeal pursuant to Article VI, §3(b)(2),
the particulars of which were set forth
by CJA’s final January 9, 2020 letter**

Faced with the Court’s two October 24, 2019 orders denying without reasons, CJA’s May 31, 2019 and June 6, 2019 motions, plus a third [October 24, 2019 order \(Mo. No. 2019-799\)](#) denying, without reasons, their August 8, 2019 motion to strike the Attorney General’s combined opposition to the May 31, 2019 and June 6, 2019 motions as a “fraud on the court”, CJA made a final motion to the Court on November 25, 2019 – the same motion as CJA highlighted by its [October 12, 2023 letter to the Commission](#) (at pp. 3-4).

The [November 25, 2019 notice of motion](#) sought, by its fifth branch, an order:

“pursuant to CPLR §2221(d) and this Court’s Rule 500.24, granting reargument to address what the Court ‘overlooked’ by its three October 24, 2019 Orders – *to wit*, ALL the facts, law, and legal argument presented by appellants’ May 31, 2019, June 6, 2019, and August 8, 2019 motions, including as to the *unconstitutionality, as written, as unwritten, and as applied*, of the Court’s substitution of the language of Article VI, §3(b)(1) of the New York State Constitution, mirrored in CPLR §5601(b)(1) – granting appeals of right ‘wherein is directly involved the construction of the constitution of the state or of the United States’ – with a *sua sponte* ground to dismiss because “no substantial constitutional question is directly involved”, which it has not even embodied in a court rule.”

The motion also sought renewal pursuant to CPLR 2221(e), by its sixth branch, based on new facts that could not be presented previously, including relating to [the Court’s November 21, 2019 order in *Delgado v. New York State*](#), which denied the direct appeal that the *Delgado* plaintiffs had taken to the Court, pursuant to Article VI, §3(b)(2), from a Supreme Court order that rested on the Appellate Division, Third Department’s December 27, 2018 decision in *CJA v. Cuomo...DiFiore*.

[CJA’s November 25, 2019 moving affidavit](#) by CJA plaintiff Sassower stated (at p. 17), with respect to the Court’s denial of the *Delgado* direct appeal:

“Based upon my preliminary review, it appears that just as the Court has subverted Article VI, §3(b)(1) of the New York State Constitution, for appeals of right from Appellate Division orders, and has subverted Article VI, §3(b)(6) of the New York State Constitution, for appeals by leave^{fn8} – so, too, has it subverted Article VI, §3(b)(2) for direct appeals. This includes by *sua sponte* jurisdictional inquiry letters, of the type [the Court of Appeals Clerk] sent out, NOT citing Article VI, §3(b)(2), but only CPLR §5601(b)(2) – plainly reflective of his knowledge that CPLR §5601(b)(2) omits the crucial clause that Article VI, §3(b)(2) contains: ‘and on any such appeal only the constitutional question shall be considered and determined by the court’. I will report more specifically on this upon my further examination of the law – and after the Court furnishes me with [*Delgado* counsel] MacDonald’s September 9, 2019 letter in support of his direct appeal, which he has refused to supply.^{fn}

By a [January 9, 2020 letter addressed to the Court’s Clerk](#), which would be the CJA plaintiffs last submission to the Court in *CJA v. Cuomo...DiFiore*, plaintiff Sassower stated (at pp. 3-5):

“Having now more thoroughly examined the law pertaining to direct appeals and Mr. Paladino’s submissions – and, for the first time, Mr. MacDonald’s submissions – I can now more definitively report...that the November 21, 2019 Order you signed is neither procedurally nor substantively proper – and that:

^{fn8} See appellants’ May 31, 2019 motion, at ¶¶19-23 and appellants’ June 6, 2019 motion, at pages 5-10.”

‘just as the Court has subverted Article VI, §3(b)(1) of the New York State Constitution, for appeals of right from Appellate Division orders, and has subverted Article VI, §3(b)(6) of the New York State Constitution, for appeals by leave^{fn8} – so, too, has it subverted Article VI, §3(b)(2) for direct appeals.’ (my November 25, 2019 moving affidavit, at p. 17).

As for this now third subversion of Article VI, §3(b) of the New York Constitution by the Court, §3(b)(2) confers an appeal of right:

‘from a judgment or order of a court of record of original jurisdiction which finally determines an action or special proceeding where the only question involved on the appeal is the validity of a statutory provision of the state or of the United States; and on any such appeal only the constitutional question shall be considered and determined by the court.’

In other words, the existence of other questions not pertaining to ‘the validity of a statutory provision of the state or of the United States’ does not preclude a direct appeal so long as they do not prevent the Court from considering and determining the constitutional question – which is the only question that the Court can consider and determine on the direct appeal.

Yet the Court’s stock boilerplate – which the November 21, 2019 Order in *Delgado* (Exhibit B) uses – is that ‘a direct appeal does not lie when questions other than the constitutional validity of a statutory provision are involved’.^{fn4} This is misleading, at best – and NOT consistent with Article VI, §3(b)(2), to which the boilerplate *Delgado* Order cites with an inferential ‘see’.^{fn5} Nor is it consistent with CPLR §5601(b)(2), also cited. Indeed, the language of CPLR §5601(b)(2) is materially identical to that of Article VI, §3(b)(2), except that the statute omits the concluding clause of the constitutional provision ‘and on any such appeal only the constitutional question shall be considered and determined by the court.’^{fn6}

^{fn4} This boilerplate appears in all five of the Court’s orders cited at page 5 of its ‘Civil Jurisdiction and Practice Outline’: <https://www.nycourts.gov/ctapps/forms/civiloutline.pdf>; *Jetro Cash and Carry Enters. v. State of New York Dept. of Taxation and Finance*, 81 NY2d 776 (1992); *Town of Brookhaven v. State of New York*, 70 NY2d 999 (1998); *Matter of Morley v. Town of Oswegatchie*, 70 NY2d 925 (1987); *New York State Club Assn. v City of New York*, 67 NY2d 717 (1986); *Kerrigan v. Kenny*, 64 NY2d 1109 (1985).”

^{fn5} According to *The Bluebook: A Uniform System of Citation* (at p. 4)(18th ed. 2004), the word ‘see’ is used ‘to introduce an authority that clearly supports, but does not directly state, the proposition’.”

^{fn6} The only other difference is that CPLR §5601(b)(2) additionally omits the words ‘order’ and ‘special proceeding’ from which Article VI, §3(b)(2) identifies a direct appeal to also be available.”

Obvious from this concluding clause of Article VI, §3(b)(2) is that the existence of non-constitutional questions does not, of itself, bar a direct appeal. Is this the reason the Court's 'Civil Jurisdiction and Practice Outline' omits any reference to it and refers only to CPLR §5602(b)(2)? Or do you have another reason? Likewise, what is the reason that the Court's preliminary appeal statement form also does not cite to Article VI, §3(b)(2), but only CPLR §5602(b)(2)? How about your *sua sponte* jurisdictional inquiry letters? Do they all resemble your August 30, 2019 letter to Mr. MacDonald, which, with no mention of Article VI, §3(b)(2), states:

'The Court has received your preliminary appeal statement and will examine its subject matter jurisdiction with respect to whether a direct appeal lies pursuant to CPLR 5601(b)(2).'

Your November 21, 2019 *Delgado* Order (Exhibit B) reads, in full:

'Appellants having appealed to the Court of Appeals in the above cause;

Upon the papers filed and due deliberation, it is

ORDERED, that the appeal is transferred without costs, by the Court sua sponte, to the Appellate Division, Third Department, upon the ground that a direct appeal does not lie when questions other than the constitutional validity of a statutory provision are involved (see NY Const, art VI, §§3[b][2], 5[b]; CPLR 5601[b][2]).
Chief Judge DiFiore took no part.'

What are the supposed other 'questions' precluding direct review?

Mr. MacDonald had presented none when, by his August 9, 2019 notice of direct appeal, he invoked both 'Article 6, Section 3(b)(2) of the New York Constitution and CPLR §5601(b)(2)', further stating:

'This appeal deals solely with the constitutionality of Part HHH of Chapter 59 of the Laws of 2018.'

Likewise, only a single issue was presented by Mr. MacDonald's August 20, 2019 preliminary appeal statement:

"Whether Part HHH of Chapter 59 of the Laws of 2018 is unconstitutional under the New York State Constitution".

So, too, was Mr. MacDonald's September 9, 2019 letter (Exhibit D) exclusively devoted to the unconstitutionality of Part HHH, Chapter 59 of the Laws of 2018, furnishing, as well, 'the papers filed with the Supreme Court', requested by your *sua sponte* jurisdictional inquiry letter.

Did the Court not examine ‘the papers’, as its November 21, 2019 Order purports?...” (underlining in the original).

Exhibit F to Petitioners' March 18, 2024 Verified Petition/Complaint [R.204-207]

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Written Testimony of CJA Director Elena Ruth Sassower
for the Legislature's January 25, 2024 "Public Protection" Budget Hearing
submitted AFTER the testimony of Chief Administrative Judge Joseph Zayas and
Commission on Judicial Conduct Administrator Robert Tembeckjian

At [pages 18-19 of Legislative/Judiciary Budget Bill #S.8301/A.8801, introduced by Governor Hochul on January 16, 2024](#), the judiciary seeks \$34,600,000:

"For expenses necessary to implement the recommendations of the commission on legislative, judicial and executive compensation pursuant to chapter 60 of the Laws of 2015, as amended by Part WW of chapter 55 of the Laws of 2020, for adjustment of the salaries of judges and justices of the unified court system."

On Friday, January 19, 2024, by a series of e-mails to legislators, all attaching [CJA's January 18, 2024 Opposition Report](#) to the [Commission on Legislative, Judicial and Executive Compensation's December 4, 2023 Final Report](#), and all containing a subject line reading:

"ALERT: \$34.6M at pp. 18-19 of Budget Bill #S.8301/A.8801 must be stricken, as it is the product of statutory violations & fraud by the Commission on Legislative, Judicial & Executive Compensation",

I stated:

"The \$34.6M line item for so-called 'adjustment of the salaries of judges and justices' in [Legislative/Judiciary Budget Bill S.8301/A.8801 \(at pp. 18-19\)](#) must be stricken as it is the product of statutory violations and fraud by the Commission on Legislative, Judicial and Executive Compensation whose December 4, 2023 misnomered 'Final Report on Judicial Compensation' is a 'false instrument' The details are set forth by CJA's above-attached January 18, 2024 Opposition Report to the Commission's December 4, 2023 Report, which was e-mailed to [Legislative Leaders Stewart-Cousins, Heastie, Ortt, and Barclay] for distribution to you so that you could be alerted to your constitutional and oversight responsibilities.

The e-mail, addressed and also sent to Chief Administrative Judge Zayas, is below. Presumably Chief Administrative Judge Zayas will be your first witness at the [January 25th budget hearing on 'public protection'](#) – and you should be prepared to grill him about it.

I am available to assist you – and am reachable by phone and e-mail over the weekend, late at night, and early in the morning."

Exhibit F to Petitioners' March 18, 2024 Verified Petition/Complaint [R.204-207]

I sent these e-mails to:

- [every member of the Senate Judiciary Committee;](#)
- [every member of the Assembly Judiciary Committee;](#)
- [every member of the Senate Committee on Investigations and Government Operations;](#)
- [every member of the Assembly Committee on Governmental Operations](#)
[and every member of the Assembly Committee on Oversight, Analysis and Investigation;](#)
- [every member of the Senate Finance Committee;](#)
- [every member of the Assembly Ways and Means Committee.](#)

I received not a single call, nor e-mail, other than automated e-mails acknowledging receipt.

On Tuesday, January 23rd, I sent a comparable e-mail to the [deficiently-appointed membership of the Legislative Commission on Government Administration](#) – and, yesterday, January 24th, sent more comparable e-mails to:

- [every member of the Senate Committee on Budget and Revenue;](#)
- [every member of the Senate Codes Committee;](#)
- [every member of the Assembly Codes Committee;](#)
- [every member of the Senate Rules Committee;](#)
- [every member of the Assembly Rules Committee;](#)
- [every member of the Senate Majority Leadership;](#)
- [every member of the Senate Minority Leadership;](#)
- [every member of the Assembly Majority Leadership;](#)
- [every member of the Assembly Minority Leadership](#) & [here.](#)

Here, too, I received not a single call, nor e-mail, other than automated e-mails acknowledging receipt.

Meanwhile, in advance of the hearing, you posted on the [Senate webpage for the hearing](#), Chief Administrative Judge Zayas' [written statement](#) identifying (at p. 1) that the judiciary's budget includes "judicial pay increases recommended by the 2023 Quadrennial Salary Commission". This

description was itself a deceit, falsifying the Commission's name – Commission on Legislative, Judicial and Executive Compensation – to conceal its statutory violation in NOT having examined “compensation and non-salary benefits”, exposed again and again by [CJA's Opposition Report](#). His written testimony made no reference to the Opposition Report – apparently unconcerned that when I sent it to him by a [January 18th e-mail](#), corrected by a [January 19th e-mail](#), I had simultaneously sent it to:

“All Senators: *c/o* Senate Leaders Andrea Stewart-Cousins & Robert Ort
All Assembly Members: *c/o* Assembly Leaders Carl Heastie & William Barclay”

so as to enable you to “individually and collectively [] discharge constitutional and oversight responsibilities:

- “(1) to void the Commission's ‘force of law’ December 4, 2023 Final Report on Judicial Compensation because it is statutorily-violative, fraudulent, and unconstitutional – and striking the \$34.6 million appropriation for judicial salary increases from the Governor's Legislative/Judiciary Budget Bill #S.8301/A.8801;
- (2) to refer the Commission's seven members for criminal prosecution...based on penal law violations including:

Penal Law §175.35: ‘Offering a false instrument for filing in the first degree’;

Penal Law §195: ‘Official misconduct’;

Penal Law §105.15: ‘Conspiracy in the second degree’;

Penal Law §20.00: ‘Criminal liability for conduct of another’;

Penal Law Article 496: ‘PUBLIC TRUST ACT’

§496.06: ‘Public corruption’;

§496.05: ‘Corrupting the government in the first degree’;

- (3) to hold hearings on the corruption in New York's judiciary to which the three judicial pay raise opponents attested, with evidence – involving the corruption of the Commission on Judicial Conduct, the Appellate Division attorney grievance committees, and the OCA Inspector General”.

Roughly half an hour before the “public protection” budget hearing commenced, I sent a [January 25th e-mail to every member of the Senate Judiciary Committee and every member of the Senate Committee on Children and Families](#) entitled: “Today's ‘public protection’ budget hearing – & your questioning of Chief Administrative Judge Zayas & Commission on Judicial Conduct Administrator Tembeckjian”. It explained that I had received no response from their chairs to a [January 23rd e-mail](#), inquiring whether the chairs had forwarded to committee members the [written testimony](#) I had submitted for the record of their [November 1, 2023 oversight hearing of Family Court](#) which had included [CJA's October 25, 2023 complaint](#) to the Commission on Judicial Conduct, to the Appellate Division, Fourth Department attorney grievance committee, to the OCA Inspector General, to Chief Administrative Judge Zayas, and his Statewide Coordinating Judge for Family Court Matters pertaining to the Monroe County Family Court case about which I had testified before

Exhibit F to Petitioners' March 18, 2024 Verified Petition/Complaint [R.204-207]
the Commission on Legislative, Judicial and Executive Compensation at its [October 13, 2023 hearing](#) (at 2 hrs/31 mins), furnishing an [independent expert report](#) I had written about the Family Court case, and at which New York Families Civil Liberties Union executive director Sebastian Doggart had also testified, furnishing an independent report he had written involving other Family Court cases: "[Corruption and Waste in the New York Court System in 2023](#)".

Your [today's "public protection" budget hearing](#) began, as expected, with Chief Administrative Judge Zayas as your first witness – and his opening statement repeated the reference from his written statement to "judicial pay increases recommended by the 2023 Quadrennial Salary Commission". None of the legislators present – most of whom were recipients of my e-mails – corrected him about this – or asked him, during his nearly two-hour appearance, even a single question about the Commission on Legislative, Judicial and Executive Compensation's Report or CJA's Opposition Report. Nor did legislators ask him about any of the judiciary's "public protection" entities whose corruption the Opposition Report identified and substantiated with evidence: the Appellate Division attorney grievance committees and OCA Inspector General.

The legislators manifested the same behavior with respect to the Commission on Judicial Conduct, whose corruption the Opposition Report also identified, with evidence. The [written statement](#) of Commission on Judicial Conduct Administrator Tembeckjian, also posted by the Senate prior to the hearing, referred to the Commission as a "successful ethics-enforcement entity" (at p. 2) – a theme he expanded upon in his oral testimony – and which the legislators endorsed, as true, by their repetition of praise for the Commission. Yet, [the Commission on Judicial Conduct is demonstrably corrupt – and the New York Senate and Assembly have had the proof of this for decades](#), as likewise, of the corruption of the attorney grievance committees – and of New York's other ethics and criminal authorities.

The foregoing summary is furnished so that the public will have a record of today's latest demonstration of your corrupt, posturing, and larcenous conduct – inexplicable except as a manifestation of your self-interest, over the public interest, for which you must be turned out of office this election year and prosecuted by ethics and criminal authorities.

For the convenience of all, here are links further reinforcing this statement:

- [CJA's January 18, 2024 Opposition Report to the December 4, 2023 Report of the Commission on Legislative, Judicial, and Executive Compensation;](#)
- [CJA's written testimony for the November 1, 2023 oversight hearing of Family Court, held by the Senate Judiciary Committee and Senate Committee on Children and Families;](#)
- [CJA's written testimony for last year's February 7, 2023 "public protection" budget hearing](#) – as the situation it describes as unchanged from past years is unchanged this year, as well.

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Written Testimony of Center for Judicial Accountability Director Elena Sassower
for the NYS Legislature's February 6, 2024 Budget Hearing
on "Local Government Officials/General Government"

After years of oral and written testimony at the Legislature's budget hearings on "public protection" and "local government officials/general government", furnishing facts and law establishing that the state budget is a "grand larceny of the public fisc", flagrantly "OFF THE CONSTITUTIONAL RAILS", and rife with constitutional, statutory, and legislative rule violations, I rest on all my prior testimony, as the situation there described is unchanged.

Spanning from 2013, the testimony¹ and the mountain of evidentiary proof substantiating it are accessible from CJA's website, www.judgewatch.org, via the prominent center link entitled "**Legislative Sessions – Comparing NY's Legislature BEFORE & AFTER its Fraudulent Pay Raises**" – sub-headed: "*No Change: The Legislators are the SAME Posturing Fraudsters, Perpetrating a Legislature that Does NOT Function at a Constitutional Level*".

¹ As stated at footnote 1 of [my written testimony for the Legislature's February 7, 2023 "public protection" budget hearing](#):

"All this testimony has been before Senator Krueger, who, in 2013, was ranking member of the Senate Finance Committee until January 2019, when she became its chair, and/or before Assemblywoman Weinstein, who, in 2013, was chair of the Assembly Judiciary Committee until September 2017, when she became chair of the Assembly Ways and Means Committee.

My live testimony on [February 6, 2013](#) was before both Krueger and Weinstein. I was not permitted to give live testimony again until 2017, when I testified twice, on [January 30, 2017](#) and on [January 31, 2017](#), both times before Krueger. The following year, I testified on [January 30, 2018](#) before Krueger and Weinstein and on [February 5, 2018](#) before Weinstein. In 2019, I furnished them with [written testimony, dated February 19, 2019](#), and, in 2020, furnished them with my trilogy of letters to Governor Cuomo pertaining to the budget: [my February 18, 2020 letter](#), [my March 3, 2020 letter](#), and [my March 18, 2020 letter](#). In 2021 and 2022, I testified before both *via zoom*, on [February 10, 2021](#) and [January 25, 2022](#)."

This was inadvertently not complete with respect to [2020](#), as on February 11-12, 2020, I also furnished Krueger and Weinstein two sets of "Questions" pertaining to the judiciary and legislative budgets, culminating on February 19, 2020, [here](#).

Exhibit G to Petitioners' March 18, 2024 Verified Petition/Complaint [R.208-217]

This subheading reflects what comparison reveals, namely, that since 2013, the Legislature has uniformly ignored, without response, ALL my testimony about the obvious constitutional, statutory, and legislative rule violations of the state budget and about the “false instrument” commission/committee reports whose “force of law” salary increase recommendations the budget embeds, *to wit*,

- the “false instrument” [August 29, 2011 Report of the Commission on Judicial Compensation](#), raising judicial salaries – and district attorney salaries, which are linked to judicial salaries – particularized by [CJA’s October 27, 2011 Opposition Report](#) and [CJA’s March 30, 2012 verified complaint in its declaratory judgment action](#) based thereon and thereafter embodied in [CJA’s March 28, 2014 verified complaint in its first citizen-taxpayer action](#);
- the “false instrument” [December 24, 2015 Report of the \(1st\) Commission on Legislative, Judicial and Executive Compensation](#), raising judicial salaries – and district attorney salaries linked thereto – particularized by [CJA’s March 23, 2016 verified second supplemental complaint in its first citizen-taxpayer action](#), thereafter embodied in [CJA’s September 2, 2016 verified complaint in its second citizen-taxpayer action](#);
- the “false instrument” [December 10, 2018 Report of the Committee on Legislative and Executive Compensation](#), raising legislator salaries, the salaries of the Attorney General and Comptroller, and, indirectly, the Governor and Lieutenant Governor, as well as executive branch commissioners – particularized by [CJA’s July 15, 2019 Analysis](#) thereof.

To date, the cost of the salary raises resulting from these fraudulent “force of law” commission/committee reports is on the order of a billion dollars. This theft of taxpayer monies, however, has never motivated legislators to take remedial steps – and now you are embarked on replicating all your prior duty-violating and unconstitutional conduct to implement the “false instrument” [December 4, 2023 Report of the \(3rd\) Commission on Legislative, Judicial and Executive Compensation](#), whose fraud, statutory-violations, and unconstitutionality are particularized by [CJA’s January 18, 2024 Opposition Report](#).

[My written testimony for the Legislature’s January 25, 2024 “public protection” budget hearing](#), chronicles what took place at that hearing with respect to the larcenous \$34.6M appropriation for judicial salary raises at [pages 18-19 of Legislative/Judiciary Budget Bill #S.8301/A.8801](#)² resulting from the December 4, 2023 Report. To date, more than ten days after e-mailing my testimony to the chairs of the Senate Finance Committee and Assembly Ways and Means Committee, as required, I have yet to receive any inquiry or other response from them or anyone else. Likewise, I have yet to receive any inquiry or response from any of the scores of legislators, from leadership on down, to

² Because of the statutory link between judicial salaries and D.A. salaries, this will raise D.A. salaries – a cost borne by the counties. This “unfunded mandate” is NOT addressed by [Aid to Localities Budget Bill #S.8303/A.8803](#), whose appropriation of \$4,212,000 “For grants to counties for district attorney salaries” (at p. 91) is an amount that has not changed for ten years – and, by 2016, was already vigorously protested by the counties as insufficient to cover D.A. salary increases resulting from the December 24, 2015 Report of the (1st) Commission on Legislative, Judicial and Executive Compensation.

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whom, from January 18th to January 25th, I sent the [Opposition Report](#) on which my testimony rests. This further illustrates and reinforces what my years of testimony on the budget have chronicled about how the Legislature and legislators operate – itself replicating what I had chronicled about the Legislature and legislators for 20 years before that: a total disregard for facts, law, and evidence to cover up and perpetuate the systemic corruption of New York’s judiciary, at every level, adjudicative, administrative, supervisory, up to the Court of Appeals, and involving the Attorney General, the Commission on Judicial Conduct, the Appellate Division Attorney Grievance Committees, and the OCA Inspector General.

Finally, by way of update to [my written testimony for last year’s February 7, 2023 “public protection” budget hearing](#) – and as reflected by [CJA’s January 18, 2024 Opposition Report](#) – CJA perfected its appeal to the Appellate Division, Third Department in [CJA v. JCOPE, et al.](#), its monumental Article 78 proceeding/declaratory judgment action/citizen-taxpayer action, brought “on behalf of the People of the State of New York”, suing the Legislature, among others, for corruption of the budget involving New York’s sham “public protection” entities, funded through the budget. As [below](#), Attorney General James, a respondent representing the Legislature and the other respondents, has had no legitimate defense, and has sought to corrupt the judicial process by litigation fraud, for which, thus far, she has escaped all accountability.

Lastly, and identical to past years, the Legislature is not justifying or explaining its own FY2024-25 budget at any hearing and conceals the legislative budget, in whole or in part, from its “colorbook”/analyses of the state budget. I, therefore, close by furnishing a list of questions for Temporary Senate President Stewart-Cousins and Assembly Speaker Heastie to answer about the [December 1, 2023 proposed legislative budget they signed](#) – and about the 39 pages of legislative reappropriations that were not part of it but which, nonetheless, popped into Governor Hochul’s combined [Legislative/Judiciary Budget Bill #S.8301/A.8801](#) in an out-of-sequence, mistitled section at the back (pp. 36-74). These questions largely replicate those I furnished for:

- [the Legislature’s February 15, 2023 “local government officials/general government” budget hearing](#);
- [the Legislature’s February 12, 2020 “public protection” budget hearing](#);³
- [the Legislature’s February 11, 2019 “local government officials/general government” budget hearing](#);
- [the Legislature’s February 5, 2018 “local government officials/general government” budget hearing](#);

³ These were also furnished directly to Temporary Senate President Stewart-Cousins and other senators with districts in Westchester County at their February 18, 2020 local forum on the state budget – and so reflected by this [February 19, 2020 e-mail](#).

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- [the Legislature's January 30, 2017 "local government officials/general government" budget hearing;](#)
- [the Legislature's February 4, 2016 "public protection" budget hearing.](#)

Consequently, the answers should, by now, be easy to supply.

* * *

**Questions for Temporary Senate President Stewart-Cousins &
Assembly Speaker Heastie to Answer about their FY2024-25 Legislative Budget
& about Governor Hochul's Legislative/Judiciary Appropriation Bill #S.8301/A.8801 –
and for Legislators & their "Appropriate Committees" to Ask Them**

- (1) [Article VII, §1 of the New York State Constitution](#) requires that "Itemized estimates of the financial needs of the legislature, certified by the presiding officer of each house" be transmitted to the Governor before December 1st of each year, is that correct?
- (2) By a [one-sentence December 1, 2023 coverletter to Governor Hochul](#), on a letterhead of the "New York State Legislature" and bearing your printed names, titles, and signatures, you stated:

"Attached hereto is a copy of the Legislature's Budget for the 2024-2025 fiscal year, pursuant to Article VII, Section 1 of the New York State Constitution."

In so doing, you did not purport that your "[a]ttached...Legislature's Budget" was "Itemized estimates of the financial needs of the legislature", or that you were certifying it right?

- (3) Your attached budget consisted of 17 pages: a four-page budget narrative, with a fifth page of "Budget Highlights – Joint Entities", plus a sixth page chart entitled "ALL FUNDS REQUIREMENTS FOR THE LEGISLATURE", followed by 11 pages bearing no title, but which, prior to the FY2020-21 legislative budget, had been titled "Schedule of Appropriations". Was that title inadvertently dropped from your FY2024-25 legislative budget – and from your prior four legislative budgets for [FY2023-24](#), [FY2022-23](#), [FY2021-22](#), and [FY2020-21](#)? Or was there some other reason?
- (4) Would you agree that the 17 pages of your FY2024-25 legislative budget do not include a certification, make no reference to "itemized estimates" of the Legislature's "financial needs", and do not refer to Article VII, §1?

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- (5) Isn't the reason you did not certify the Legislature's budget to be "Itemized estimates of the financial needs of the legislature" is because it is not?
- (6) Where are the Legislature's FY2024-25 "general state charges", *to wit*, the "fringe benefits" that are pension contributions, social security, health, dental, vision and life insurance, etc. for legislators and legislative branch employees? How much are they – and did you certify them to be "itemized estimates" of the Legislature's "financial needs" with respect thereto?
- (7) Shouldn't the Legislature's "general state charges" be part of its budget – just as the Judiciary's "general state charges" are part of the [Judiciary's budget](#), "approved by the court of appeals and certified by the chief judge of the court of appeals", as Article VII, §1 requires.
- (8) The "Legislative Budget Highlights" (at p. 1) states that the General Fund "increase of \$5,674,691 from the amount appropriated in FY2023-24...is an increase of 2% for all entities", with similar assertions, in the narrative (at pp. 1-3), the "Budget Highlights – Joint Entities" (at p. 5), and the chart of "All Funds Requirements for the Legislature" (at p. 6). Can you explain how any cognizable "process" of ascertaining the Legislature's actual "financial needs" could have produced such uniform, across-the-board, 2% increases?
- (9) Can you explain why neither the [Senate](#) nor [Assembly](#) websites post the Legislature's budgets that you and your predecessors have transmitted to the Governor, pursuant to Article VII, §1 – unlike the Judiciary which has a [webpage](#) for the "approved...and certified" "itemized estimates of [its] financial needs" transmitted to the Governor pursuant to Article VII, §1?
- (10) Do you agree that Article VII, §1 does not vest you with the power to determine the "Itemized estimates of the financial needs of the legislature", but only to certify same?
- (11) Do you agree that the logical reason why Article VII, §1 requires that the Judiciary's "certified" "itemized estimates" of its "financial needs" be transmitted to "the appropriate committees of the legislature" – in addition to the Governor – but does not require that the Legislature's "certified" "itemized estimates" of its "financial needs" be transmitted to "the appropriate committees of the legislature" is because "the appropriate committees of the legislature are presumed to have formulated and/or approved the "itemized estimates" that the "presiding officer of each house" certify?
- (12) Do you agree that the Senate Committee on Investigations and Government Operations and Assembly Committee on Governmental Operations would be the "appropriate committees" of the Legislature to formulate or approve the Legislature's budget – or are there other "appropriate committees", as, for instance, the Senate Rules Committee; the Assembly Rules Committee, the Senate Committee on Ethics and Internal Governance, the Assembly Committee on Ethics and Guidance, the Assembly Committee on Oversight, Analysis, and Investigation?

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- (13) Describe the “process”, if any, by which the Legislature’s budget for fiscal year 2024-2025 was compiled.
- (14) Wouldn’t the process of compiling “Itemized estimates of the financial needs of the legislature” require soliciting the Legislature’s 213 members – and its committees, commissions, and task forces through which your budget narrative (at p. 2) purports the Senate and Assembly operate, stating:
- “The Senate conducts its legislative business by operating 46 Standing Committees, Commissions, and Task Forces.”;
- “The Assembly conducts its legislative business through the operation of 37 standing committees.”
- (15) By the way, is 37 the correct number of Assembly standing committees? [Assembly Rule IV, §1\(a\)](#) lists 39, with 39 also reflected on the [Assembly webpage of “Committees & More”](#).
- (16) Were legislators and legislative committees, commissions, and task forces solicited as to their “itemized estimates” of their “financial needs”?
- (17) Can you explain why the Assembly Ways and Means Committee is the only legislative committee for which appropriations are included in the Legislature’s budget (at pp. 3, 6, 9-10). Why aren’t appropriations for the Senate Finance Committee comparably included – and are they the same amount: \$7,034,206? What about all the other Senate and Assembly committees? Don’t they require adequate funding and staffing to operate professionally, discharging their lawmaking and oversight functions?
- (18) Why does the Legislature’s budget include, as a “joint entity”, the [Commission on Long Island Power Authority](#) – codified in [Legislative Law Article 5-A, §83-n](#) – but not the 12 other commissions listed by [Legislative Law Article 5-A](#), whose memberships, likewise, consist exclusively of Senate and Assembly members who you appoint. And what about the single commission established by [Legislative Law Article 5-B: the administrative regulations review commission](#), whose membership, exclusively of Senate and Assembly members, is also appointed by you? What is your definition of “joint entities”?
- (19) Other “joint entities” that you have included in the Legislature’s budget are the [Legislative Task Force on Demographic Research and Reapportionment](#), codified by [Legislative Law Article 5-A, §83-m](#), and the [Legislative Ethics Commission](#), codified by [Legislative Law Article 5 \(§80\)](#). Both have memberships NOT exclusively of Senate and Assembly members, although all appointed by you, correct?

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- (20) What is the reason you did not include, as a “joint entity” the [Law Revision Commission](#), codified by [Legislative Law Article 4-A](#)? Is it because, although the four chairs of the Senate and Assembly Judiciary and Codes Committees are *ex officio* members, five members are appointed by the Governor? If so, why does the Legislature’s budget not reflect a split in costs with the Governor, just as is done with the Office of Lieutenant Governor, so-identified by your budget narrative (at pp. 1, 2).
- (21) Can you explain why, considering the omission from the Legislature’s budget of most “joint entities”— indeed, of most of the components of the Legislature – you include the Legislative Health Service, the Legislative Library, and the Legislative Messenger Service, as if these and dues for the National Conference of State Legislatures, which you also include, are significant.
- (22) As for the Legislative Ethics Commission, included among your few listed “joint entities”, can you explain why your budget narrative (at p. 3) makes it appear that it is operating with “four legislators and five non-legislative members”, when, as you know, it has not been operating with [a non-legislative ninth member](#) since its inception.
- (23) Why, in the same budget narrative pertaining to the Legislative Ethics Commission (at p. 3), do you refer to the “Joint Commission on Public Ethics”, when you eliminated it, *via* the budget, in 2022, by your behind-closed-doors, “three people in the room” insertion of [Part QQ to Education, Labor, Housing and Family Assistance Budget Bill #S.8006-C/A.9006-C – the “ethics commission reform act of 2022”](#) (at pp. 151-201), replacing it with the Commission on Ethics and Lobbying in Government. Is there nobody on your staff who “proofed” the Legislature’s budget for such inaccuracies?
- (24) Do you agree that more than half of the Legislature’s barely 17-page budget is devoted to the handful of “joint entities” it features as if they were all “joint entities” and whose cumulative appropriations, listed on the page 6 chart, is \$26,443,236 – in other words, less than 10% of the \$289,409,242 “GENERAL FUND TOTAL”, also listed on that chart.
- (25) Do you agree that most of the over 90% balance of legislative appropriations are under the headings “The Senate” and “The Assembly” – and that with the exception of “salaries” and “allowances” for Senate and Assembly members, they lack sufficient itemization for intelligent, meaningful review?
- (26) Can you explain why the second item of “Personal Service” for the Senate (at p. 7) reads:
- “For payment of allowances to members designated by
the temporary president, pursuant to the schedule of
such allowances set forth in section 5-a of the legislative law....\$1,289,500”

Exhibit G to Petitioners' March 18, 2024 Verified Petition/Complaint [R.208-217]

and the second item of “Personal Service” for the Assembly (at p. 8) reads:

“For payment of allowances to members designated by
the speaker pursuant to the provisions of section 5-a of
the legislative law.....\$1,592,500”

when the [December 10, 2018 Report of the Committee on Legislative and Executive Compensation](#) superseded [Legislative Law §5-a](#) and eliminated all but 15 of the Legislative Law §5-a allowances.⁴ Shouldn't the listed figures have been \$185,000 for the Senate and \$239,500 for the Assembly?

- (27) The [legislative budget that your December 1, 2023 coverletter transmitted](#) to the Governor contained no legislative reappropriations, correct?
- (28) Do you agree that when Governor Hochul combined the Legislature's budget with the Judiciary's budget in her [January 16, 2024 Legislative/Judiciary Budget Bill #S.8301/A.8801](#), she was able to conceal 39 pages of legislative reappropriations (pp. 36-74) that were not part of your December 1, 2023 transmittal to her?
- (29) Do you agree that these 39 pages of legislative reappropriations are – as reflected by the [table of contents for Legislative/Judiciary Budget Bill #S.8301/A.8801 \(p. 75\)](#) – in an out-of-sequence section at the back of the bill? And shouldn't the first page of these 39 pages (p. 36) be prominently marked “Reappropriations”, just as the first page of the Judiciary's “Reappropriations” is (p. 25)?
- (30) Can you explain where the 39 pages of legislative reappropriations (pp. 36-74) came from?
- (a) When and in what fashion were they transmitted to the Governor?;
- (b) Did you certify the dollar amounts of these legislative reappropriations and, additionally, that they were suitable for designation as reappropriations?;
- (c) Are the purported “reappropriations” in fact suitable for reappropriation considering the definition of “reappropriation” posted on the [Division of the Budget's website](#): “a legislative enactment that continues all or part of the

⁴ These are the six allowances in the Senate, whose total cost is \$185,000: (1) for the Temporary Senate President (\$41,500); (2) for the Deputy Majority Leader (\$34,000); (3) for the Minority Leader (\$34,500); (4) for the Deputy Minority Leader (\$20,500); (5) for the Finance Committee Chair (\$34,000); and (6) for the Finance Committee Ranking Member (\$20,500). And the nine allowances in the Assembly, whose total cost is \$239,500: (1) for the Assembly Speaker (\$41,500); (2) for the Assembly Majority Leader (\$34,500); (3) for the Speaker *Pro Tempore* (\$25,000); (4) for the Minority Leader (\$34,500); (5) for the Minority Leader *Pro Tempore* (\$20,500); (6) for the Ways & Means Committee Chair (\$34,000); (7) for the Ways & Means Committee Ranking Member (\$20,500); (8) for the Codes Committee Chair (\$18,000); (9) for the Codes Committee Ranking Member (\$11,000).

Exhibit G to Petitioners' March 18, 2024 Verified Petition/Complaint [R.208-217]

undisbursed balance of an appropriation that would otherwise lapse (see lapsed appropriation). Reappropriations are commonly used in the case of federally funded programs and capital projects, where the funding amount is intended to support activities that may span several fiscal years.”

- (d) What is the cumulative total of these 39 pages of legislative reappropriations?
- (e) What is the tally of each section of legislative reappropriations – and why was this amount not deducted from the corresponding appropriations for each entity and/or why did the availability of reappropriations not obviate the need for any 2% increases from FY2023-24:
 - (i) Senate: pp. 36-39;
 - (ii) Assembly: pp. 39-41;
 - (iii) Ways & Means (pp. 41-43);
 - (iv) Senate & Assembly Joint Entities (pp. 43-72):
 - Legislative Ethics Commission (pp. 43-47);
 - Legislative Health Service (pp. 47-50);
 - Legislative Library (pp. 51-54);
 - Legislative Messenger Service (pp. 54-58);
 - Legislative Bill Drafting Commission (pp. 58-60);
 - Demographic Research/Reapportionment Task Force (pp. 60-71);
 - Independent Redistricting Commission (pp. 71-72);
 - Commission on LI Power Authority (p. 72).
 - (v) Special Revenue Funds-Other
 - Computer Services Fund (pp. 73-74);
 - Recyclable Materials; Info Services & Conference (p. 74).
- (31) Can you explain why [Legislative/Judiciary Budget Bill #S.8301/A.8801](#) has reappropriations for the Legislative Ethics Commission, but, by comparison, [State Operations Budget Bill #S.8300/A.8800](#) has NO reappropriations for
 - (i) the Commission on Ethics and Lobbying in Government (at p. 205);
 - (ii) the State Inspector General (at pp. 458-460);
 - (iii) the Commission on Judicial Conduct (at p. 462);
 - (iv) the Commission on Prosecutorial Conduct (at p. 586)?
- (32) Governor Hochul’s [Legislative/Judiciary Budget Bill #S.8301/A.8801](#) contains no cumulative tally for its monetary allocations for the Legislature, is that correct? What is the dollar amount? Is it the addition of appropriations in its §1 (pp. 1-10) and reappropriations in its §4 (pp. 36-74)?

Exhibit G to Petitioners' March 18, 2024 Verified Petition/Complaint [R.208-217]

- (33) Is it concerning to you that none of the glaring deficiencies, inconsistencies, and inaccuracies of the Legislature's FY2024-25 budget, such as hereinabove summarized, were made the subject of "recommendations" by Governor Hochul, pursuant to [Article VII, §1 of the New York State Constitution](#), requiring that the "Itemized estimates of the financial needs of the legislature, certified by the presiding officer of each house" be included in the state budget "without revision but with such recommendations as the governor may deem appropriate".
- (34) Can you explain why the Senate and Assembly "colorbook" analyses of the FY2024-25 budget either contain no inclusion, at all, of the Legislature's budget, or no analysis thereof?⁵
- (35) Would you be willing to publicly give your answers to the above questions pertaining to your FY2024-25 legislative budget and [Legislative/Judiciary Budget Bill #S.8301/A.8801](#) at a legislative hearing on the Legislature's own budget and, if not, why?
- (36) By the way, congratulations on updating the outdated figures in your budget narrative (at p. 2) from last year's "Each Senator represents approximately 308,000 constituents." and "Each Member of the Assembly represents approximately 129,000 constituents." But what is the source of these new figures: "Each Senator represents approximately 312,000 constituents."; "Each Member of the Assembly represents approximately 131,000 constituents.". According to [Ballotpedia](#), the 2020 figure for the Senate are 320,885 and for the Assembly 134,772.

⁵ The [Senate Majority "Blue Book"](#), [Senate Minority "White Book"](#), and [Assembly Majority's "Yellow Book"](#) do not appear to mention the Legislature's budget, at all. The [Assembly Minority's "Green Book"](#) is the only one to include the Legislature in its table of contents, combined with the Judiciary, with skeletal information furnished in a two-page section (pp. 173-174).

Exhibit H to Petitioners' March 18, 2024 Verified Petition/Complaint [R.218]

STATE FINANCES

[Estimates by departments, the legislature and the judiciary of needed appropriations; hearings]

Section 1. For the preparation of the budget, the head of each department of state government, except the legislature and judiciary, shall furnish the governor such estimates and information in such form and at such times as the governor may require, copies of which shall forthwith be furnished to the appropriate committees of the legislature. The governor shall hold hearings thereon at which the governor may require the attendance of heads of departments and their subordinates.

Designated representatives of such committees shall be entitled to attend the hearings thereon and to make inquiry concerning any part thereof.

Itemized estimates of the financial needs of the legislature, certified by the presiding officer of each house, and of the judiciary, approved by the court of appeals and certified by the chief judge of the court of appeals, shall be transmitted to the governor not later than the first day of December in each year for inclusion in the budget without revision but with such recommendations as the governor may deem proper. Copies of the itemized estimates of the financial needs of the judiciary also shall forthwith be transmitted to the appropriate committees of the legislature. (Amended by vote of the people November 8, 1977; November 6, 2001.)

[Executive budget]

§2. Annually, on or before the first day of February in each year following the year fixed by the constitution for the election of governor and lieutenant governor, and on or before the second Tuesday following the first day of the annual meeting of the legislature, in all other years, the governor shall submit to the legislature a budget containing a complete plan of expenditures proposed to be made before the close of the ensuing fiscal year and all moneys and revenues estimated to be available therefor, together with an explanation of the basis of such estimates and recommendations as to proposed legislation, if any, which the governor may deem necessary to provide moneys and revenues sufficient to meet such proposed expenditures. It shall also contain such other recommendations and information as the governor may deem proper and such additional information as may be required by law. (New. Derived in part from former §2 of Art. 4-a. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; amended by vote of the people November 2, 1965; November 6, 2001.)

[Budget bills; appearances before legislature]

§3. At the time of submitting the budget to the legislature the governor shall submit a bill or bills containing all the proposed appropriations and reappropriations included in the budget and the proposed legislation, if any, recommended therein.

The governor may at any time within thirty days thereafter and, with the consent of the legislature, at any time before the adjournment thereof, amend or supplement the budget and submit amendments to any bills submitted by him or her or submit supplemental bills.

The governor and the heads of departments shall have the right, and it shall be the duty of the heads of departments when requested by either house of the legislature or an appropriate committee thereof, to appear and be heard in respect to the budget during the consideration thereof, and to answer inquiries relevant thereto. The procedure for such appearances and inquiries shall be provided by law. (New. Derived in part from former §§2 and 3 of Art. 4-a. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; amended by vote of the people November 6, 2001.)

[Action on budget bills by legislature; effect thereof]

§4. The legislature may not alter an appropriation bill submitted by the governor except to strike out or reduce items therein, but it may add thereto items of appropriation provided that such additions are stated separately and distinctly from the original items of the bill and refer each to a single object or purpose. None of the restrictions of this section, however, shall apply to appropriations for the legislature or judiciary.

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 approval of the governor as provided in section 7 of article IV. (New. Derived in part from former §3 of Art. 4-a. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; amended by vote of the people November 6, 2001.)

[Restrictions on consideration of other appropriations]

§5. Neither house of the legislature shall consider any other bill making an appropriation until all the appropriation bills submitted by the governor shall have been finally acted on by both houses, except on message from the governor certifying to the necessity of the immediate passage of such a bill. (New. Derived in part from former §4 of Art. 4-a. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[Restrictions on content of appropriation bills]

§6. Except for appropriations contained in the bills submitted by the governor and in a supplemental appropriation bill for the support of government, no appropriations shall be made except by separate bills each for a single object or purpose. All such bills and such supplemental appropriation bill shall be subject to the governor's approval as provided in section 7 of article IV.

No provision shall be embraced in any appropriation bill submitted by the governor or in such supplemental appropriation bill unless it relates specifically to some particular appropriation in the bill, and any such provision shall be limited in its operation to such appropriation. (New. Derived in part from former §22 of Art. 3 and former §4 of Art. 4-a. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[Appropriation bills]

§7. No money shall ever be paid out of the state treasury or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made within two years next after the passage of such appropriation act; and every such law making a new appropriation or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object or purpose to which it is to be applied; and it shall not be sufficient for such law to refer to any other law to fix such sum. (New. Derived in part from former §21 of Art. 3. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

ARTICLE III
LEGISLATURE

[Journals; open sessions; adjournments]

§10. Each house of the legislature shall keep a journal of its proceedings, and publish the same, except such parts as may require secrecy. The doors of each house shall be kept open, except when the public welfare shall require secrecy. Neither house shall, without the consent of the other, adjourn for more than two days. (Formerly §11. Renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

Letitia James
NY Attorney GeneralATTORNEY
GENERAL

Select Language ▼

Welcome to the Office of the Attorney General Online Submission Form

Public Integrity Bureau Form

Form Successfully Submitted

[Print](#)

Thank you for your submission to the New York State Attorney General's Bureau of Public Integrity. Your Intake Reference Number is # 1-792648172. Your complaint will be reviewed as soon as possible after which we will contact you if we require any additional information. Attorney General Letitia James is strongly committed to the rights of all citizens and hopes that we can be of assistance to you. Thank you for contacting us.

Your Information

First Name	Elena
Last Name	Sassower
Street Address	10 Stewart Place, Apt. 2D-E, White Plains 10603
Address Line 2	
City/Town	White Plains
State	New York
County	Westchester
Zip/Postal Code	10603
Phone Number	914-421-1200
Email Address	elena@judgewatch.org

Subject of Your Complaint

Are you complaining about an Individual or Entity?	Entity
Entity Name	Commission on Legislative, Judicial & Executive Compensation
Entity Contact Name	Chair Eugene Fahey & six commissioners
Street Address	64 Beaver Street
Address Line 2	Box 454
City/Town	New York
State	New York
Zip/Postal Code	10004
Phone Number	
Email Address	nyscompensation@gmail.com

Additional Complaint Information

NYSCEF DOC. NO. Exhibit I-1 to Petitioners' March 18, 2024 Verified Petition/Complaint R.220-2024

Has this matter been submitted to another agency?

Yes

If so, which agency :

in process - Commission on Ethics & Lobbying in Gov't & Attorney Grievance Committees

Is there any legal action pending?

No

Complaint Description

Commission on Legislative, Judicial & Executive Compensation rendered a "false instrument" "force of law" December 4, 2023 Report on Judicial Compensation to steal taxpayer money for statutorily-violative, fraudulent & unconstitutional judicial pay raises - \$34.6 million for FY2024-25 (Legislative/Judiciary Budget Bill #S.8301/A.8801, at pp. 18-19).

Documents

Document Name	Document Type	Document Size
1-18-24-opposition-report	pdf	1.78MB

In filing this complaint, I understand that:

The Attorney General is not my private attorney, but represents the public in enforcing laws designed to protect the public from misleading or unlawful business practices. My filing this complaint does not mean that the Attorney General has initiated a lawsuit or proceeding on my behalf or that it will do so.

The Attorney General cannot give me legal advice or represent me in court. If I have any questions concerning my legal rights or responsibilities, I should contact a private attorney.

The Attorney General works with other state, local and federal government agencies to investigate complaints and coordinate law enforcement and may also share my complaint with them. In addition, the Attorney General may use information from my complaint in legal proceedings to establish violations of law.

Any false statement made in this complaint are punishable as crimes, including under Section 175 and/or Section 210 of the Penal Law.

By typing my full name below, I certify that the above complaint is true and accurate to the best of my knowledge and that any documents attached are true and accurate copies of the originals.

Signature

Elena Ruth Sassower

Date of Affirmation

01/19/2024

Exhibit I-2 to Petitioners' March 18, 2024 Verified Petition/Complaint [R.221-222]

From: Constituent Services <Constituent.Services@ag.ny.gov>
Sent: Wednesday, January 24, 2024 5:15 PM
To: elena@judgewatch.org
Subject: NYAG Submission 24-004940



State of New York
Office of the Attorney General

Letitia James
Attorney General

Division of Criminal Justice
Public Integrity Bureau

January 24, 2024

Elena Ruth Sassower
10 Stewart Pl Apartment 2d-E
White Plains, NY 10603

Our File Number: 24-004940

Dear Sir or Madam:

On behalf of Attorney General Letitia James, I thank you for the information you provided in your complaint to the Public Integrity Bureau.

The Public Integrity Bureau seeks to vindicate the public's interest in honest government. When government actors, or private individuals acting in concert with them, engage in corrupt, fraudulent, or other illegal behavior in the course of their public duties, the Public Integrity Bureau may investigate or take enforcement action. The Public Integrity Bureau receives thousands of complaints each year. Due to the high volume of complaints, the limits of our resources and the constraints of our jurisdiction, the Bureau cannot act on or otherwise investigate every complaint.

We will review your correspondence closely to evaluate whether sufficient basis exists for our office to take action. If we need any additional information, we will contact you. In the meantime, if you obtain any additional relevant information, please do not hesitate to send it to us at the address below referencing the file number listed above.

Please be advised that this Office does not provide legal opinions nor does it represent individuals in private civil matters. If you believe that you may have an individual claim, you may wish to consult a private attorney. Your local bar association is one potential source for attorney referrals. ***Please note: The complaint you have filed with this Office has no effect on any statute of limitations filing deadlines that might apply to your claim.*** By filing a

Exhibit I-2 to Petitioners' March 18, 2024 Verified Petition/Complaint [R.221-222]

complaint with this Office, you have not initiated a lawsuit or a proceeding, nor has this Office initiated a lawsuit or a proceeding on your behalf.

Thank you again for bringing this matter to our attention.

Very truly yours,

Public Integrity Bureau

David Lopez
Constituent Services Representative
Office of the New York State Attorney General, Letitia James
Constituent.Services@ag.ny.gov

IMPORTANT NOTICE: This e-mail, including any attachments, may be confidential, privileged or otherwise legally protected. It is intended only for the addressee. If you received this e-mail in error or from someone who was not authorized to send it to you, do not disseminate, copy or otherwise use this e-mail or its attachments. Please notify the sender immediately by reply e-mail and delete the e-mail from your system.

Exhibit J to Petitioners' March 18, 2024 Verified Petition/Complaint [R.223-225]

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Tuesday, January 30, 2024 12:35 PM
To: 'investigations@osc.ny.gov'; 'inspectorgeneral@osc.ny.gov'
Subject: **\$34.6M larceny for judicial pay raises in Legislative/Judiciary Budget Bill S.8301/A.8801 -- the product of a "false instrument" Dec 4, 2023 Report of the Commission on Legislative, Judicial & Executive Compensation**
Attachments: [1-18-24-opposition-report-superseding.pdf](#)

TO: Office of the NY State Comptroller – Division of Investigations AND Inspector General

A short time ago I called your hotline #1-888-672-4555 "To report fraud outside of OSC". I spoke with Investigator Patrick Lanza about a larcenous appropriation of \$34.6M in Legislative/Judiciary Budget Bill #S.8301/A.8801 – about which, on January 18th and 19th, by the below e-mails, with the above-attached January 18th Opposition Report, I alerted Comptroller DiNapoli, *via* his Counsel for State Audit & Litigation Michael Kogut, whose e-mail I had.

I received no response from Counsel Kogut – despite the fact that the above-attached January 18th Opposition Report is DISPOSITIVE of Comptroller DiNapoli's duty to take steps "to VOID the Dec 4, 2023 Report of the Commission on Legislative, Judicial & Executive Compensation, STRIKE the \$34.6M for judicial pay raises from the Legislative/Judiciary budget bill, & REFER the commissioners for criminal prosecutions".

Please deem this as a formal complaint for investigation – including as to corruption and conflict-of-interest inside the OSC with respect to this issue – a matter over which the OSC Inspector General has jurisdiction.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org
914-421-1200
elena@judgewatch.org

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Friday, January 19, 2024 8:45 AM
To: 'records.access@exec.ny.gov' <records.access@exec.ny.gov>; 'lgnny@exec.ny.gov' <lgnny@exec.ny.gov>; 'scousins@nysenate.gov' <scousins@nysenate.gov>; 'Ortt@nysenate.gov' <Ortt@nysenate.gov>; 'Speaker@nyassembly.gov' <Speaker@nyassembly.gov>; 'BarclaW@nyassembly.gov' <BarclaW@nyassembly.gov>; 'jzayas@nycourts.gov' <jzayas@nycourts.gov>; 'cmartucc@nycourts.gov' <cmartucc@nycourts.gov>;

Exhibit J to Petitioners' March 18, 2024 Verified Petition/Complaint [R.223-225]

'NYAG.Pressoffice@ag.ny.gov' <NYAG.Pressoffice@ag.ny.gov>; 'mkogut@osc.ny.gov' <mkogut@osc.ny.gov>

Subject: ** Your Duty to VOID the Dec 4, 2023 Report of the Commission on Legislative, Judicial & Executive Compensation, STRIKE the \$34.6M for judicial pay raises from the Legislative/Judiciary budget bill, & REFER the commissioners for criminal prosecutions

The above-attached supersedes the Opposition Report sent yesterday, by the below, which I have adjusted to reflect the 3rd branch of relief that had been omitted.

Apologies for the inconvenience.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org
914-421-1200
elena@judgewatch.org

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>

Sent: Thursday, January 18, 2024 8:06 PM

To: 'records.access@exec.ny.gov' <records.access@exec.ny.gov>; 'lgnny@exec.ny.gov' <lgnny@exec.ny.gov>; 'scousins@nysenate.gov' <scousins@nysenate.gov>; 'Ortt@nysenate.gov' <Ortt@nysenate.gov>; 'Speaker@nyassembly.gov' <Speaker@nyassembly.gov>; 'BarclaW@nyassembly.gov' <BarclaW@nyassembly.gov>; 'rwilson@nycourts.gov' <rwilson@nycourts.gov>; 'jzayas@nycourts.gov' <jzayas@nycourts.gov>; 'cmartucc@nycourts.gov' <cmartucc@nycourts.gov>; 'NYAG.Pressoffice@ag.ny.gov' <NYAG.Pressoffice@ag.ny.gov>; 'mkogut@osc.ny.gov' <mkogut@osc.ny.gov>

Subject: Your Duty to VOID the Dec 4, 2023 Report of the Commission on Legislative, Judicial & Executive Compensation, STRIKE the \$34.6M for judicial pay raises from the Legislative/Judiciary budget bill, & REFER the commissioners for criminal prosecutions

TO: Governor Kathy Hochul & Lieutenant Governor Antonio Delgado
All Senators: c/o Senate Leaders Andrea Stewart-Cousins & Robert Ortt
All Assembly Members: c/o Assembly Leaders Carl Heastie & William Barclay
Chief Judge Rowan Wilson & Chief Administrative Judge Joseph Zayas, Etc.
Attorney General Letitia James & Comptroller Thomas DiNapoli

The [December 4, 2023 Final Report on Judicial Compensation](#) of the Commission on Legislative, Judicial and Executive Compensation is a fraud on the People of the State of New York and a grand larceny of taxpayer monies by its judicial pay raise "Conclusions", if these are deemed to be its "force of law" "recommendations". This is demonstrated by CJA's January 18, 2024 Opposition Report, above-attached. It is addressed to all of you so that individually and collectively you can discharge your constitutional and oversight responsibilities:

Exhibit J to Petitioners' March 18, 2024 Verified Petition/Complaint [R.223-225]

- (1) to void the Commission's "force of law" December 4, 2023 Final Report on Judicial Compensation because it is statutorily-violative, fraudulent, and unconstitutional – and striking the \$34.6 million appropriation for judicial salary increases from the Governor's Legislative/Judiciary Budget Bill #S.8301/A.8801;
- (2) to refer the Commission's seven members for criminal prosecution – and for Attorney General James to herself bring such prosecution – based on penal law violations including:

Penal Law §175.35: "Offering a false instrument for filing in the first degree";

Penal Law §195: "Official misconduct";

Penal Law §105.15: "Conspiracy in the second degree";

Penal Law §20.00: "Criminal liability for conduct of another";

Penal Law Article 496: "PUBLIC TRUST ACT"

§496.06: "Public corruption";

§496.05: "Corrupting the government in the first degree";

- (3) to hold hearings on the corruption in New York's judiciary to which the three judicial pay raise opponents attested, with evidence – involving the corruption of the Commission on Judicial Conduct, the Appellate Division attorney grievance committees, and the OCA Inspector General.

Although the Opposition Report is filled with EVIDENTIARY hyperlinks, CJA's website has an [EVIDENTIARY webpage](#) for the Opposition Report, to further assist you. Please note that the posted Opposition Report removes the LIVE link in footnote 5 that reads:

"Because the Independent Expert Report pertains to a sealed Monroe County Family Court case, it and what occurred thereafter, recited by CJA's October 25, 2023 complaint, are posted on a publicly inaccessible webpage, [here](#)."

Finally, to those whose direct e-mails I do not have, kindly forward.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org
914-421-1200
elena@judgewatch.org

SUPREME COURT OF STATE OF NEW YORK
COUNTY OF ALBANY

----- x
CENTER FOR JUDICIAL ACCOUNTABILITY, INC.
and ELENA RUTH SASSOWER, individually and
as Director of the Center for Judicial Accountability, Inc.,
acting on their own behalf and on behalf of the People
of the State of New York & the Public Interest,

Index #

**Order to Show Cause
to Determine Threshold Issues,
Including Preliminary Injunction
with TRO**

Petitioners/Plaintiffs,

-against-

NEW YORK STATE COMMISSION ON LEGISLATIVE,
JUDICIAL AND EXECUTIVE COMPENSATION,

KATHY HOCHUL and ANTONIO DELGADO, in their official
capacities as GOVERNOR and LIEUTENANT GOVERNOR
OF THE STATE OF NEW YORK,

ROWAN WILSON and JOSEPH ZAYAS, in their official capacities
as CHIEF JUDGE and CHIEF ADMINISTRATIVE JUDGE
OF THE STATE OF NEW YORK,

ANDREA STEWART-COUSINS, in her official capacity
as TEMPORARY SENATE PRESIDENT and
THE NEW YORK STATE SENATE,

CARL HEASTIE, in his official capacity as
ASSEMBLY SPEAKER, and
THE NEW YORK STATE ASSEMBLY,

LETITIA JAMES, in her official capacity as
ATTORNEY GENERAL OF THE STATE OF NEW YORK,

THOMAS DiNAPOLI, in his official capacity as
COMPTROLLER OF THE STATE OF NEW YORK,

Respondents/Defendants.

Upon the annexed March 18, 2024 affidavit of unrepresented individual petitioner/plaintiff
Elena Ruth Sassower and upon petitioners'/plaintiffs' March 18, 2024 verified petition/complaint,
with exhibits,

LET respondents/defendants show cause before this Court on the _____ day of March 2024 at _____ why this Court should not issue an order:

- (a) transferring this hybrid Article 78 proceeding/citizen-taxpayer action/declaratory judgment action to federal court, inasmuch as Judiciary Law § 14 divests every New York State justice and acting justice of jurisdiction because of their direct financial and other interests and “rule of necessity” cannot be invoked by reason thereof;
- (b) determining that the unrepresented petitioners/plaintiffs are entitled to representation/intervention by the Office of the Attorney General, pursuant to Executive Law § 63.1 and State Finance Law, Article 7-A , *via* appointment of independent counsel;
- (c) granting petitioners/plaintiffs a preliminary injunction to stay the “force of law” judicial salary increase recommendations of the December 4, 2023 Report of Respondent Commission on Legislative, Judicial and Executive Compensation from taking effect on April 1, 2024 and enjoining disbursement of the \$34,600,000 appropriation in Legislative/Judiciary Budget Bill #S.8301/A.8801 (at pp. 18-19) based thereon;

PENDING HEARING OF THIS MOTION, SUFFICIENT CAUSE APPEARING THEREFORE, let a TRO issue.

LET SERVICE of this order to show cause, the moving affidavit, and the verified petition/complaint, with exhibits be made by petitioners/plaintiffs upon respondents/defendants on or before the _____ day of March 2024 by e-mail.

ANSWERING PAPERS, if any, from respondents/defendants are to be served by e-mail by March _____, 2024, with reply papers from petitioners/plaintiffs served by e-mail by March _____, 2024.

UPON ORAL ARGUMENT, the parties shall be ready to proceed to an EVIDENTIARY HEARING, with testimony taken, from the witness stand, under oath.

Justice, Albany County Supreme Court

Petitioners' March 18, 2024 Moving Affidavit in Support of Order to Show Cause [R.228-232]

SUPREME COURT OF STATE OF NEW YORK
COUNTY OF ALBANY

----- X
CENTER FOR JUDICIAL ACCOUNTABILITY, INC.
and ELENA RUTH SASSOWER, individually and
as Director of the Center for Judicial Accountability, Inc.,
acting on their own behalf and on behalf of the People
of the State of New York & the Public Interest,

[Index # 902654-24](#)

**Moving Affidavit
in Support of OSC**

Petitioners/Plaintiffs,

-against-

NEW YORK STATE COMMISSION ON LEGISLATIVE,
JUDICIAL AND EXECUTIVE COMPENSATION,

KATHY HOCHUL and ANTONIO DELGADO, in their official
capacities as GOVERNOR and LIEUTENANT GOVERNOR
OF THE STATE OF NEW YORK,

ROWAN WILSON and JOSEPH ZAYAS, in their official capacities
as CHIEF JUDGE and CHIEF ADMINISTRATIVE JUDGE
OF THE STATE OF NEW YORK,

ANDREA STEWART-COUSINS, in her official capacity
as TEMPORARY SENATE PRESIDENT and
THE NEW YORK STATE SENATE,

CARL HEASTIE, in his official capacity as
ASSEMBLY SPEAKER, and
THE NEW YORK STATE ASSEMBLY,

LETITIA JAMES, in her official capacity as
ATTORNEY GENERAL OF THE STATE OF NEW YORK,

THOMAS DiNAPOLI, in his official capacity as
COMPTROLLER OF THE STATE OF NEW YORK,

Respondents/Defendants.

ELENA RUTH SASSOWER, affirms the following to be true
under penalties of perjury, pursuant to CPLR §2106:

Petitioners' March 18, 2024 Moving Affidavit in Support of Order to Show Cause [R.228-232]

1. I am the unrepresented individual petitioner/plaintiff, fully familiar with all the facts, papers, and proceedings on which the March 18, 2024 verified petition/complaint herein rests ([NYSCEF #1](#)).¹ This affidavit is submitted in support of the accompanying order to show cause pertaining to threshold issues ([NYSCEF #13](#)).

2. The most threshold issue is the jurisdictional bar to this Court's hearing and determining this lawsuit wherein petitioners seek to prevent the Court – and every other state-paid justice and judge of the New York courts – from receiving salary increases, effective April 1, 2024, which they will, by “force of law”, as a result of the December 4, 2023 Report of the Commission on Legislative, Judicial and Executive Compensation ([NYSCEF #4](#)).

3. [Judiciary §14](#) is unequivocal:

“A judge shall not sit as such in, or take any part in the decision of, an action, claim, matter, motion or proceeding...in which he is interested...”

This more than disqualifies, it divests of jurisdiction. As stated by the Appellate Division, Third Department in [People v. Alteri](#), 47 A.D.3d 1070 (2008):

“A statutory disqualification under Judiciary Law §14 will deprive a judge of jurisdiction (see [Wilcox v. Supreme Council of Royal Arcanum](#), 210 N.Y. 370, 377...[1914]; see also [Matter of Harkness Apt. Owners Corp. v. Abdus-Salaam](#), 232 A.D.2d 309, 310... [1996])... In fact, “a judge disqualified under a statute cannot act even with the consent of the parties interested, because the law was not designed merely for the protection of the parties to the suit, but for the general interests of justice’ ([Matter of Beer Garden v. New York State Liq. Auth.](#), 79 N.Y.2d 266, 278–279...[1992], quoting [Matter of City of Rochester](#), 208 N.Y. 188, 192... [1913])”.

¹ For simplicity, petitioners/plaintiffs are hereinafter referred to as petitioners; their verified petition/complaint is referred to as the petition; and respondents/defendants are referred to as respondents.

Petitioners' March 18, 2024 Moving Affidavit in Support of Order to Show Cause [R.228-232]

4. Nor is the jurisdictional bar overcome by “rule of necessity” – as only judges having jurisdiction can invoke such judge-made doctrine – a fact [United States v. Will](#), 449 U.S. 200, 210-211 (1980), makes evident² and 32 New York Jurisprudence §45 (1963) also reflects:

‘...since the courts have declared that the disqualification of a judge for any of the statutory reasons deprives him of jurisdiction,^{fn} a serious doubt exists as to the applicability of the necessity rule where the judge is disqualified under the statute.^{fn}’

5. Consequently, the only solution would be for the lawsuit to be transferred to federal court, as its judges are not beneficiaries of the judicial salary increases at issue.

6. Upon information and belief, there is no legal obstacle to the Court transferring the case in the circumstances at bar – or to respondents applying for its removal. Certainly, the Court should be able to rely on the Attorney General for a full briefing on transfer/removal to federal court, including pursuant to Article IV, §4 of the United States Constitution: “The United States shall guarantee every State in this Union a Republican Form of Government”.

7. Secondly, and just as threshold, is that petitioners are unrepresented by counsel and are entitled to the Attorney General’s representation/intervention pursuant to [Executive Law §63.1](#) and [State Finance Law Article 7-A](#) (§123-A, §123-C, §123-D, §123-E). This is obvious from the most cursory examination of petitioners’ January 18, 2024 Opposition Report on which this lawsuit rests ([NYSCEF #6](#)) – as there is NO DEFENSE to its demonstration of statutory violations and

² The federal courts have NO analogue to Judiciary Law §14, which is why in *US v. Will*, involving federal judicial salaries, the U.S. Supreme Court could invoke “rule of necessity”, which it did after first reciting, under the title heading ‘Jurisdiction’, its jurisdiction and that of the lower courts to decide the case.

New York courts apparently recognize this, as in cases involving judicial self-interest, they cite NOT to the jurisdiction-stripping Judiciary Law §14, but to *US v. Will*, either directly or through other cases, so as to bootstrap the jurisdictional issue. Thus, the Court of Appeals decisions in [Maresca v Cuomo](#), 64 N.Y.2d 242, 247, n.1 (1984), [Matter of Morgenthau v Cooke](#), 56 N.Y.2d 24, 29 n.3 (1982), and [Maron v. Silver](#), 14 N.Y.3d 230, 249 (2010). Similarly, the Appellate Division, Third Department’s [Maron v Silver](#), 58 A.D.3d 102, 106-107 (2008).

Petitioners' March 18, 2024 Moving Affidavit in Support of Order to Show Cause [R.228-232]

fraud by the Commission. Based thereon, petitioners have an open-and-shut, summary judgment entitlement to the relief their verified petition seeks, including its further relief:

“referral of all respondents to criminal authorities for the corruption and collusion established by petitioners’ January 18, 2024 Opposition Report and by their correspondence, complaints, and testimony” (at p. 15).

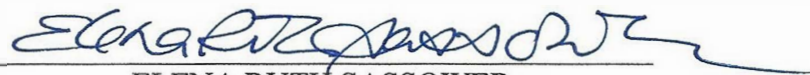
8. Attorney General James is a respondent herein because of her violation of duties with respect to the Opposition Report, the accuracy and truth of which she has had two months to fully and completely verify – most importantly, the records of [CJA v. Cuomo...DiFiore, et al.](#) and [CJA v. JCOPE, et al.](#) – featured by my testimony at the Commission’s October 13, 2023 hearing ([NYSCEF #3](#)) and by the Opposition Report. Those records are *prima facie* as to EXACTLY what occurred in each case, *to wit*, the Attorney General, a defendant representing her fellow defendants, had no legitimate defense, corrupted the judicial process with litigation fraud, and was rewarded by fraudulent judicial decisions.

9. Respondent Attorney General James must be required to disgorge her findings of fact and conclusions of law with respect to the Opposition Report and her compliance with conflict-of-interest protocols in determining her obligations under Executive Law §63.1 and State Finance Law Article 7-A to provide petitioners with representation, including by independent counsel.

10. Finally, there is the threshold issue of petitioners’ entitlement to a preliminary injunction to stay the judicial salary increases of the Commission’s December 4, 2023 Report from acquiring “the force of law” on April 1, 2024 and to enjoin disbursement of the \$34,600,000 appropriation in Legislative/Judiciary Budget Bill S.8301/A.8801 based thereon ([NYSCEF #5](#)). As this lawsuit has a 100% likelihood of success on the merits based on petitioners’ January 18, 2024 Opposition Report, and the equities are entirely in their favor inasmuch as the December 4, 2023 Report was procured by fraudulent advocacy of New York’s judges before the Commission,

Petitioners' March 18, 2024 Moving Affidavit in Support of Order to Show Cause [R.228-232]

injunctive relief is warranted to avoid the slightest possibility of any unrecoverable financial loss to the state resulting from disbursement.


ELENA RUTH SASSOWER



REQUEST FOR JUDICIAL INTERVENTION

Supreme COURT, COUNTY OF Albany

Index No: _____ Date Index Issued: _____

For Court Use Only:

CAPTION	For Court Use Only:
Enter the complete case caption. Do not use et al or et ano. If more space is needed, attach a caption rider sheet.	IAS Entry Date
Center for Judicial Accountability, Inc. and Elena Ruth Sassower, individually and as Director of the Center for Judicial Accountability, Inc., acting on their own behalf and on behalf of the People of the State of New York & the Public Interest, Elena Ruth Sassower	Judge Assigned
Plaintiff(s)/Petitioner(s)	RJI Filed Date
-against-	
New York State Commission on Legislative, Judicial and Executive Compensation, Kathy Hochul in her official capacity as Governor of the State of New York, Antonio Delgado in his official capacity as Lieutenant Governor of the State of New York, Rowan Wilson in his official capacity as Chief Judg...	
Defendant(s)/Respondent(s)	

NATURE OF ACTION OR PROCEEDING: Check only one box and specify where indicated.

COMMERCIAL	MATRIMONIAL
☐ Business Entity (includes corporations, partnerships, LLCs, LLPs, etc.) ☐ Contract ☐ Insurance (where insurance company is a party, except arbitration) ☐ UCC (includes sales and negotiable instruments) ☐ Other Commercial (specify): _____ NOTE: For Commercial Division assignment requests pursuant to 22 NYCRR 202.70(d), complete and attach the COMMERCIAL DIVISION RJI ADDENDUM (UCS-840C) .	☐ Contested NOTE: If there are children under the age of 18, complete and attach the MATRIMONIAL RJI Addendum (UCS-840M) . For Uncontested Matrimonial actions, use the Uncontested Divorce RJI (UD-13). REAL PROPERTY Specify how many properties the application includes: _____ ☐ Condemnation ☐ Mortgage Foreclosure (specify): ☐ Residential ☐ Commercial Property Address: _____ NOTE: For Mortgage Foreclosure actions involving a one to four-family, owner-occupied residential property or owner-occupied condominium, complete and attach the FORECLOSURE RJI ADDENDUM (UCS-840F) . ☐ Partition NOTE: Complete and attach the PARTITION RJI ADDENDUM (UCS-840P) . ☐ Tax Certiorari (specify): Section: _____ Block: _____ Lot: _____ ☐ Tax Foreclosure ☐ Other Real Property (specify): _____
TORTS	OTHER MATTERS
☐ Asbestos ☐ Environmental (specify): _____ ☐ Medical, Dental or Podiatric Malpractice ☐ Motor Vehicle ☐ Products Liability (specify): _____ ☐ Other Negligence (specify): _____ ☐ Other Professional Malpractice (specify): _____ ☐ Other Tort (specify): _____	☐ Certificate of Incorporation/Dissolution [see NOTE in COMMERCIAL section] ☐ Emergency Medical Treatment ☐ Habeas Corpus ☐ Local Court Appeal ☐ Mechanic's Lien ☐ Name Change/Sex Designation Change ☐ Pistol Permit Revocation Hearing ☐ Sale or Finance of Religious/Not-for-Profit Property ☐ Other (specify): _____
SPECIAL PROCEEDINGS	
☐ Child-Parent Security Act (specify): ☐ Assisted Reproduction ☐ Surrogacy Agreement ☐ CPLR Article 75 - Arbitration [see NOTE in COMMERCIAL section] ☒ CPLR Article 78 - Proceeding against a Body or Officer ☐ Election Law ☐ Extreme Risk Protection Order ☐ MHL Article 9.60 - Kendra's Law ☐ MHL Article 10 - Sex Offender Confinement (specify): ☐ Initial ☐ Review ☐ MHL Article 81 (Guardianship) ☐ Other Mental Hygiene (specify): _____ ☐ Other Special Proceeding (specify): _____	

STATUS OF ACTION OR PROCEEDING Answer YES or NO for every question and enter additional information where indicated.

	YES	NO	
Has a summons and complaint or summons with notice been filed?	☐	☒	If yes, date filed: _____
Has a summons and complaint or summons with notice been served?	☐	☒	If yes, date served: _____
Is this action/proceeding being filed post-judgment?	☐	☒	If yes, judgment date: _____

NATURE OF JUDICIAL INTERVENTION Check one box only and enter additional information where indicated.

☐ Infant's Compromise		
☐ Extreme Risk Protection Order Application		
☐ Note of Issue/Certificate of Readiness		
☐ Notice of Medical, Dental or Podiatric Malpractice	Date Issue Joined: _____	
☐ Notice of Motion	Relief Requested: _____	Return Date: _____
☐ Notice of Petition	Relief Requested: _____	Return Date: _____
☒ Order to Show Cause	Relief Requested: Article 78 (Body or Officer)	Return Date: _____
☐ Other Ex Parte Application	Relief Requested: _____	
☐ Partition Settlement Conference		
☐ Poor Person Application		
☐ Request for Preliminary Conference		
☐ Residential Mortgage Foreclosure Settlement Conference		
☐ Writ of Habeas Corpus		
☐ Other (specify): _____		

RELATED CASES				
List any related actions. For Matrimonial cases, list any related criminal or Family Court cases. If none, leave blank. If additional space is required, complete and attach the RJI Addendum (UCS-840A) .				
Case Title	Index/Case Number	Court	Judge (if assigned)	Relationship to instant case

PARTIES				
For parties without an attorney, check the "Un-Rep" box and enter the party's address, phone number and email in the space provided. If additional space is required, complete and attach the RJI Addendum (UCS-840A) .				
Un-Rep	Parties	Attorneys and Unrepresented Litigants	Issue Joined	Insurance Carriers
	List parties in same order as listed in the caption and indicate roles (e.g., plaintiff, defendant, 3 rd party plaintiff, etc.)	For represented parties, provide attorney's name, firm name, address, phone and email. For unrepresented parties, provide party's address, phone and email.	For each defendant, indicate if issue has been joined.	For each defendant, indicate insurance carrier, if applicable.
☐	Name: Center for Judicial Accountability, Inc. and Elena Ruth Sassow... Role(s): Plaintiff/Petitioner	Elena Sassower, 10 Stewart Place, Apt. 2D-E, White Plains 10603 , White Plains, NY 10603, elena@judgewidth.org	☐ YES ☒ NO	
☐	Name: Sassower, Elena R. Role(s): Plaintiff/Petitioner	Elena Sassower, 10 Stewart Place, Apt. 2D-E, White Plains 10603 , White Plains, NY 10603, elena@judgewidth.org	☐ YES ☒ NO	
☒	Name: New York State Commission on Legislative, Judicial and Executive... Role(s): Defendant/Respondent	64 Beaver Street-Box 454, New York, NY 10004, nycompensation@gmail.com	☐ YES ☒ NO	
☒	Name: Hochul, Kathy Role(s): Defendant/Respondent	The Capitol , Albany, NY 12224	☐ YES ☒ NO	
☒	Name: Delgado, Antonio Role(s): Defendant/Respondent	The Capitol, Albany , NY 12224	☐ YES ☒ NO	
☒	Name: Wilson, Rowan Role(s): Defendant/Respondent	20 Eagle Street, Albany, NY 12207	☐ YES ☒ NO	
☒	Name: Zayas, Joseph Role(s): Defendant/Respondent	25 Beaver Street, New York, NY 10004	☐ YES ☒ NO	
☒	Name: Stewart-Cousins, Andrea Role(s): Defendant/Respondent	The Capitol , Albany, NY 12224	☐ YES ☒ NO	
☒	Name: The New York State Senate Role(s): Defendant/Respondent	The Capitol, Albany, NY 12224	☐ YES ☒ NO	
☒	Name: Heastie, Carl Role(s): Defendant/Respondent	The Capitol, Albany, NY 12224	☐ YES ☒ NO	

NYSCEF FILING UNDER THE PENALTY OF PERJURY THAT ALL INFORMATION AND PROCEEDINGS ARE RECEIVED BY NYSCEF ACTION NO. 03/18/2024
PROCEEDINGS, EXCEPT AS NOTED ABOVE, NOR HAS A REQUEST FOR JUDICIAL INTERVENTION BEEN PREVIOUSLY FILED IN THIS
ACTION OR PROCEEDING.

Dated: 03/18/2024

Elena Ruth Sassower

Signature

Elena Ruth Sassower

Print Name

Attorney Registration Number

This form was generated by NYSCEF

Caption Rider Sheet

Plaintiff(s)/Petitioner(s)

vs.

New York State Commission on Legislative, Judicial and Executive Compensation, Kathy Hochul in her official capacity as Governor of the State of New York, Antonio Delgado in his official capacity as Lieutenant Governor of the State of New York, Rowan Wilson in his official capacity as Chief Judge of the State of New York, Joseph Zayas in his official capacity as Chief Administrative Judge of the State of New York, Andrea Stewart-Cousins in her official capacity as Temporary Senate President, The New York State Senate, Carl Heastie in his official capacity as Assembly Speaker, The New York State Assembly, Letitia James in her official capacity as Attorney General of the State of New York, Thomas DiNapoli in his official capacity as Comptroller of the State of New York

Defendant(s)/Respondent(s)

Request for Judicial Intervention Addendum

UCS-840A (7/2012)

Supreme COURT, COUNTY OF Albany

Index No:

For use when additional space is needed to provide party or related case information.

PARTIES: For parties without an attorney, check "Un-Rep" box AND enter party address, phone number and e-mail address in "Attorneys" space.

Un-Rep	Parties	Attorneys and Unrepresented Litigants	Issue Joined	Insurance Carriers
☐	List parties in same order as listed in the caption and indicate roles (e.g., plaintiff, defendant, 3 rd party plaintiff, etc.) Name: Center for Judicial Accountability, Inc. and Elena Ruth Sassower, individually and as Director of the Center for Judicial Accountability, Inc., acting on their own behalf and on behalf of the People of the State of New York & the Public Interest Role(s): Plaintiff/Petitioner	For represented parties, provide attorney's name, firm name, address, phone and email. For unrepresented parties, provide party's address, phone and email. Elena Sassower, 10 Stewart Place, Apt. 2D-E, White Plains 10603 , White Plains, NY 10603, elena@judgewatch.org	For each defendant, indicate if issue has been joined. ☐ YES ☒ NO	For each defendant, indicate insurance carrier, if applicable.
☒	Name: New York State Commission on Legislative, Judicial and Executive Compensation Role(s): Defendant/Respondent	64 Beaver Street-Box 454, New York, NY 10004, nycompensation@gmail.com	☐ YES ☒ NO	
☒	Name: The New York State Assembly Role(s): Defendant/Respondent	The Capitol, Albany, NY 12224	☐ YES ☒ NO	
☒	Name: James, Letitia Role(s): Defendant/Respondent	The Capitol, Albany, NY 12224	☐ YES ☒ NO	
☒	Name: DiNapoli, Thomas Role(s): Defendant/Respondent	100 State Street, Albany, NY 12236	☐ YES ☒ NO	

RELATED CASES: List any related actions. For Matrimonial actions, include any related criminal and/or Family Court cases.

Justice Ryba's March 19, 2024 Signed Order to Show Cause [R.237-238]

SUPREME COURT OF STATE OF NEW YORK
COUNTY OF ALBANY

----- x
CENTER FOR JUDICIAL ACCOUNTABILITY, INC.
and ELENA RUTH SASSOWER, individually and
as Director of the Center for Judicial Accountability, Inc.,
acting on their own behalf and on behalf of the People
of the State of New York & the Public Interest,

Index #

902654-24

Order to Show Cause

Petitioners/Plaintiffs,

-against-

NEW YORK STATE COMMISSION ON LEGISLATIVE,
JUDICIAL AND EXECUTIVE COMPENSATION,

KATHY HOCHUL and ANTONIO DELGADO, in their official
capacities as GOVERNOR and LIEUTENANT GOVERNOR
OF THE STATE OF NEW YORK,

ROWAN WILSON and JOSEPH ZAYAS, in their official capacities
as CHIEF JUDGE and CHIEF ADMINISTRATIVE JUDGE
OF THE STATE OF NEW YORK,

ANDREA STEWART-COUSINS, in her official capacity
as TEMPORARY SENATE PRESIDENT and
THE NEW YORK STATE SENATE,

CARL HEASTIE, in his official capacity as
ASSEMBLY SPEAKER, and
THE NEW YORK STATE ASSEMBLY,

LETITIA JAMES, in her official capacity as
ATTORNEY GENERAL OF THE STATE OF NEW YORK,

THOMAS DiNAPOLI, in his official capacity as
COMPTROLLER OF THE STATE OF NEW YORK,

Respondents/Defendants.

Upon the annexed March 18, 2024 affidavit of unrepresented individual petitioner/plaintiff

Elena Ruth Sassower and upon petitioners'/plaintiffs' March 18, 2024 verified petition/complaint,
with exhibits,

Justice Ryba's March 19, 2024 Signed Order to Show Cause [R.237-238]

LET respondents/defendants show cause before this Court on the 29th day of March 2024 at 9:30 am ~~⊗~~ why this Court should not issue an order:

- (a) transferring this hybrid Article 78 proceeding/citizen-taxpayer action/declaratory judgment action to federal court, inasmuch as Judiciary Law §14 divests every New York State justice and acting justice of jurisdiction because of their direct financial and other interests and "rule of necessity" cannot be invoked by reason thereof;
- (b) determining that the unrepresented petitioners/plaintiffs are entitled to representation/intervention by the Office of the Attorney General, pursuant to Executive Law §63.1 and State Finance Law, Article 7-A, via appointment of independent counsel;
- (c) granting petitioners/plaintiffs a preliminary injunction to stay the "force of law" judicial salary increase recommendations of the December 4, 2023 Report of Respondent Commission on Legislative, Judicial and Executive Compensation from taking effect on April 1, 2024 and enjoining disbursement of the \$34,600,000 appropriation in Legislative/Judiciary Budget Bill #S.8301/A.8801 (at pp. 18-19) based thereon;

~~PENDING HEARING OF THIS MOTION, SUFFICIENT CAUSE APPEARING~~

~~THEREFORE, let a TRO issue.~~

~~No temporary relief is granted. Petitioner's request for temporary relief does not comply with Court Rule 202.7(F)~~

LET SERVICE of this order to show cause, the moving affidavit, and the verified

petition/complaint, with exhibits be made by petitioners/plaintiffs upon respondents/defendants on or before the 21ST day of March 2024 in a manner authorized by the CPLR.

ANSWERING PAPERS, if any, from respondents/defendants are to be served by March 27th, 2024, with reply papers from petitioners/plaintiffs served by March 29, 2024.

~~⊗~~ No personal appearances on the return date unless directed by the assigned Justice.

Dated: March 19, 2024


Justice, Albany County Supreme Court

Hon. Christina L. Ryba
Supreme Court Justice

SUPREME COURT OF STATE OF NEW YORK
COUNTY OF ALBANY

----- x
CENTER FOR JUDICIAL ACCOUNTABILITY, INC.
and ELENA RUTH SASSOWER, individually and
as Director of the Center for Judicial Accountability, Inc.,
acting on their own behalf and on behalf of the People
of the State of New York & the Public Interest,

Index # 902654-24

**Amended Order to Show Cause
to Determine Threshold Issues,
Including Preliminary Injunction
with TRO**

Petitioners/Plaintiffs,

-against-

NEW YORK STATE COMMISSION ON LEGISLATIVE,
JUDICIAL AND EXECUTIVE COMPENSATION,

KATHY HOCHUL and ANTONIO DELGADO, in their official
capacities as GOVERNOR and LIEUTENANT GOVERNOR
OF THE STATE OF NEW YORK,

ROWAN WILSON and JOSEPH ZAYAS, in their official capacities
as CHIEF JUDGE and CHIEF ADMINISTRATIVE JUDGE
OF THE STATE OF NEW YORK,

ANDREA STEWART-COUSINS, in her official capacity
as TEMPORARY SENATE PRESIDENT and
THE NEW YORK STATE SENATE,

CARL HEASTIE, in his official capacity as
ASSEMBLY SPEAKER, and
THE NEW YORK STATE ASSEMBLY,

LETITIA JAMES, in her official capacity as
ATTORNEY GENERAL OF THE STATE OF NEW YORK,

THOMAS DiNAPOLI, in his official capacity as
COMPTROLLER OF THE STATE OF NEW YORK,

Respondents/Defendants.

Upon the annexed March 19, 2024 affidavit of unrepresented individual petitioner/plaintiff
Elena Ruth Sassower and upon petitioners'/plaintiffs' March 18, 2024 verified petition/complaint,
with exhibits,

LET respondents/defendants show cause before this Court on the _____ day of March 2024 at _____ why this Court should not issue an order:

- (a) transferring this hybrid Article 78 proceeding/citizen-taxpayer action/declaratory judgment action to federal court, inasmuch as Judiciary Law § 14 divests every New York State justice and acting justice of jurisdiction because of their direct financial and other interests and “rule of necessity” cannot be invoked by reason thereof;
- (b) determining that the unrepresented petitioners/plaintiffs are entitled to representation/intervention by the Office of the Attorney General, pursuant to Executive Law § 63.1 and State Finance Law, Article 7-A , *via* appointment of independent counsel;
- (c) granting petitioners/plaintiffs a preliminary injunction to stay the “force of law” judicial salary increase recommendations of the December 4, 2023 Report of Respondent Commission on Legislative, Judicial and Executive Compensation from taking effect on April 1, 2024 and enjoining disbursement of the \$34,600,000 appropriation in Legislative/Judiciary Budget Bill #S.8301/A.8801 (at pp. 18-19) based thereon;

PENDING HEARING OF THIS MOTION, SUFFICIENT CAUSE APPEARING THEREFORE, let a TRO issue.

LET SERVICE of this order to show cause, the moving affidavit, the prior affidavit, and the verified petition/complaint, with exhibits, be made by petitioners/plaintiffs upon respondents/defendants on or before the _____ day of March 2024 by e-mail.

ANSWERING PAPERS, if any, from respondents/defendants are to be served by e-mail by March _____, 2024, with reply papers from petitioners/plaintiffs served by e-mail by March _____, 2024.

UPON ORAL ARGUMENT, the parties shall be ready to proceed to an EVIDENTIARY HEARING, with testimony taken, from the witness stand, under oath.

Justice, Albany County Supreme Court

Petitioners' March 19, 2024 Moving Affidavit for Amended Order to Show Cause [R.241-242]

SUPREME COURT OF STATE OF NEW YORK
COUNTY OF ALBANY

----- X
CENTER FOR JUDICIAL ACCOUNTABILITY, INC.
and ELENA RUTH SASSOWER, individually and
as Director of the Center for Judicial Accountability, Inc.,
acting on their own behalf and on behalf of the People
of the State of New York & the Public Interest,

[Index #902654-24](#)

**Moving Affidavit in
Support of Amended OSC**

Petitioners/Plaintiffs,

-against-

NEW YORK STATE COMMISSION ON LEGISLATIVE,
JUDICIAL AND EXECUTIVE COMPENSATION,

KATHY HOCHUL and ANTONIO DELGADO, in their official
capacities as GOVERNOR and LIEUTENANT GOVERNOR
OF THE STATE OF NEW YORK,

ROWAN WILSON and JOSEPH ZAYAS, in their official capacities
as CHIEF JUDGE and CHIEF AMINISTRATIVE JUDGE
OF THE STATE OF NEW YORK,

ANDREA STEWART-COUSINS, in her official capacity
as TEMPORARY SENATE PRESIDENT and
THE NEW YORK STATE SENATE,

CARL HEASTIE, in his official capacity as
ASSEMBLY SPEAKER, and
THE NEW YORK STATE ASSEMBLY,

LETITIA JAMES, in her official capacity as
ATTORNEY GENERAL OF THE STATE OF NEW YORK,

THOMAS DiNAPOLI, in his official capacity as
COMPTROLLER OF THE STATE OF NEW YORK,

Respondents/Defendants.

ELENA RUTH SASSOWER, affirms the following to be true
under penalties of perjury, pursuant to CPLR §2106:

Petitioners' March 19, 2024 Moving Affidavit for Amended Order to Show Cause [R.241-242]

1. I am the unrepresented individual petitioner/plaintiff,¹ fully familiar with all the facts, papers, and proceedings herein.

2. This affidavit is submitted in support of petitioners' proposed amended order to show cause, identical to the original order to show cause that petitioners filed yesterday ([NYSCEF #13](#)) – which the Court signed, striking the requested TRO relief because petitioners had not complied with Uniform Court Rule 202.7(f), requiring notice to respondents/defendants ([NYSCEF #17](#)).

3. As that deficiency is easily rectified, this Court has agreed to hear the TRO request on Thursday, March 21, 2024, at 3:00 p.m., *via* Teams, provided I comply with the notice requirement of Uniform Rule 202.7(f) (Exhibit A), which I am in the process of doing.

4. In the interest of judicial economy, petitioners rest on the facts and law presented by my yesterday's affidavit in support of the original order to show cause, herein incorporated by reference ([NYSCEF #14](#)).



ELENA RUTH SASSOWER

¹ For simplicity, petitioners/plaintiffs are hereinafter referred to as petitioners; their verified petition/complaint is referred to as the petition; and respondents/defendants are referred to as respondents.

Ex. A to Petitioners' March 19, 2024 Moving Affidavit in Support of Amended OSC [R.243-247]

From: Cris Puma <rpuma@nycourts.gov>
Sent: Tuesday, March 19, 2024 12:12 PM
To: Center for Judicial Accountability, Inc. (CJA)
Cc: Ryba Chambers; Amy Serson
Subject: **RE: NOTICE -- OSC for TRO: Lawsuit to VOID the Dec 4, 2023 Report of the Commission on Legislative, Judicial & Executive Compensation & STRIKE the \$34.6M appropriation for judicial pay raises in Legislative/Judiciary Budget Bill #S.8301/8801**

Ms. Sassower,

I have reviewed your attached email. The Order to Show Cause signed by Judge Ryba in her capacity as Part One Judge has been uploaded to NYSCEF and is being assigned to the Justice presiding over the Article 78 Term scheduled for Friday, March 29, 2024. Accordingly, your Order to Show Cause is no longer pending before Judge Ryba. If you wish to have Judge Ryba re-consider your Order to Show Cause and request for a TRO, you must 1) file an Amended Order to Show Cause (i.e., a clean copy of your original order to show cause), and 2) comply with Court Rule 202.7 (f).

Compliance with Court Rule 202.7 (f) requires you to furnish the Court with proof that you have provided all of the respondents and/or their respective attorneys with a copy of your papers and sufficient notice of the date and time when you will present the papers to the Court. It is your responsibility to provide this notice to all of the respondents. You may not rely upon the respondents to notify one another.

Judge Ryba is available to hear your application for temporary relief virtually via TEAMS on Thursday, March 21, 2024 at 3:00pm.

If you wish to be heard at this time, you must:

- 1) file an Amended Order to Show Cause as described above,
- 2) provide the Court with proof that you have notified all respondents and/or their attorneys of the date and time of the TEAMS appearance and given them a copy of your papers, and
- 3) provide the Court with proper email addresses for the attorney(s) representing each of the respondents, so a TEAMS link may be sent to them.

Once these requirements have been satisfied, the Court will schedule the virtual appearance for Thursday, March 21, 2024 at 3:00pm, and will email a TEAMS link to you and the attorneys for respondents.

Warm regards,

Cris Puma, Esq.
Principal Law Clerk to
Hon. Christina L. Ryba, JSC

Ex. A to Petitioners' March 19, 2024 Moving Affidavit in Support of Amended OSC [R.243-247]

Albany County Courthouse
16 Eagle Street, Room 401
Albany, NY 12207
(518) 285-8916

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>

Sent: Tuesday, March 19, 2024 11:28 AM

To: 'NYS Salary Commission' <nyscompensation@gmail.com>; 'Records_Access' <Records.Access@exec.ny.gov>; lgny@exec.ny.gov; scousins@nysenate.gov; ortt@nysenate.gov; Speaker@nyassembly.gov; BarclaW@nyassembly.gov; Hon. Joseph A. Zayas <jzayas@nycourts.gov>; Cindy Martucci-Kiyar <cmartucc@nycourts.gov>; NYAG.Pressoffice@ag.ny.gov; mkogut@osc.ny.gov
Cc: Ryba Chambers <rybachambers@nycourts.gov>; Amy Serson <aserson@nycourts.gov>; Paul J Ruf <pruf@nycourts.gov>

Subject: NOTICE -- OSC for TRO: Lawsuit to VOID the Dec 4, 2023 Report of the Commission on Legislative, Judicial & Executive Compensation & STRIKE the \$34.6M appropriation for judicial pay raises in Legislative/Judiciary Budget Bill #S.8301/8801

TO: NYS Commission on Legislative, Judicial and Executive Compensation
Governor Kathy Hochul & Lieutenant Governor Antonio Delgado
Chief Judge Rowan Wilson & Chief Administrative Judge Joseph Zayas
Temporary Senate President Andrea Stewart-Cousins & The Senate
Assembly Speaker Carl Heastie & The Assembly
Attorney General Letitia James & Comptroller Thomas DiNapoli

Yesterday, an Article 78 proceeding/declaratory judgment action/citizen-taxpayer action was commenced against you, in Supreme Court/Albany County, to VOID the Dec 4, 2023 Report of the Commission on Legislative, Judicial & Executive Compensation & STRIKE the \$34.6M appropriation for judicial pay raises in Legislative/Judiciary Budget Bill #S.8301/8801. The NYSCEF # is [902654-24](#) – and all papers are accessible therefrom.

An order to show cause to determine threshold issue was also signed, but the TRO relief was stricken because I had not given you notice thereof, as is required by [Uniform Civil Rules for Supreme Court 202.7\(f\)](#).

As that deficiency is easily rectified, I have requested that the Court hear the TRO relief on Thursday, March 21st – the date by which the OSC requires that you be served with the papers. I have asked the Albany Supreme Court clerk who handles these matters, Amy Serson, for whatever time in the day would be convenient for the Court.

Finally, kindly forward this e-mail to those whose direct e-mail addresses I do not have – Attorney General James, in particular.

Thank you.

Ex. A to Petitioners' March 19, 2024 Moving Affidavit in Support of Amended OSC [R.243-247]

Elena Sassower, unrepresented individual petitioner/plaintiff,
acting on her own behalf and on behalf of the People of the State of New
York & the Public Interest
914-421-1200

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Friday, January 19, 2024 8:45 AM

To: 'records.access@exec.ny.gov' <records.access@exec.ny.gov>; 'lgnny@exec.ny.gov' <lgnny@exec.ny.gov>; 'scousins@nysenate.gov' <scousins@nysenate.gov>; 'Ortt@nysenate.gov' <Ortt@nysenate.gov>; 'Speaker@nyassembly.gov' <Speaker@nyassembly.gov>; 'BarclaW@nyassembly.gov' <BarclaW@nyassembly.gov>; 'jzayas@nycourts.gov' <jzayas@nycourts.gov>; 'cmartucc@nycourts.gov' <cmartucc@nycourts.gov>; 'NYAG.Pressoffice@ag.ny.gov' <NYAG.Pressoffice@ag.ny.gov>; 'mkogut@osc.ny.gov' <mkogut@osc.ny.gov>

Subject: ** Your Duty to VOID the Dec 4, 2023 Report of the Commission on Legislative, Judicial & Executive Compensation, STRIKE the \$34.6M for judicial pay raises from the Legislative/Judiciary budget bill, & REFER the commissioners for criminal prosecutions

The above-attached supersedes the Opposition Report sent yesterday, by the below, which I have adjusted to reflect the 3rd branch of relief that had been omitted.

Apologies for the inconvenience.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org
914-421-1200
elena@judgewatch.org

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Thursday, January 18, 2024 8:06 PM

To: 'records.access@exec.ny.gov' <records.access@exec.ny.gov>; 'lgnny@exec.ny.gov' <lgnny@exec.ny.gov>; 'scousins@nysenate.gov' <scousins@nysenate.gov>; 'Ortt@nysenate.gov' <Ortt@nysenate.gov>; 'Speaker@nyassembly.gov' <Speaker@nyassembly.gov>; 'BarclaW@nyassembly.gov' <BarclaW@nyassembly.gov>; 'rwilson@nycourts.gov' <rwilson@nycourts.gov>; 'jzayas@nycourts.gov' <jzayas@nycourts.gov>; 'cmartucc@nycourts.gov' <cmartucc@nycourts.gov>; 'NYAG.Pressoffice@ag.ny.gov' <NYAG.Pressoffice@ag.ny.gov>; 'mkogut@osc.ny.gov' <mkogut@osc.ny.gov>

Ex. A to Petitioners' March 19, 2024 Moving Affidavit in Support of Amended OSC [R.243-247]

Subject: Your Duty to VOID the Dec 4, 2023 Report of the Commission on Legislative, Judicial & Executive Compensation, STRIKE the \$34.6M for judicial pay raises from the Legislative/Judiciary budget bill, & REFER the commissioners for criminal prosecutions

TO: Governor Kathy Hochul & Lieutenant Governor Antonio Delgado
All Senators: c/o Senate Leaders Andrea Stewart-Cousins & Robert Ort
All Assembly Members: c/o Assembly Leaders Carl Heastie & William Barclay
Chief Judge Rowan Wilson & Chief Administrative Judge Joseph Zayas, Etc.
Attorney General Letitia James & Comptroller Thomas DiNapoli

The December 4, 2023 Final Report on Judicial Compensation of the Commission on Legislative, Judicial and Executive Compensation is a fraud on the People of the State of New York and a grand larceny of taxpayer monies by its judicial pay raise “Conclusions”, if these are deemed to be its “force of law” “recommendations”. This is demonstrated by CJA’s January 18, 2024 Opposition Report, above-attached. It is addressed to all of you so that individually and collectively you can discharge your constitutional and oversight responsibilities:

- (1) to void the Commission’s “force of law” December 4, 2023 Final Report on Judicial Compensation because it is statutorily-violative, fraudulent, and unconstitutional – and striking the \$34.6 million appropriation for judicial salary increases from the Governor’s Legislative/Judiciary Budget Bill #S.8301/A.8801;
- (2) to refer the Commission’s seven members for criminal prosecution – and for Attorney General James to herself bring such prosecution – based on penal law violations including:

Penal Law §175.35: “Offering a false instrument for filing in the first degree”;

Penal Law §195: “Official misconduct”;

Penal Law §105.15: “Conspiracy in the second degree”;

Penal Law §20.00: “Criminal liability for conduct of another”;

Penal Law Article 496: “PUBLIC TRUST ACT”

§496.06: “Public corruption”;

§496.05: “Corrupting the government in the first degree”;

- (3) to hold hearings on the corruption in New York’s judiciary to which the three judicial pay raise opponents attested, with evidence – involving the corruption of the Commission on Judicial Conduct, the Appellate Division attorney grievance committees, and the OCA Inspector General.

Ex. A to Petitioners' March 19, 2024 Moving Affidavit in Support of Amended OSC [R.243-247]

Although the Opposition Report is filled with EVIDENTIARY hyperlinks, CJA's website has an [EVIDENTIARY webpage](#) for the Opposition Report, to further assist you. Please note that the posted Opposition Report removes the LIVE link in footnote 5 that reads:

"Because the Independent Expert Report pertains to a sealed Monroe County Family Court case, it and what occurred thereafter, recited by CJA's October 25, 2023 complaint, are posted on a publicly inaccessible webpage, [here](#)."

Finally, to those whose direct e-mails I do not have, kindly forward.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org
914-421-1200
elena@judgewatch.org

Petitioners' March 20, 2024 e-mail to Justice Ryba's Chambers [R.248-255]

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Wednesday, March 20, 2024 1:36 PM
To: 'rpuma@nycourts.gov'; 'Rybachambers@nycourts.gov'
Cc: 'aserson@nycourts.gov'; 'pruf@nycourts.gov'; 'NYS Salary Commission'; 'Emma.Muirhead@exec.ny.gov'; 'lgny@exec.ny.gov'; 'lievans@nycourts.gov'; 'josephj@nysenate.gov'; 'mudier@nyassembly.gov'; 'Speaker@nyassembly.gov'; 'mkogut@osc.ny.gov'; 'NYAG.Pressoffice@ag.ny.gov'
Subject: E-Mail Addresses for TEAMS link for tomorrow's 3pm oral argument for TRO, etc. -- CJA, et al v. NYS Commission on Legislative, Judicial & Executive Compensation, et al. (Albany Co. #902654-24)

To: Cris Puma/Principal Law Clerk to Albany Supreme Court Part 1 Duty Judge Ryba

Following up our phone conversation at about 11:30 this morning, I have the following e-mail addresses to provide for all respondents/defendants except Attorney General James:

For New York State Commission on Legislative, Judicial and Executive Compensation:
nyscompensation@gmail.com

For Governor Hochul: Emma.Muirhead@exec.ny.gov [Emma Muirhead/Executive Asst. to Governor's counsel, Liz Fine]

For Lieutenant Governor Delgado: lgny@exec.ny.gov

For Chief Judge Wilson & Chief Administrative Zayas: lievans@nycourts.gov (Lisa Evans, Deputy Counsel – OCA) [per Court of Appeals Deputy Clerk Edward Ohanian]

For Temporary Senate President Stewart-Cousins & The Senate: josephj@nysenate.gov (Jellisa Joseph, Counsel – Secretary of the Senate)

For The Assembly: mudier@nyassembly.gov (Rebecca Mudie, Counsel)

For Assembly Speaker Heastie: speaker@nyassembly.gov

For Comptroller DiNapoli: mkogut@osc.ny.gov (Michael Kogut/Counsel for State Audit & Litigation)

All the above are herein cc'd. With respect to Attorney General James – whose only e-mail address I have is NYAG.Pressoffice@ag.ny.gov, herein cc'd – please be advised that the AG's website does NOT post any phone numbers or e-mail addresses for arranging for orders to show cause and TROs – and the number I called yesterday, 518-776-2050, is the appeals and litigation bureau number that Court Clerk Serson provided me yesterday, with the results recited by my below e-mail.

At 11:45 today, I called that number again and requested to speak with someone who could give me an e-mail address for a TEAMS link for oral argument for a TRO. Although I had not identified who I was, the woman who picked up the call, stated that the matter had been “forwarded”, that “this office cannot help [me] further”, and that I should “please stop calling this number”. She then hung up the phone. Upon

Petitioners' March 20, 2024 e-mail to Justice Ryba's Chambers [R.248-255]

my calling back, two or three minutes later, I got a voice mail recording, on which I left a message reciting the foregoing. That was nearly two hours ago.

I am travelling from White Plains to Albany tomorrow to serve 11 copies of the verified petition/complaint and OSC papers on the 11 respondents/defendants. Hopefully that will be done by early in the afternoon. I will then head over to the Court for the oral argument on the TRO.

I would prefer to physically appear before Justice Ryba for the oral argument – but, apparently this is not what will happen. My appearance will be *via* TEAMS, with a hook-up in a kiosk room by the law library.

If it is possible to record the TEAMS transmission, I request that be done – and am willing to pay costs for same. In any event, you assured me that a stenographer would be present, taking minutes.

Thank you.

Elena Sassower, unrepresented individual petitioner/plaintiff
acting on her own behalf and on behalf of the People of the State of New York
& the Public Interest

914-421-1200

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>

Sent: Tuesday, March 19, 2024 7:17 PM

To: 'NYS Salary Commission' <nyscompensation@gmail.com>; 'Emma.Muirhead@exec.ny.gov' <Emma.Muirhead@exec.ny.gov>; 'lgny@exec.ny.gov' <lgny@exec.ny.gov>; 'josephj@nysenate.gov' <josephj@nysenate.gov>; 'scousins@nysenate.gov' <scousins@nysenate.gov>; 'Ortt@nysenate.gov' <Ortt@nysenate.gov>; 'Speaker@nyassembly.gov' <Speaker@nyassembly.gov>; 'BarclaW@nyassembly.gov' <BarclaW@nyassembly.gov>; 'jzayas@nycourts.gov' <jzayas@nycourts.gov>; 'cmartucc@nycourts.gov' <cmartucc@nycourts.gov>; 'NYAG.Pressoffice@ag.ny.gov' <NYAG.Pressoffice@ag.ny.gov>; 'mkogut@osc.ny.gov' <mkogut@osc.ny.gov>

Cc: 'Rybachambers@nycourts.gov' <Rybachambers@nycourts.gov>; 'rpuma@nycourts.gov' <rpuma@nycourts.gov>; 'aserson@nycourts.gov' <aserson@nycourts.gov>; 'pruf@nycourts.gov' <pruf@nycourts.gov>

Subject: NOTICE: 3pm Thurs. March 21st: Oral Argument for TRO, etc. -- CJA, et al v. NYS Commission on Legislative, Judicial & Executive Compensation, et al. (Albany Co. #902654-24)

TO: NYS Commission on Legislative, Judicial and Executive Compensation
Governor Kathy Hochul & Lieutenant Governor Antonio Delgado
Chief Judge Rowan Wilson & Chief Administrative Judge Joseph Zayas
Temporary Senate President Andrea Stewart-Cousins & The Senate
Assembly Speaker Carl Heastie & The Assembly
Attorney General Letitia James & Comptroller Thomas DiNapoli

Petitioners' March 20, 2024 e-mail to Justice Ryba's Chambers [R.248-255]

Below, with the above-attached, which are NYSCEF [#18](#), [#19](#), and [#20](#), is the current status of the TRO that petitioners/plaintiffs seek in the lawsuit commenced against you yesterday in Albany Supreme Court.

Excepting the Commission on Legislative, Judicial and Executive Compensation, which has no phone number, I have alerted all of you by phone this afternoon to the [Albany Supreme Court NYSCEF Index #902654-24](#), from which all papers are accessible – and that, upon my giving the required notice to you, the Court will schedule oral argument on petitioners’/plaintiffs’ amended OSC for 3 pm on Thursday, *via* TEAMS, and has requested that you provide me with e-mail addresses to which the Court can send you the link.

My telephonic notification was, as follows:

- (1) 4:20 pm to Lt. Delgado (518-[402-2292], spoke with Denise Poutre/Senior Executive Asst. to the Lt. Governor);
- (2) 4:15 pm to Gov. Hochul (518-474-8343, spoke with Emma Muirhead/Executive Asst. to Governor’s counsel, Liz Fine);
- (3) 4:20 pm to AG James (518-776-2050, left a voice message, furnishing full info – much as I had 2 hours earlier in a phone conversation with Deputy Solicitor General Jeffrey Lang and, before that, with Laura, both of whom hung up on me – the latter stating “I can’t accept telephone notice”, following which, upon my immediate call back, a voice mail kicked in on which I left a message, not returned, for an e-mail address);
- (4) at 4:25 pm for Chief Judge Wilson (518-455-7700, spoke with Margaret Wood/Court of Appeals Asst. Deputy Clerk);
- (5) at 4:45 pm for Temporary Senate President Stewart-Cousins & The Senate (518-455-2051, spoke with Shekia Huntley in the Office of the Secretary of the Senate, with whom I had spoken at 10:05 am, and who confirmed that Jellina Joseph is still counsel and her e-mail is josephj@nysenate.gov);
- (6) at 4:47 pm for Assembly Speaker Heastie & The Assembly (518-455-4191, spoke with Katelyn in the Assembly counsel’s office, with whom I had spoken at 10:10 am, and who stated that majority counsel is Rebecca Mudie, but could not give me her e-mail or a generic email for Assembly counsel’s office);
- (7) at 4:50 pm for Comptroller DiNapoli (518-402-3215, left a voice message for Michael Kogut/Counsel for State Audit & Litigation);
- (8) at 4:58 pm for Chief Administrative Judge Zayas (212-428-2120, left a voice mail message for his assistant, Cindy Martucci, to whom my call was transferred by the staff member who picked up the phone, simply because I asked whether Ms. Martucci was in).

Kindly confirm the e-mail addresses I should supply the Court for its TEAMS link for the March 21st oral argument on the OSC – and the physical address to which the verified petition/complaint and OSC papers will be accepted, for service, on that date, either before or after the argument.

Petitioners' March 20, 2024 e-mail to Justice Ryba's Chambers [R.248-255]

Thank you.

Elena Sassower, unrepresented individual petitioner/plaintiff,
acting on her own behalf and on behalf of the People of the State of New York
& the Public Interest

914-421-1200

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>

Sent: Tuesday, March 19, 2024 4:00 PM

To: 'rpuma@nycourts.gov' <rpuma@nycourts.gov>; 'Rybachambers@nycourts.gov' <Rybachambers@nycourts.gov>

Cc: 'aserson@nycourts.gov' <aserson@nycourts.gov>; 'pruf@nycourts.gov' <pruf@nycourts.gov>

Subject: Amended OSC for TRO: #902654-24 -- CJA v. Commission on Legislative, Judicial & Executive Compensation

Following up my phone call to chambers at 2:40 pm and conversation with Lori, above-attached is an amended OSC, electronically filed with moving affidavit & exhibit, also above-attached, for your convenience.

Will now go back to continuing my notification of respondents, with requests to them for e-mail addresses for March 21st TEAMS access.

Thank you.

Elena Sassower
914-421-1200

From: Cris Puma <rpuma@nycourts.gov>

Sent: Tuesday, March 19, 2024 12:12 PM

To: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>

Cc: Ryba Chambers <rybachambers@nycourts.gov>; Amy Serson <aserson@nycourts.gov>

Subject: RE: NOTICE -- OSC for TRO: Lawsuit to VOID the Dec 4, 2023 Report of the Commission on Legislative, Judicial & Executive Compensation & STRIKE the \$34.6M appropriation for judicial pay raises in Legislative/Judiciary Budget Bill #S.8301/8801

Ms. Sassower,

I have reviewed your attached email. The Order to Show Cause signed by Judge Ryba in her capacity as Part One Judge has been uploaded to NYSCEF and is being assigned to the Justice presiding over the Article 78 Term scheduled for Friday, March 29, 2024. Accordingly, your Order to Show Cause is no longer pending before Judge Ryba. If you wish to have Judge Ryba re-consider your Order to Show Cause and request for a TRO, you must 1) file an Amended Order to Show Cause (i.e., a clean copy of your original order to show cause), and 2) comply with Court Rule 202.7 (f).

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Petitioners' March 20, 2024 e-mail to Justice Ryba's Chambers [R.248-255]

sufficient notice of the date and time when you will present the papers to the Court. It is your responsibility to provide this notice to all of the respondents. You may not rely upon the respondents to notify one another.

Judge Ryba is available to hear your application for temporary relief virtually via TEAMS on Thursday, March 21, 2024 at 3:00pm.

If you wish to be heard at this time, you must:

- 1) file an Amended Order to Show Cause as described above,
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Once these requirements have been satisfied, the Court will schedule the virtual appearance for Thursday, March 21, 2024 at 3:00pm, and will email a TEAMS link to you and the attorneys for respondents.

Warm regards,

Cris Puma, Esq.

Principal Law Clerk to
Hon. Christina L. Ryba, JSC
Albany County Courthouse
16 Eagle Street, Room 401
Albany, NY 12207
(518) 285-8916

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Speaker@nyassembly.gov; BarclaW@nyassembly.gov; Hon. Joseph A. Zayas <jzayas@nycourts.gov>;

Cindy Martucci-Kiyar <cmartucc@nycourts.gov>; NYAG.Pressoffice@ag.ny.gov; mkogut@osc.ny.gov

Cc: Ryba Chambers <rybachambers@nycourts.gov>; Amy Serson <aserson@nycourts.gov>; Paul J Ruf <pruf@nycourts.gov>

Subject: NOTICE -- OSC for TRO: Lawsuit to VOID the Dec 4, 2023 Report of the Commission on Legislative, Judicial & Executive Compensation & STRIKE the \$34.6M appropriation for judicial pay raises in Legislative/Judiciary Budget Bill #S.8301/8801

TO: NYS Commission on Legislative, Judicial and Executive Compensation
Governor Kathy Hochul & Lieutenant Governor Antonio Delgado
Chief Judge Rowan Wilson & Chief Administrative Judge Joseph Zayas
Temporary Senate President Andrea Stewart-Cousins & The Senate
Assembly Speaker Carl Heastie & The Assembly

Petitioners' March 20, 2024 e-mail to Justice Ryba's Chambers [R.248-255]**Attorney General Letitia James & Comptroller Thomas DiNapoli**

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Finally, kindly forward this e-mail to those whose direct e-mail addresses I do not have – Attorney General James, in particular.

Thank you.

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Subject: ** Your Duty to VOID the Dec 4, 2023 Report of the Commission on Legislative, Judicial & Executive Compensation, STRIKE the \$34.6M for judicial pay raises from the Legislative/Judiciary budget bill, & REFER the commissioners for criminal prosecutions

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Apologies for the inconvenience.

Petitioners' March 20, 2024 e-mail to Justice Ryba's Chambers [R.248-255]

Thank you.

Elena Sassower, Director
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www.judgewatch.org
914-421-1200
elena@judgewatch.org

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>

Sent: Thursday, January 18, 2024 8:06 PM

To: 'records.access@exec.ny.gov' <records.access@exec.ny.gov>; 'lgny@exec.ny.gov' <lgny@exec.ny.gov>; 'scousins@nysenate.gov' <scousins@nysenate.gov>; 'Ortt@nysenate.gov' <Ortt@nysenate.gov>; 'Speaker@nyassembly.gov' <Speaker@nyassembly.gov>; 'BarclaW@nyassembly.gov' <BarclaW@nyassembly.gov>; 'rwilson@nycourts.gov' <rwilson@nycourts.gov>; 'jzayas@nycourts.gov' <jzayas@nycourts.gov>; 'cmartucc@nycourts.gov' <cmartucc@nycourts.gov>; 'NYAG.Pressoffice@ag.ny.gov' <NYAG.Pressoffice@ag.ny.gov>; 'mkogut@osc.ny.gov' <mkogut@osc.ny.gov>

Subject: Your Duty to VOID the Dec 4, 2023 Report of the Commission on Legislative, Judicial & Executive Compensation, STRIKE the \$34.6M for judicial pay raises from the Legislative/Judiciary budget bill, & REFER the commissioners for criminal prosecutions

TO: Governor Kathy Hochul & Lieutenant Governor Antonio Delgado
All Senators: c/o Senate Leaders Andrea Stewart-Cousins & Robert Ortt
All Assembly Members: c/o Assembly Leaders Carl Heastie & William Barclay
Chief Judge Rowan Wilson & Chief Administrative Judge Joseph Zayas, Etc.
Attorney General Letitia James & Comptroller Thomas DiNapoli

The [December 4, 2023 Final Report on Judicial Compensation](#) of the Commission on Legislative, Judicial and Executive Compensation is a fraud on the People of the State of New York and a grand larceny of taxpayer monies by its judicial pay raise "Conclusions", if these are deemed to be its "force of law" "recommendations". This is demonstrated by CJA's January 18, 2024 Opposition Report, above-attached. It is addressed to all of you so that individually and collectively you can discharge your constitutional and oversight responsibilities:

- (1) to void the Commission's "force of law" December 4, 2023 Final Report on Judicial Compensation because it is statutorily-violative, fraudulent, and unconstitutional – and striking the \$34.6 million appropriation for judicial salary increases from the Governor's Legislative/Judiciary Budget Bill #S.8301/A.8801;
- (2) to refer the Commission's seven members for criminal prosecution – and for Attorney General James to herself bring such prosecution – based on penal law violations including:

Petitioners' March 20, 2024 e-mail to Justice Ryba's Chambers [R.248-255]

Penal Law §175.35: “Offering a false instrument for filing
in the first degree”;

Penal Law §195: “Official misconduct”;

Penal Law §105.15: “Conspiracy in the second degree”;

Penal Law §20.00: “Criminal liability for conduct of another”;

Penal Law Article 496: “PUBLIC TRUST ACT”

§496.06: “Public corruption”;

§496.05: “Corrupting the government in the first degree”;

- (3) to hold hearings on the corruption in New York’s judiciary to which the three judicial pay raise opponents attested, with evidence – involving the corruption of the Commission on Judicial Conduct, the Appellate Division attorney grievance committees, and the OCA Inspector General.

Although the Opposition Report is filled with EVIDENTIARY hyperlinks, CJA’s website has an [EVIDENTIARY webpage](#) for the Opposition Report, to further assist you. Please note that the posted Opposition Report removes the LIVE link in footnote 5 that reads:

“Because the Independent Expert Report pertains to a sealed Monroe County Family Court case, it and what occurred thereafter, recited by CJA’s October 25, 2023 complaint, are posted on a publicly inaccessible webpage, [here](#).”

Finally, to those whose direct e-mails I do not have, kindly forward.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org
914-421-1200
elena@judgewatch.org

Petitioners' March 22, 2024 Affidavit of Service for Verified Petition/Complaint, etc. [R.256-271]

SUPREME COURT OF STATE OF NEW YORK
COUNTY OF ALBANY

----- X
CENTER FOR JUDICIAL ACCOUNTABILITY, INC.
and ELENA RUTH SASSOWER, individually and
as Director of the Center for Judicial Accountability, Inc.,
acting on their own behalf and on behalf of the People
of the State of New York & the Public Interest,

[Index #902654-24](#)

Affidavit of Service

Petitioners/Plaintiffs,

-against-

NEW YORK STATE COMMISSION ON LEGISLATIVE,
JUDICIAL AND EXECUTIVE COMPENSATION,

KATHY HOCHUL and ANTONIO DELGADO, in their official
capacities as GOVERNOR and LIEUTENANT GOVERNOR
OF THE STATE OF NEW YORK,

ROWAN WILSON and JOSEPH ZAYAS, in their official capacities
as CHIEF JUDGE and CHIEF ADMINISTRATIVE JUDGE
OF THE STATE OF NEW YORK,

ANDREA STEWART-COUSINS, in her official capacity
as TEMPORARY SENATE PRESIDENT and
THE NEW YORK STATE SENATE,

CARL HEASTIE, in his official capacity as
ASSEMBLY SPEAKER, and
THE NEW YORK STATE ASSEMBLY,

LETITIA JAMES, in her official capacity as
ATTORNEY GENERAL OF THE STATE OF NEW YORK,

THOMAS DiNAPOLI, in his official capacity as
COMPTROLLER OF THE STATE OF NEW YORK,

Respondents/Defendants.

ELENA RUTH SASSOWER, affirms the following to be true
under penalties of perjury, pursuant to CPLR §2106:

Petitioners' March 22, 2024 Affidavit of Service for Verified Petition/Complaint, etc. [R.256-271]

1. I am the unrepresented individual petitioner/plaintiff and submit this affidavit to attest to service, on March 21, 2024, of:

- petitioners' March 18, 2024 verified petition/complaint, with exhibits (NYSCEF ##1-12);
- petitioners' order to show cause, as signed by Part I Judge Christina Ryba on March 19, 2024, with moving affidavit (NYSCEF #17, #14);
- petitioners' March 19, 2024 unsigned order to show cause, with moving affidavit (w/o Exhibit A) (NYSCEF ##18-19).

2. Annexed hereto are receipted first pages for each of the above (Exhibit A), reflecting acceptance of service, as follows:

- for Governor Hochul & Lt. Governor Delgado – by Deputy Counsel for Litigation Pei Pei Cheng-DeCastro (2 copies) [*refused to do more than partially sign only 2 pages*];
- for Assembly Speaker Heastie & the Assembly – by Associate Counsel to the Majority Katherine Ambrosio (2 copies);
- for Temporary Senate President Stewart-Cousins & the Senate – by Counsel to the Secretary of the Senate Jellisa Joseph (2 copies);
- Attorney General James – machine stamped at 1:13 pm;
- Comptroller DiNapoli – hand-stamped/signed by Kellie Bailey;
- Chief Judge Wilson – signed by Court of Appeals Deputy Clerk Heather Davis;
- Chief Administrative Judge Zayas – signed by OCA First Deputy & Legislative Counsel Marc Bloustein.

3. Additionally, reflected by each of the three first pages (Exhibit A) is a 4:43 pm hand-stamped receipt by the Office of the Attorney General for the Commission on Legislative, Judicial and Executive Compensation and the signature of Amber Schofield/Office Assistant 1 – the background of which is, as follows:

- a. By a March 19, 2024 e-mail to respondents, including the Commission (Exhibit B), I requested a physical address to which service could be made. I received no response to this e-mail from the Commission, or anyone else.

Petitioners' March 22, 2024 Affidavit of Service for Verified Petition/Complaint, etc. [R.256-271]

- b. On March 21st, shortly after 12 noon, upon serving Governor Hochul and Lt. Governor Delgado, I asked Deputy Counsel Cheng-DeCastro to accept service for the Commission, inasmuch as the Governor had appointed three of its seven members. Ms. Cheng-DeCastro refused and, as I recollect, either would not or could not inform me where I could serve the Commission, which has no physical address.
- c. At about 1:15 pm, the Office of the Attorney General, after internal inquiry, refused to accept service for the Commission – and, upon my question as to whether the Secretary of State could accept service for the Commission, responded, *via* a helpful staffer Bill, after internal inquiry, that the answer was yes, furnishing me a paper with the Secretary of State's address (Exhibit C-1).
- d. I immediately went to the Office of the Secretary of State. However, I was informed by Senior Attorney Richard DiGiovanna (Richard.digiovanna@dos.ny.gov – 518-474-5742), that the Secretary of State could not accept service for the Commission. His only advice was that I should go to the “OAG” – Office of the Attorney General.

4. By the time of the 3 pm March 21st oral argument on the TRO, I had served all respondent/defendants except two: the Commission, because of the foregoing, and Chief Administrative Judge Zayas, because Court of Appeals Deputy Clerk Davis had, surprisingly, refused to accept service for him, notwithstanding the previous day, Deputy Clerk Edward Ohanian had informed me that OCA Deputy Counsel Lisa Evans would be the point of contact for both of them. Nevertheless, at the oral argument, Assistant Attorney General Noah Engelhart appeared for the unserved Chief Administrative Judge Zayas and all other respondent/defendants, but for the Commission, as to which he stated that service may not have been made upon it. In so-stating, AAG Engelhart did not reveal my attempt to serve the Commission through the AG's office, 1-3/4 hours earlier – and, upon my setting it forth and requesting to be advised, by AAG Engelhart and Justice Ryba, as to how I could serve a Commission that had no physical address, they each refused to inform me, stating words to the effect, or explicitly, that it was my problem.

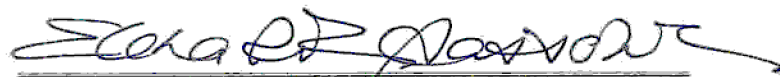
Petitioners' March 22, 2024 Affidavit of Service for Verified Petition/Complaint, etc. [R.256-271]

5. My solution to the problem, after the oral argument, was to go back to the Office of the Attorney General, with the verified petition and OSC papers, and leave same for the Commission – and this is reflected by the signed and stamped receipt by Office Assistant 1 Schofield at 4:43 pm, and it was she who, at 1:13 pm, had receipted service for AG James, but, after internal inquiry, not accepted the papers for the Commission. Prior to her so-accepting the papers from me at 4:43 pm, she had given me a paper with the Commission's New York City address – 64 Beaver Street, Box 454, New York 10004 (Exhibit C-2) – which, as I showed her from my cell phone, was a UPS store.

6. About 15 minutes earlier (4:30 pm), I had served Chief Administrative Judge Zayas, at an Albany address I obtained, following the oral argument, by calling his New York City office (212-428-2120) and securing such information *via* transfer of the call to OCA counsel's office (212-428-2100), *to wit*, Agency Building #4, Suite 2001, Empire State Plaza, 12223 (518-453-8680).¹

7. The unprofessional and unhelpful conduct of AAG Engelhart and Justice Ryba, at the oral argument, with respect to service on the then-unserved Chief Administrative Judge Zayas – as to which Court of Appeals Deputy Clerk Davis had told me she had no OCA Albany address to give me for service upon him – was also impliedly or expressly stated to be my problem, which they could not help me with.

8. I have already e-mailed the court reporter present at the March 21st oral argument, J.C. Conrow (jconrow@nycourts.gov), to order the transcript.


ELENA RUTH SASSOWER

March 22, 2024
White Plains, New York

¹ Upon my calling it, twice, this was picked up by a voice mail. The direct # for Mr. Bloustein, called by security at Agency Building #4, upon my calling OCA counsel's office in NY, is 518-453-8652).

FILED: ALBANY COUNTY CLERK 03/18/2024 12:33 PM
EX. A to Petitioners' March 22, 2024 Affidavit of Service (R.260-262)

MAR 21 2024

*Heather Davis
Deputy Clerk
Court of Appeals*

STATE OF NEW YORK
ATTORNEY GENERAL
MANAGING ATTORNEY
RECEIVED

NEW YORK STATE
SUPREME COURT OF STATE OF NEW YORK
COUNTY OF ALBANY

2024 MAR 21 PM 1:13

CENTER FOR JUDICIAL ACCOUNTABILITY, INC.
and ELENA RUTH SASSOWER, individually and
as Director of the Center for Judicial Accountability, Inc.,
acting on their own behalf and on behalf of the People
of the State of New York & the Public Interest,

Index # 902654-24

VERIFIED
PETITION/COMPLAINT
+ Exhibits

*Received on behalf of Chief Administrative
Judge Joseph Zayas -
-against- Marc Blouin
3/21/24*

NEW YORK STATE COMMISSION ON LEGISLATIVE,
JUDICIAL AND EXECUTIVE COMPENSATION,

KATHY HOCHUL and ANTONIO DELGADO, in their official
capacities as GOVERNOR and LIEUTENANT GOVERNOR
OF THE STATE OF NEW YORK,

ROWAN WILSON and JOSEPH ZAYAS, in their official capacities
as CHIEF JUDGE and CHIEF ADMINISTRATIVE JUDGE
OF THE STATE OF NEW YORK,

ANDREA STEWART-COUSINS, in her official capacity
as TEMPORARY SENATE PRESIDENT and
THE NEW YORK STATE SENATE,

CARL HEASTIE, in his official capacity as
ASSEMBLY SPEAKER, and
THE NEW YORK STATE ASSEMBLY,

LETITIA JAMES, in her official capacity as
ATTORNEY GENERAL OF THE STATE OF NEW YORK,

THOMAS DiNAPOLI, in his official capacity as
COMPTROLLER OF THE STATE OF NEW YORK,

Respondents/Defendants.

*Received
on behalf of
Assembly and
Speaker Heastie
3/21/24 @ 12:35
by Katherine E.
Ambrosio*

(Katherine E.
Ambrosio)

STATE OF NEW YORK
ATTORNEY GENERAL

MAR 21 2024

*Received
for Commission
on Legislation*

TO THE SUPREME COURT OF THE STATE OF NEW YORK:

RECEIVED - MAC/ALB
AM/PM

Petitioners/plaintiffs, as and for their verified petition/complaint, state:

*Kelli Bailey
For Comptroller
3/21/24
2:06pm*

RECEIVED BY PERSONAL SERVICE
AT 2:06 PM on March 21, 2024
SIGNED BY: *[Signature]*
OFFICE OF STATE COMP. - ALB. NY.

*for the Senate
Leader: *[Signature]*
3/21/24
1pm*

Amber Schofield
Office Assistant 1

RECEIVED

MAR 21 2024

Heather Davis
Deputy Clerk of Appeals

STATE OF NEW YORK
ATTORNEY GENERAL
MANAGEMENT SYSTEMS OFC
RECEIVED

2024 MAR 21 PM 1:13

NEW YORK STATE COURT OF STATE OF NEW YORK
COURT OF APPEALS ALBANY

CENTER FOR JUDICIAL ACCOUNTABILITY, INC.
and ELENA RUTH SASSOWER, individually and
as Director of the Center for Judicial Accountability, Inc.,
acting on their own behalf and on behalf of the People
of the State of New York & the Public Interest,

Index # 902654-24

Order to Show Cause

+ moving affidavits

STATE OF NEW YORK
ATTORNEY GENERAL

MAR 21 2024

Received for
commission on
legislative

RECEIVED - MAO/ALB
443 AM/PM

Received 3/21/24
Per Albany delays

Received on behalf of
Chief Administrative
Judge Joseph Zayas
-against- 3/21/24

NEW YORK STATE COMMISSION ON LEGISLATIVE,
JUDICIAL AND EXECUTIVE COMPENSATION,

KATHY HOCHUL and ANTONIO DELGADO, in their official
capacities as GOVERNOR and LIEUTENANT GOVERNOR
OF THE STATE OF NEW YORK,

ROWAN WILSON and JOSEPH ZAYAS, in their official capacities
as CHIEF JUDGE and CHIEF ADMINISTRATIVE JUDGE
OF THE STATE OF NEW YORK,

ANDREA STEWART-COUSINS, in her official capacity
as TEMPORARY SENATE PRESIDENT and
THE NEW YORK STATE SENATE,

CARL HEASTIE, in his official capacity as
ASSEMBLY SPEAKER, and
THE NEW YORK STATE ASSEMBLY,

LETITIA JAMES, in her official capacity as
ATTORNEY GENERAL OF THE STATE OF NEW YORK,

THOMAS DINAPOLI, in his official capacity as
COMPTROLLER OF THE STATE OF NEW YORK,

Respondents/Defendants.

Received on behalf
of Assembly and
Speaker Heastie on
3/21/24 @ 12:35
Katherine E.
Ambrosio

Upon the annexed March 18, 2024 affidavit of unrepresented individual petitioner/plaintiff

Elena Ruth Sassower and upon petitioners'/plaintiffs' March 18, 2024 verified petition/complaint,
with exhibits,

RECEIVED BY PERSONAL SERVICE
AT Albany, NY on 3/21/24
SIGNED BY Letitia James
OFFICE OF STATE COMP. - ALB, NY

For the Senate
& Leader Jellisa Joseph
3/21

MAR 21 2024

Heather Davis
Deputy Clerk of AppellateSTATE OF NEW YORK
ATTORNEY GENERAL
MANAGING ATTORNEY
RECEIVEDNEW YORK STATE
SUPREME COURT OF STATE OF NEW YORK
COURT OF APPEALS
COUNTY OF ALBANY

2024 MAR 21 PM 1:13

CENTER FOR JUDICIAL ACCOUNTABILITY, INC.
and ELENA RUTH SASSOWER, individually and
as Director of the Center for Judicial Accountability, Inc.,
acting on their own behalf and on behalf of the People
of the State of New York & the Public Interest,

Index # 902654-24

Amended Order to Show Cause
to Determine Threshold Issues,
Including Preliminary Injunction
with TRO

Received on behalf of Chief Administrative
Judge Joseph Zayas
- Marc Ambrosio
-against- 3/21/24

Petitioners/Plaintiffs,

NEW YORK STATE COMMISSION ON LEGISLATIVE,
JUDICIAL AND EXECUTIVE COMPENSATION,

KATHY HOCHUL and ANTONIO DELGADO, in their official
capacities as GOVERNOR and LIEUTENANT GOVERNOR
OF THE STATE OF NEW YORK,

ROWAN WILSON and JOSEPH ZAYAS, in their official capacities
as CHIEF JUDGE and CHIEF ADMINISTRATIVE JUDGE
OF THE STATE OF NEW YORK,

ANDREA STEWART-COUSINS, in her official capacity
as TEMPORARY SENATE PRESIDENT and
THE NEW YORK STATE SENATE,

CARL HEASTIE, in his official capacity as
ASSEMBLY SPEAKER, and
THE NEW YORK STATE ASSEMBLY,

LETITIA JAMES, in her official capacity as
ATTORNEY GENERAL OF THE STATE OF NEW YORK,

THOMAS DiNAPOLI, in his official capacity as
COMPTROLLER OF THE STATE OF NEW YORK,

Respondents/Defendants.

Upon the annexed March 19, 2024 affidavit of unrepresented individual petitioner/plaintiff

Elena Ruth Sassower and upon petitioners'/plaintiffs' March 18, 2024 verified petition/complaint,

with exhibits

RECEIVED BY PERSONAL SERVICE
AT 2:00 PM on March 22, 2024
SIGNED BY Letitia James
OFFICE OF STATE COMP. - ALB, NY

1

R.262

Received
for commission
of legislative
AM
STATE OF NEW YORK
ATTORNEY GENERAL
Mar 21, 2024
JUL 11 2023
RECEIVED - MAO/ALB
443 AM/PM
Read 3/21/2024
Piper they did not
for Hochul

Received on behalf
of Assembly
Speaker Heastie on
3/21/24 by Katherine
E. Ambrosio

For the Senate
Leader
Jellison
3/24

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Tuesday, March 19, 2024 7:17 PM

To: 'NYS Salary Commission'; 'Emma.Muirhead@exec.ny.gov';
'lgny@exec.ny.gov'; 'josephj@nysenate.gov'; 'scousins@nysenate.gov';
'Ortt@nysenate.gov'; 'Speaker@nyassembly.gov';
'BarclaW@nyassembly.gov'; 'jzayas@nycourts.gov';
'cmartucc@nycourts.gov'; 'NYAG.Pressoffice@ag.ny.gov';
'mkogut@osc.ny.gov'

Cc: 'Rybachambers@nycourts.gov'; 'rpuma@nycourts.gov';
'aserson@nycourts.gov'; 'pruf@nycourts.gov'

Subject: **NOTICE: 3pm Thurs. March 21st: Oral Argument for TRO, etc. -- CJA, et al v. NYS Commission on Legislative, Judicial & Executive Compensation, et al. (Albany Co. #902654-24)**

Attachments: 3-19-24-osc-amended.pdf;
3-19-24-affidavit-signed.pdf;
exA-3-19-24-email-from-puma.pdf

**TO: NYS Commission on Legislative, Judicial and Executive Compensation
Governor Kathy Hochul & Lieutenant Governor Antonio Delgado
Chief Judge Rowan Wilson & Chief Administrative Judge Joseph Zayas
Temporary Senate President Andrea Stewart-Cousins & The Senate
Assembly Speaker Carl Heastie & The Assembly
Attorney General Letitia James & Comptroller Thomas DiNapoli**

Below, with the above-attached, which are NYSCEF [#18](#), [#19](#), and [#20](#), is the current status of the TRO that petitioners/plaintiffs seek in the lawsuit commenced against you yesterday in Albany Supreme Court.

Excepting the Commission on Legislative, Judicial and Executive Compensation, which has no phone number, I have alerted all of you by phone this afternoon to the [Albany Supreme Court NYSCEF Index #902654-24](#), from which all papers are accessible – and that, upon my giving the required notice to you, the Court will schedule oral argument on petitioners'/plaintiffs' amended OSC for 3 pm on Thursday, *via* TEAMS, and has requested that you provide me with e-mail addresses to which the Court can send you the link.

My telephonic notification was, as follows:

- (1) 4:20 pm to Lt. Delgado (518-[402-2292]), spoke with Denise Poutre/Senior Executive Asst. to the Lt. Governor);
- (2) 4:15 pm to Gov. Hochul (518-474-8343, spoke with Emma Muirhead/Executive Asst. to Governor's counsel, Liz Fine);

- (3) 4:20 pm to AG James (518-776-2050, left a voice message, furnishing full info – much as I had 2 hours earlier in a phone conversation with Deputy Solicitor General Jeffrey Lang and, before that, with Laura, both of whom hung up on me – the latter stating “I can’t accept telephone notice”, following which, upon my immediate call back, a voice mail kicked in on which I left a message, not returned, for an e-mail address);
- (4) at 4:25 pm for Chief Judge Wilson (518-455-7700, spoke with Margaret Wood/Court of Appeals Asst. Deputy Clerk);
- (5) at 4:45 pm for Temporary Senate President Stewart-Cousins & The Senate (518-455-2051, spoke with Shekia Huntley in the Office of the Secretary of the Senate, with whom I had spoken at 10:05 am, and who confirmed that Jellina Joseph is still counsel and her e-mail is josephj@nysenate.gov);
- (6) at 4:47 pm for Assembly Speaker Heastie & The Assembly (518-455-4191, spoke with Katelyn in the Assembly counsel’s office, with whom I had spoken at 10:10 am, and who stated that majority counsel is Rebecca Mudie, but could not give me her e-mail or a generic email for Assembly counsel’s office);
- (7) at 4:50 pm for Comptroller DiNapoli (518-402-3215, left a voice message for Michael Kogut/Counsel for State Audit & Litigation);
- (8) at 4:58 pm for Chief Administrative Judge Zayas (212-428-2120, left a voice mail message for his assistant, Cindy Martucci, to whom my call was transferred by the staff member who picked up the phone, simply because I asked whether Ms. Martucci was in).

Kindly confirm the e-mail addresses I should supply the Court for its TEAMS link for the March 21st oral argument on the OSC – and the physical address to which the verified petition/complaint and OSC papers will be accepted, for service, on that date, either before or after the argument.

Thank you.

Elena Sassower, unrepresented individual petitioner/plaintiff,
acting on her own behalf and on behalf of the People of the State of New York
& the Public Interest
914-421-1200

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>

Sent: Tuesday, March 19, 2024 4:00 PM

To: 'rpuma@nycourts.gov' <rpuma@nycourts.gov>; 'Rybachambers@nycourts.gov' <Rybachambers@nycourts.gov>

Cc: 'aserson@nycourts.gov' <aserson@nycourts.gov>; 'pruf@nycourts.gov' <pruf@nycourts.gov>

Subject: Amended OSC for TRO: #902654-24 -- CJA v. Commission on Legislative, Judicial & Executive Compensation

Following up my phone call to chambers at 2:40 pm and conversation with Lori, above-attached is an amended OSC, electronically filed with moving affidavit & exhibit, also above-attached, for your convenience.

Will now go back to continuing my notification of respondents, with requests to them for e-mail addresses for March 21st TEAMS access.

Thank you.

Elena Sassower
914-421-1200

From: Cris Puma <rpuma@nycourts.gov>

Sent: Tuesday, March 19, 2024 12:12 PM

To: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>

Cc: Ryba Chambers <rybachambers@nycourts.gov>; Amy Serson <aserson@nycourts.gov>

Subject: RE: NOTICE -- OSC for TRO: Lawsuit to VOID the Dec 4, 2023 Report of the Commission on Legislative, Judicial & Executive Compensation & STRIKE the \$34.6M appropriation for judicial pay raises in Legislative/Judiciary Budget Bill #S.8301/8801

Ms. Sassower,

I have reviewed your attached email. The Order to Show Cause signed by Judge Ryba in her capacity as Part One Judge has been uploaded to NYSCEF and is being assigned to the Justice presiding over the Article 78 Term scheduled for Friday, March 29, 2024. Accordingly, your Order to Show Cause is no longer pending before Judge Ryba. If you wish to have Judge Ryba re-consider your Order to Show Cause and request for a TRO, you must 1) file an Amended Order to Show Cause (i.e., a clean copy of your original order to show cause), and 2) comply with Court Rule 202.7 (f).

Compliance with Court Rule 202.7 (f) requires you to furnish the Court with proof that you have provided all of the respondents and/or their respective attorneys with a copy of your papers and sufficient notice of the date and time when you will present the papers to the Court. It is your responsibility to provide this notice to all of the respondents. You may not rely upon the respondents to notify one another.

Judge Ryba is available to hear your application for temporary relief virtually via TEAMS on Thursday, March 21, 2024 at 3:00pm.

If you wish to be heard at this time, you must:

- 1) file an Amended Order to Show Cause as described above,
- 2) provide the Court with proof that you have notified all respondents and/or their attorneys of the date and time of the TEAMS appearance and given them a copy of your papers, and

- 3) provide the Court with proper email addresses for the attorney(s) representing each of the respondents, so a TEAMS link may be sent to them.

Once these requirements have been satisfied, the Court will schedule the virtual appearance for Thursday, March 21, 2024 at 3:00pm, and will email a TEAMS link to you and the attorneys for respondents.

Warm regards,

Cris Puma, Esq.

Principal Law Clerk to
Hon. Christina L. Ryba, JSC
Albany County Courthouse
16 Eagle Street, Room 401
Albany, NY 12207
(518) 285-8916

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>

Sent: Tuesday, March 19, 2024 11:28 AM

To: 'NYS Salary Commission' <nyscompensation@gmail.com>; 'Records_Access' <Records.Access@exec.ny.gov>; lgny@exec.ny.gov; scousins@nysenate.gov; ortt@nysenate.gov; Speaker@nyassembly.gov; BarclaW@nyassembly.gov; Hon. Joseph A. Zayas <jzayas@nycourts.gov>; Cindy Martucci-Kiyar <cmartucc@nycourts.gov>; NYAG.Pressoffice@ag.ny.gov; mkogut@osc.ny.gov
Cc: Ryba Chambers <rybachambers@nycourts.gov>; Amy Serson <aserson@nycourts.gov>; Paul J Ruf <pruf@nycourts.gov>

Subject: NOTICE -- OSC for TRO: Lawsuit to VOID the Dec 4, 2023 Report of the Commission on Legislative, Judicial & Executive Compensation & STRIKE the \$34.6M appropriation for judicial pay raises in Legislative/Judiciary Budget Bill #S.8301/8801

TO: NYS Commission on Legislative, Judicial and Executive Compensation
Governor Kathy Hochul & Lieutenant Governor Antonio Delgado
Chief Judge Rowan Wilson & Chief Administrative Judge Joseph Zayas
Temporary Senate President Andrea Stewart-Cousins & The Senate
Assembly Speaker Carl Heastie & The Assembly
Attorney General Letitia James & Comptroller Thomas DiNapoli

Yesterday, an Article 78 proceeding/declaratory judgment action/citizen-taxpayer action was commenced against you, in Supreme Court/Albany County, to VOID the Dec 4, 2023 Report of the Commission on Legislative, Judicial & Executive Compensation & STRIKE the \$34.6M appropriation for judicial pay raises in Legislative/Judiciary Budget Bill #S.8301/8801. The NYSCEF # is [902654-24](#) – and all papers are accessible therefrom.

An order to show cause to determine threshold issue was also signed, but the TRO relief was stricken because I had not given you notice thereof, as is required by [Uniform Civil Rules for Supreme Court 202.7\(f\)](#).

As that deficiency is easily rectified, I have requested that the Court hear the TRO relief on Thursday, March 21st – the date by which the OSC requires that you be served with the papers. I have asked the Albany Supreme Court clerk who handles these matters, Amy Serson, for whatever time in the day would be convenient for the Court.

Finally, kindly forward this e-mail to those whose direct e-mail addresses I do not have – Attorney General James, in particular.

Thank you.

Elena Sassower, unrepresented individual petitioner/plaintiff,
acting on her own behalf and on behalf of the People of the State of New York
& the Public Interest

914-421-1200

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>

Sent: Friday, January 19, 2024 8:45 AM

To: 'records.access@exec.ny.gov' <records.access@exec.ny.gov>; 'lgny@exec.ny.gov' <lgny@exec.ny.gov>; 'scousins@nysenate.gov' <scousins@nysenate.gov>; 'Ortt@nysenate.gov' <Ortt@nysenate.gov>; 'Speaker@nyassembly.gov' <Speaker@nyassembly.gov>; 'BarclaW@nyassembly.gov' <BarclaW@nyassembly.gov>; 'jzayas@nycourts.gov' <jzayas@nycourts.gov>; 'cmartucc@nycourts.gov' <cmartucc@nycourts.gov>; 'NYAG.Pressoffice@ag.ny.gov' <NYAG.Pressoffice@ag.ny.gov>; 'mkogut@osc.ny.gov' <mkogut@osc.ny.gov>

Subject: ** Your Duty to VOID the Dec 4, 2023 Report of the Commission on Legislative, Judicial & Executive Compensation, STRIKE the \$34.6M for judicial pay raises from the Legislative/Judiciary budget bill, & REFER the commissioners for criminal prosecutions

The above-attached supersedes the Opposition Report sent yesterday, by the below, which I have adjusted to reflect the 3rd branch of relief that had been omitted.

Apologies for the inconvenience.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org
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From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>

Sent: Thursday, January 18, 2024 8:06 PM

To: 'records.access@exec.ny.gov' <records.access@exec.ny.gov>; 'lgnny@exec.ny.gov' <lgnny@exec.ny.gov>; 'scousins@nysenate.gov' <scousins@nysenate.gov>; 'Ortt@nysenate.gov' <Ortt@nysenate.gov>; 'Speaker@nyassembly.gov' <Speaker@nyassembly.gov>; 'BarclaW@nyassembly.gov' <BarclaW@nyassembly.gov>; 'rwilson@nycourts.gov' <rwilson@nycourts.gov>; 'jzayas@nycourts.gov' <jzayas@nycourts.gov>; 'cmartucc@nycourts.gov' <cmartucc@nycourts.gov>; 'NYAG.Pressoffice@ag.ny.gov' <NYAG.Pressoffice@ag.ny.gov>; 'mkogut@osc.ny.gov' <mkogut@osc.ny.gov>

Subject: Your Duty to VOID the Dec 4, 2023 Report of the Commission on Legislative, Judicial & Executive Compensation, STRIKE the \$34.6M for judicial pay raises from the Legislative/Judiciary budget bill, & REFER the commissioners for criminal prosecutions

TO: Governor Kathy Hochul & Lieutenant Governor Antonio Delgado
All Senators: c/o Senate Leaders Andrea Stewart-Cousins & Robert Ortt
All Assembly Members: c/o Assembly Leaders Carl Heastie & William Barclay
Chief Judge Rowan Wilson & Chief Administrative Judge Joseph Zayas, Etc.
Attorney General Letitia James & Comptroller Thomas DiNapoli

The [December 4, 2023 Final Report on Judicial Compensation](#) of the Commission on Legislative, Judicial and Executive Compensation is a fraud on the People of the State of New York and a grand larceny of taxpayer monies by its judicial pay raise “Conclusions”, if these are deemed to be its “force of law” “recommendations”. This is demonstrated by CJA’s January 18, 2024 Opposition Report, above-attached. It is addressed to all of you so that individually and collectively you can discharge your constitutional and oversight responsibilities:

- (1) to void the Commission’s “force of law” December 4, 2023 Final Report on Judicial Compensation because it is statutorily-violative, fraudulent, and unconstitutional – and striking the \$34.6 million appropriation for judicial salary increases from the Governor’s Legislative/Judiciary Budget Bill #S.8301/A.8801;
- (2) to refer the Commission’s seven members for criminal prosecution – and for Attorney General James to herself bring such prosecution – based on penal law violations including:

Penal Law §175.35: “Offering a false instrument for filing
in the first degree”;

Penal Law §195: “Official misconduct”;

Penal Law §105.15: “Conspiracy in the second degree”;

Penal Law §20.00: "Criminal liability for conduct of another";

Penal Law Article 496: "PUBLIC TRUST ACT"

§496.06: "Public corruption";

§496.05: "Corrupting the government in the first degree";

- (3) to hold hearings on the corruption in New York's judiciary to which the three judicial pay raise opponents attested, with evidence – involving the corruption of the Commission on Judicial Conduct, the Appellate Division attorney grievance committees, and the OCA Inspector General.

Although the Opposition Report is filled with EVIDENTIARY hyperlinks, CJA's website has an [EVIDENTIARY webpage](#) for the Opposition Report, to further assist you. Please note that the posted Opposition Report removes the LIVE link in footnote 5 that reads:

"Because the Independent Expert Report pertains to a sealed Monroe County Family Court case, it and what occurred thereafter, recited by CJA's October 25, 2023 complaint, are posted on a publicly inaccessible webpage, [here](#)."

Finally, to those whose direct e-mails I do not have, kindly forward.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
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914-421-1200
elena@judgewatch.org

Department of State, Albany Location:

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Albany, NY 12231-0001

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NYS Commission on Legislative, Judicial & Executive
Compensation

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New York, NY 10004

Petitioners' March 25, 2024 Letter: Amendment to RJI --"Related Cases" [R-272-274]

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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Elena Sassower, Director

March 25, 2024

TO: David Cardona, Chief Clerk/Albany County Supreme Court

FROM: Elena Sassower, unrepresented individual petitioner/plaintiff
CJA, et al. v. Commission on Legislative, Judicial & Executive Compensation, et al.
Albany County #902654-24 (NYSCEF)

RE: Amendment to RJI: "Related Cases"

Thank you for your phone call to me late Friday afternoon, following up on the phone conversation I had earlier in the day with Amy (518-285-8989), as to the confidential "wheel" procedure used for randomly assigning Article 78 proceedings – which is modified where an RJI lists "related cases" to allow the judges therein to decide the "relatedness" issue and potentially handle the new case.

As discussed, after filing my RJI on Monday ([NYSCEF #15](#)), which had left that section blank, I had struggled with the question as to whether the three prior cases I had filed in Albany County Supreme Court met the definition of "related cases" – which the RJI does not define – and had discussed same with Amy. My conclusion had been that it was an open question, which could go either way – and since, as I confirmed with NYSCEF (646-386-3033), "returning for correction" an auto-generated RJI would require me to replace it with one I would have to manually complete, I decided to forego the emendation.

However, at the Thursday, March 21st oral argument on the TRO, it became apparent that at least in the view of Assistant Attorney General Noah Engelhart, the second case – the *CJA, et al. v. DiFiore* (Albany Co. #5122-16) – was "related", as he identified the Appellate Division, Third Department decision therein, [167 AD3d 1406 \(2018\)](#), as dispositive of the threshold issues of judicial disqualification and of the attorney general's duty of representation/intervention – and that, by his further assertion of technical defenses, such as "standing", the third case, *CJA v. JCOPE, et al.* (Albany Co. #904235-22), in which all technical defenses had been thoroughly rebutted, was also a "related case". I have ordered the transcript of the oral argument from the court reporter, J. C. Conrow, on an expedited basis – and will furnish same to you, on Friday, March 29th – the return date that Part 1 Duty Judge/Supreme Court Justice Christina Ryba gave to my commencing March 18th order to show cause that she signed on March 19th, striking the TRO for failure to comply with Court Rule 202.7(f) ([NYSCEF #17](#)).

Petitioners' March 25, 2024 Letter: Amendment to RJL --"Related Cases" [R-272-274]

Chief Clerk Cardona/Albany County Supreme Court

Page Two

March 25, 2024

The three prior cases all involve the prior “false instrument” “force of law” commission/committee reports that have resulted in pay raises as part of larger challenges to the state budget, how the Legislature operates, and, as to the third case, NY’s ethics entities. The instant case is far simpler, with only two causes of action and these pertaining to the December 4, 2023 “Final Report on Judicial Compensation” of the (3rd) Commission on Legislative, Judicial and Executive Compensation and the \$34.6M appropriation in the FY2024-25 legislative/judiciary budget bill based thereon.

So that the judges who handled the prior three cases can have the opportunity to make their own determinations as to “relatedness” to the instant case – and to accept or decline assignment, as they deem appropriate – the prior cases and the Supreme Court/Acting Supreme Court justices handling them are, as follows:

- (1) [*CJA, et al. v. Cuomo, et al. \(Albany Co. #1788-14\)*](#)¹ – a citizen-taxpayer action, commenced on March 28, 2014, by an order to show cause for a preliminary injunction with TRO, which was heard by then Supreme Court Justice Michael Lynch, who was then awaiting appointment to the Appellate Division, Third Department. It was assigned to Acting Supreme Court Justice/Court of Claims Judge Roger McDonough, whose final August 1, 2016 decision denied petitioners’ March 23, 2016 order to show cause for leave to supplement their March 28, 2014 verified complaint by their March 23, 2016 verified second supplemental complaint.
- (2) [*CJA, et al. v. Cuomo...DiFiore \(Albany Co. #5122-16\)*](#)² – a citizen-taxpayer action, based on the March 23, 2016 verified second supplemental complaint in the prior citizen-taxpayer action. Commenced by a September 2, 2016 order to show cause for a preliminary injunction with TRO, it was heard by Acting Supreme Court Justice McDonough – and assigned, immediately thereafter, to Acting Supreme Court Justice/Court of Claims Judge Denise Hartman, whose final November 28, 2017 decision was appealed to the [*Appellate Division, Third Department*](#).³ Its December 27, 2018 affirmance, by a four-justice panel from which Appellate Division Justice Michael Lynch recused himself, was appealed, both by right and by leave, to the [*Court of Appeals*](#),⁴ which, by five orders denied review and all other relief – on a record that included the Albany County Supreme Court case *Delgado v. State of New York* ([NYSCEF #907537-18](#)) which had been before Justice Ryba, whose June 7, 2019 decision principally relied on the Appellate Division, Third Department’s

¹ The link is to CJA’s webpage of the record in Supreme Court/Albany County.

² The link is to CJA’s webpage of the record in Supreme Court/Albany County.

³ The link is to CJA’s webpage of the record before the Appellate Division, Third Department.

⁴ The link is to CJA’s webpage of the record before the Court of Appeals.

Petitioners' March 25, 2024 Letter: Amendment to RJL --"Related Cases" [R-272-274]

Chief Clerk Cardona/Albany County Supreme Court

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March 25, 2024

December 27, 2018 decision in *CJA v. Cuomo...DiFiore* to uphold the constitutionality of the statute that had established the Committee on Legislative and Executive Compensation – and so-featured by my letter to the editor “*A Call for Scholarship, Civic Engagement & Amicus Curiae Before the NYCOA*”, published by the New York Law Journal on its website, on August 20, 2019 and, in print, on August 21, 2019.

- (3) *CJA, et al. v. JCOPE, et al.* (Albany Co. #904235-22) – a hybrid Article 78 proceeding/declaratory judgment action/citizen-taxpayer action, filed electronically, *via* NYSCEF. Commenced by a June 6, 2022 order to show cause for a preliminary injunction with TRO, it was before Supreme Court Justice Peter Lynch and, thereafter, upon petitioners’ filing of a June 21, 2022 order to show cause, was before Acting Supreme Court Justice/Court of Claims Judge Richard Platkin, who recused himself, following which it was transferred back to Justice Lynch by then Supreme Court Justice L. Michael Mackey. Upon petitioners’ June 23, 2022 filing of a notice of petition, it was assigned to Ulster County Supreme Court Justice David Gandin, whose November 23, 2022 and February 15, 2023 decisions are the subject of consolidated appeals, presently before the Appellate Division, Third Department -- CV-23-0115).

As discussed, it will ultimately make NO difference to which judge the case is assigned, because pursuant to Judiciary Law §14, the assigned judge will have NO JURISDICTION to do anything but to transfer the case to federal court – the first relief sought by the order to show cause that Justice Ryba signed on March 19th – with the substantiating law and facts recited by my March 18th moving affidavit (NYSCEF #14).

Thank you.

s/

ELENA SASSOWER, unrepresented individual petitioner/plaintiff,
acting on her own behalf and on behalf of the People of the State of New York
& the Public Interest

Respondent AG James' March 26, 2024 Notice of Cross-Motion to Dismiss Petition/Complaint [R.275-276]

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY**

In the Matter of the Application of
CENTER FOR JUDICIAL ACCOUNTABILITY,
INC. and ELENA RUTH SASSOWER, individually
and as Director of the Center for Judicial
Accountability Inc., acting on their own behalf and on
behalf of the People of the State of New York & the
Public Interest,

**NOTICE OF CROSS-
MOTION**

Index No. 902654-24

Petitioners,

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

Return Date:
March 29, 2024

-against-

NEW YORK STATE COMMISSION ON
LEGISLATIVE, JUDICIAL, AND EXECUTIVE
COMPENSATION, KATHY HOCHUL and
ANTONIO DELGADO, in their official capacities as
Governor and Lieutenant Governor of the State of
New York, ROWAN WILSON and JOSEPH
ZAYAS, in their official capacities as Chief Judge and
Chief Administrative Judge of the State of New York,
ANDREA STEWART-COUSINS, in her official
capacity as Temporary Senate President, THE NEW
YORK STATE SENATE, CARL HEASTIE, in his
official capacity as Assembly Speaker, THE NEW
YORK STATE ASSEMBLY, LETITIA JAMES, in
her official capacity as the Attorney General of the
State of New York, and THOMAS DINAPOLI, in his
official capacity as Comptroller of the State of New
York,

PLEASE TAKE NOTICE that, upon the accompanying Affirmation of Noah C.
Engelhart, Assistant Attorney General, dated March 26, 2024; and the Memorandum of Law dated
March 26, 2024; and upon all pleadings and proceedings heretofore had herein, Respondents
Hochul, Delgado, Wilson, Zayas, Stewart-Cousins, N.Y. Senate, Heastie, N.Y. Assembly, James,

Respondent AG James' March 26, 2024 Notice of Cross-Motion to Dismiss Petition/Complaint [R.275-276]

and DiNapoli will move this Court at a Term of the Supreme Court, held in and for the County of Albany, at the Albany County Courthouse, 16 Eagle Street, Albany, New York on **April 12, 2024 at 9:30 a.m.**, or as soon thereafter as counsel can be heard, on submission only, for an order pursuant to CPLR 3211(a)(2), CPLR 3211(a)(7), CPLR 7804(f) and CPLR 3001 granting Respondents' motion to dismiss the Verified Petition/Complaint in its entirety, together with such other and further relief as may be just and proper.

Pursuant to CPLR § 2214(b), responsive papers, if any, are required to be served upon the undersigned at least seven (7) days before the return date of this motion.

Dated: Albany, New York
March 26, 2024

LETITIA JAMES

Attorney General of the State of New York

Attorney for Respondents Kathy Hochul, Antonio Delgado, Rowan Wilson, Joseph Zayas, Andrea Stewart-Cousins, the New York State Senate, Carle Heastie, the New York State Assembly, Letitia James, and Thomas DiNapoli

The Capitol
Albany, New York 12224

By: s/ *Noah C. Engelhart*

Noah C. Engelhart

Assistant Attorney General, of Counsel

Telephone: (518) 776-2701

Fax: (518) 915-7738 (Not for service of papers)

TO: Elena Ruth Sassower
Petitioner Pro Se
(Via NYSCEF)

Center for Judicial Accountability, Inc.
Petitioner
(Via NYSCEF)

AAG Engelhart's March 26, 2024 Moving Affirmation [R.277-280]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

In the Matter of the Application of
CENTER FOR JUDICIAL ACCOUNTABILITY, INC.
and ELENA RUTH SASSOWER, individually and as
Director of the Center for Judicial Accountability Inc.,
acting on their own behalf and on behalf of the People of
the State of New York & the Public Interest,

AFFIRMATION

Index No. 902654-24

Petitioners/Plaintiffs,

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

-against-

NEW YORK STATE COMMISSION ON
LEGISLATIVE, JUDICIAL, AND EXECUTIVE
COMPENSATION, KATHY HOCHUL and
ANTONIO DELGADO, in their official capacities as
Governor and Lieutenant Governor of the State of New
York, ROWAN WILSON and JOSEPH ZAYAS, in
their official capacities as Chief Judge and Chief
Administrative Judge of the State of New York,
ANDREA STEWART-COUSINS, in her official
capacity as Temporary Senate President, THE NEW
YORK STATE SENATE, CARL HEASTIE, in his
official capacity as Assembly Speaker, THE NEW
YORK STATE ASSEMBLY, LETITIA JAMES, in her
official capacity as the Attorney General of the State of
New York, and THOMAS DINAPOLI, in his official
capacity as Comptroller of the State of New York,

Respondents/Defendants.

Noah C. Engelhart, an attorney licensed to practice in the State of New York, affirms the
following under penalty of perjury pursuant to CPLR 2106:

1. I am an Assistant Attorney General of counsel in this matter to Letitia James,
Attorney General of the State of New York, attorney for Respondents/Defendants Governor Kathy

AAG Engelhart's March 26, 2024 Moving Affirmation [R.277-280]

Hochul, Lieutenant Governor Antonio Delgado, Rowan Wilson, Joseph Zayas, Andrea Stewart-Cousins, the New York State Senate, Carl Heastie, the New York State Assembly, Letitia James, and Thomas DiNapoli (hereinafter “Respondents”) in the above-captioned action.

2. I submit this affirmation in opposition to Petitioners/Plaintiffs’ (hereinafter “Petitioners”) request for a preliminary injunction and in support of Respondents’ motion to dismiss the Verified Petition/Complaint pursuant to CPLR 3211(a)(2), CPLR 3211(a)(7), CPLR 7804(f), and CPLR 3001.

3. This action was commenced by the filing of a Verified Petition/Complaint on or about March 18, 2024. *See* NYSCEF Dkt 1. A proposed Order to Show Cause was included as part of that filing. *See* NYSCEF Dkt. 13.

4. On March 19, 2024, Judge Ryba signed the proposed Order to Show Cause with certain modifications, including removing Petitioners’ request for a temporary restraining order for failing to comply with Court Rule 202.7(f) and indicating that no personal appearances were required. *See* NYSCEF Dkt. 17.

5. Later that day on March 19, 2024, Petitioners filed a proposed second Order to Show Cause which again included a request for a temporary restraining order and a request for oral arguments followed by an “evidentiary hearing.” *See* NYSCEF Dkt. 18. The Court did not sign Petitioners’ proposed second Order to Show Cause. However, oral arguments were scheduled for March 21, 2024.

6. On March 21, 2024, during oral arguments on Petitioners’ motion for a temporary restraining order, Petitioner Sassower informed the Court that Petitioner Sassower is not an attorney, and I have not found any record indicating that Petitioner Sassower is an attorney admitted to practice law in the State of New York.

AAG Engelhart's March 26, 2024 Moving Affirmation [R.277-280]

7. Following oral arguments, Judge Ryba denied Petitioners' request for a temporary restraining order and indicated that the original signed Order to Show Cause remained in effect.

8. For the reasons discussed in Respondents' memorandum of law submitted herewith, Petitioners' request for a preliminary injunction should be denied and the Verified Petition/Complaint should be dismissed.

WHEREFORE, the Respondents respectfully request that the court issue an order (1) denying Petitioners' request for a preliminary injunction, (2) granting Respondents' motion to dismiss in its entirety, with prejudice, and (3) granting Respondents any further relief that the court deems just, proper and equitable.

Dated: Albany, New York
March 26, 2024

/s/ Noah Engelhart

Noah C. Engelhart

AAG Engelhart's March 26, 2024 Moving Affirmation [R.277-280]

CERTIFICATION

I certify that this Affirmation contains 425 words, words exclusive of caption and signature block as established using the word count function of Microsoft Word, which complies with the word count limit.

Date: March 26, 2024
Albany, New York

/s/ Noah C. Engelhart

Noah C. Engelhart
Assistant Attorney General, of Counsel

Respondent AG James' March 26, 2024 Memorandum of Law [R.281-344]**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY**

In the Matter of the Application of
CENTER FOR JUDICIAL ACCOUNTABILITY, INC.
and ELENA RUTH SASSOWER, individually and as
Director of the Center for Judicial Accountability Inc.,
acting on their own behalf and on behalf of the People of
the State of New York & the Public Interest,

Index No. 902654-24

Petitioners/Plaintiffs,

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

-against-

NEW YORK STATE COMMISSION ON
LEGISLATIVE, JUDICIAL, AND EXECUTIVE
COMPENSATION, KATHY HOCHUL and ANTONIO
DELGADO, in their official capacities as Governor and
Lieutenant Governor of the State of New York, ROWAN
WILSON and JOSEPH ZAYAS, in their official
capacities as Chief Judge and Chief Administrative
Judge of the State of New York, ANDREA STEWART-
COUSINS, in her official capacity as Temporary Senate
President, THE NEW YORK STATE SENATE, CARL
HEASTIE, in his official capacity as Assembly Speaker,
THE NEW YORK STATE ASSEMBLY, LETITIA
JAMES, in her official capacity as the Attorney General
of the State of New York, and THOMAS DINAPOLI, in
his official capacity as Comptroller of the State of New
York,

Respondents/Defendants.

**MEMORANDUM OF LAW IN OPPOSITION TO PETITIONERS' APPLICATION FOR
A PRELIMINARY INJUNCTION AND IN SUPPORT OF RESPONDENTS' CROSS-
MOTION TO DISMISS**

Respondent AG James' March 26, 2024 Memorandum of Law [R.281-344]

LETITIA JAMES

Attorney General

State of New York

Attorney for Respondents Kathy Hochul, Antonio

Delgado, Rowan Wilson, Joseph Zayas,

Andrea Stewart-Cousins, the New York State

Senate, Carle Heastie, the New York State

Assembly, Letitia James, and Thomas

DiNapoli

The Capitol

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Noah C. Engelhart

Assistant Attorney General, of Counsel

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Respondent AG James' March 26, 2024 Memorandum of Law [R.281-344]

Respondents/Defendants Kathy Hochul, Antonio Delgado, Rowan Wilson, Joseph Zayas, Andrea Stewart-Cousins, the New York State Senate, Carle Heastie, the New York State Assembly, Letitia James, and Thomas DiNapoli (hereinafter “Respondents”), in their official capacities, respectfully submit this Memorandum of Law in opposition to Petitioners/Plaintiffs’ (hereinafter “Petitioners”) Order to Show Cause, signed by Justice Christina L. Ryba on March 19, 2024, seeking a preliminary injunction, and in support of Respondents’ cross-motion to dismiss.

PRELIMINARY STATEMENT

Petitioner Center for Judicial Accountability, Inc. (hereinafter “CJA”), a not-for-profit corporation, and Petitioner Elena Ruth Sassower (hereinafter “Sassower”), director of CJA, seek a preliminary injunction and order pursuant to CPLR Article 78 which: 1) transfers Petitioners’ hybrid proceeding to federal court, 2) appoints the Office of the Attorney General to represent Petitioners via appointment of independent counsel, and 3) preliminarily stays adoption of a December 4, 2023 Report by Respondent Commission on Legislative, Judicial, and Executive Compensation (hereinafter “Commission”) by the New York State Legislature and enjoins disbursement of \$34.6 million in appropriations as contemplated by Senate Bill S8301 and Assembly Bill A8801. *See* Order to Show Cause dated March 19, 2024, NYSCEF Dkt. 17 (hereinafter “OTSC”).

Petitioners are not entitled to a preliminary injunction because they cannot establish through clear and convincing evidence any right to same. First, Petitioners lack standing to bring this hybrid special proceeding. Second, Petitioners are not likely to succeed on the merits for a variety of reasons, including that this matter is not ripe for judicial review, Respondents Hochul, Delgado, Stewart-Cousins, and Heastie have legislative immunity, Respondents Wilson and Zayas have judicial immunity, Petitioners fail to state a claim against Respondents, binding precedent

establishes that New York courts can hear this type of claim and that Petitioner Sassower is not entitled to representation by the Attorney General's Office, and Petitioner CJA cannot appear in this action without being represented by an attorney. Furthermore, Petitioners cannot establish the requisite irreparable harm for a preliminary injunction, or any harm in general for that matter. Finally, the balancing of the equities does not tip in Petitioners favor. For the same reasons that Petitioners are not likely to succeed on the merits, Respondents' cross-motion to dismiss should be granted.

STANDARD FOR A PRELIMINARY INJUNCTION

A preliminary injunction is a "drastic remedy" that should be issued "sparingly." *Kuttner v. Cuomo*, 147 A.D. 2d 215, 218 (3d Dept 1989). To prevail on a motion for a preliminary injunction, the moving party must establish by clear and convincing evidence: "(1) the likelihood of success on the merits; (2) irreparable injury absent granting the preliminary injunction; and (3) a balancing of the equities." *Id.*; *County of Suffolk v. Givens*, 106 A.D. 3d 943, 944 (2d Dept 2013). "To warrant preliminary injunctive relief, the irreparable harm alleged must be immediate, specific, nonspeculative and nonconclusory." *Grumet v. Cuomo*, 162 Misc. 2d 913, 929–30 (Sup. Ct., Albany County 1994) (citing *Matter of N.Y. State Inspection, Sec. & Law Enforcement Employees v. Cuomo*, 64 N.Y.2d 233 (1984)).

Petitioners "who seek preliminary relief providing all the relief sought as final judgment bear an even heavier burden in demonstrating their entitlement to such relief." *Grumet*, 162 Misc. 2d at 929. Such injunctions, "if granted at all, are granted with great caution and only when required by urgent situations or grave necessity, and then only on the clearest of evidence." *Russian Church of Our Lady of Kazan v. Dunkel*, 34 A.D.2d 799, 801 (2d Dept 1970); *Grumet*, 162 Misc. 2d at 930. Such relief should not be granted "when the [petitioner's] ultimate right involved is in doubt." *Russian Church of Our Lady of Kazan*, 34 A.D.2d at 801; *Grumet*, 162 Misc. 2d at 930.

Here, Petitioners fail to carry this burden. First, Petitioners fail to demonstrate a likelihood of success on the merits. Second, Petitioners cannot establish irreparable injury, or any injury-in-fact whatsoever. Third, the balance of equities does not tip in Petitioners' favor.

ARGUMENT

POINT I

PETITIONERS ARE NOT ENTITLED TO A TRANSFER TO FEDERAL COURT

It is black letter law that federal courts are courts of limited jurisdiction that can only exercise subject matter jurisdiction over certain cases or controversies. 28 U.S.C. § 1331; § 1332. Petitioners' hybrid petition/complaint raises no question of federal law and is instead solely based on alleged violations of New York State law. *See generally* Verified Petition/Complaint, NYSCEF Dkt. 1 (hereinafter "Verified Petition/Complaint"). Nor do Petitioners allege a diversity of citizenship or the requisite amount in controversy for federal courts to entertain jurisdiction over civil matters based in state law. *Id.* As such, a federal court would lack jurisdiction over this pending special proceeding, and any attempt to transfer to such a court would be futile.

Furthermore, Petitioners chose the venue to file this action, namely Albany County Supreme Court, but now are immediately seeking to have it transferred to a different (federal) court, a court in which they conceivably could have attempted to file their lawsuit in the first place. It is well settled law that a plaintiff who selects an improper venue forfeits their right to later select the correct venue, both under state and federal law. *See, e.g., Papadakis v. Command Bus Co.*, 91 A.D.2d 657, 658 (2d Dept. 1982) ("Plaintiffs forfeited their right to select the place of venue by selecting an improper venue in the first instance."); *Ferrostaal, Inc. v. Union Pac. R.R.*, 109 F. Supp. 2d 146, 151 (S.D.N.Y. 2000) ("A motion to transfer venue is not ordinarily granted at the request of the party who chose the forum in the first place.") (internal quotations removed).

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Finally, Petitioners' argument that Judiciary Law § 14 prevents New York courts from hearing this matter is unavailing. The Third Department ruled on this very issue involving almost identical claims raised by the same Petitioners. *Ctr. for Judicial Accountability, Inc. v. Cuomo*, 167 A.D.3d 1406, (3d Dept. 2018) (hereinafter "*CJA I*"). In *CJA I*, the Third Department held recusal is warranted when a judge has an interest in litigation, "[h]owever, the Rule of Necessity provides a narrow exception to this principle, requiring a biased adjudicator to decide a case if and only if the dispute cannot otherwise be heard." *Id.* at 1408. In that case, Petitioners sought the recusal of Judge Hartman on the grounds that she had an interest in the outcome of the litigation since it involved judicial compensation. *Id.* at 1407-08. However, the Third Department ruled that "[t]he self-interest inherent in adjudicating a dispute involving judicial compensation would provide grounds for disqualifying not only Justice Hartman, but every judge who might replace her [...] [a]ccordingly, the Rule of Necessity permitted Justice Hartman to decide this action on the merits. *Id.* at 1408. By recognizing that Judge Hartman would be similarly situated to all judges in New York State and still permitting Judge Hartman to hear the case, the Third Department's holding in *CJA I* by necessity permits New York State judges to hear the present matter by Petitioners as well.

As such, Petitioners' request that this matter be transferred to a federal court should be denied.

POINT II**PETITIONERS ARE NOT ENTITLED TO REPRESENTATION BY THE OFFICE OF THE NEW YORK ATTORNEY GENERAL**

Petitioners' request that the Court issue an order "determining that the unrepresented petitioners/plaintiffs are entitled to representation/intervention by the Office of the Attorney General [...] via appointment of independent counsel" must also be denied. OTSC, p. 2.

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Under Executive Law § 63(1), “[n]o action or proceeding affecting the property or interests of the state” shall be instituted or defended “by any department, bureau, board, council, officer, agency or instrumentality *of the state*” without notice to the attorney general. N.Y. Exec. L. § 63(1) (Emphasis added). The Attorney General must be notified “so that [she] may participate or join therein if in [her] opinion the interests of the state so warrant.” *Id.* Under that clause, the decision of whether to participate is left to the Attorney General’s discretion.

Nowhere does Executive Law § 63(1) entitle private citizens to be represented by the Attorney General. Further, nothing in the statute enables plaintiff or any other private citizen to control or direct the Attorney General’s actions. Similarly, while State Finance Law § 123-c(3) requires that citizen-taxpayer complaints be served on the Attorney General, it does not empower citizen-taxpayers to compel the Attorney General to intervene as a plaintiff.

The Attorney General is authorized to defend State officers and entities in litigation (*see* N.Y. Exec. L. § 63(1)), and to litigate in support of the constitutionality of the State’s statutes (*see* N.Y. Exec. L. § 71(1)). In this case, she is doing both. Because she represents many of the Respondents, the Attorney General cannot and will not switch sides to represent Petitioners. Furthermore, there is no basis in the Executive Law which entitles private citizens to be represented by the Attorney General “via appointment of independent counsel.”

In *CJA I*, the Third Department addressed these same arguments of Petitioners and found them to be without merit. The Third Department held:

We further find unavailing Sassower’s argument that Executive Law § 63 (1) and State Finance Law article 7-A require that the Attorney General be directed to provide her with representation or intervene on her behalf. Executive Law § 63 (1) empowers the Attorney General to prosecute and defend all actions and proceedings in which the state is interested—it does not authorize the Attorney General to represent private citizens. Similarly, State Finance Law article 7-A contains no provision that requires the Attorney General to prosecute a citizen-taxpayer action commenced by a private citizen or that allows a citizen to compel the Attorney General to provide representation in such actions.

CJA I, at 1409.

As such, Petitioners' request for representation by the Office of the Attorney General, either directly or via "independent counsel" must be denied.

POINT III

PETITIONER FAILS TO DEMONSTRATE A LIKELIHOOD OF SUCCESS ON THE MERITS BY CLEAR AND CONVINCING EVIDENCE

Moving beyond the preliminary relief requested in the OTSC as discussed above, Petitioner fails to establish by clear and convincing evidence a likelihood of success on the merits of the remaining relief requested, namely a stay on the adoption of a December 4, 2023 Report by Respondent Commission (hereinafter "Report") by the New York State Legislature and an injunction against disbursement of \$34.6 million in appropriations as contemplated by pending Senate Bill S8301 and Assembly Bill A8801.

A. Petitioners' claims are not ripe.

"It is basic that a court should decline to apply the discretionary relief of declaratory judgment ... to administrative determinations unless these arise in the context of a controversy ripe for judicial resolution." *Church of St. Paul & St. Andrew v. Barwick*, 67 N.Y.2d 510, 518 (1986). And further, "the controversy cannot be ripe if the claimed harm may be prevented or significantly ameliorated by further administrative action or by steps available to the complaining party." *Id.* at 520.

As the Court of Appeals has held:

[I]t is settled that the "courts will not entertain a declaratory judgment action when any decree that the court might issue will become effective only upon the occurrence of a future event that may or may not come to pass." In accordance with this principle, we have held that the courts should not decide the constitutionality of a statute requiring mandatory arbitration in the event of a bargaining impasse, if there has been no impasse and no order to arbitrate. The same principle applies *when a party challenges a statute which has not*

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become effective. “[Until] the statute or ordinance is passed”, a declaratory judgment “would be premature.”

N.Y. Pub. Interest Research Grp., Inc. v. Carey, 42 N.Y.2d 527, 531 (1977) (emphasis added and internal citations omitted).

While Petitioners clearly take issue with the Report issued by Respondent Commission, it is the ultimate effect of that Report upon which Petitioners claim damages, namely the passage of legislation based on that report which would increase judicial salaries in the New York State Unified Court System. *See, e.g.*, Verified Petition/Complaint, ¶ 39. However, as of the date of the filing of the Verified Petition/Complaint and the OTSC, neither complained-of bill (A8801 and S8301, *see* Verified Petition/Complaint, ¶ 38) have left committee, been voted on by either the Senate or the Assembly, or signed by the Governor into law. *See* THE NEW YORK STATE SENATE, ASSEMBLY BILL A8801 (last visited March 20, 2024), <https://www.nysenate.gov/legislation/bills/2023/A8801>; THE NEW YORK STATE SENATE, SENATE BILL S8301 (last visited March 20, 2024), <https://www.nysenate.gov/legislation/bills/2023/S8301>.

Therefore, to the extent that Petitioners challenge appropriations found in either bill as unlawful or unconstitutional is clearly premature and Petitioners claims must be dismissed as not ripe for judicial review.

B. Petitioners lack standing.

Standing is a threshold legal requirement for a party seeking to challenge a governmental action, imposing upon the complaining party an obligation to demonstrate that he or she has suffered an injury in fact that is both distinct from that of the general public and "fall[s] within the zone of interests or concerns sought to be promoted or protected by the statutory provision under which the agency has acted." *Davis v. N.Y. State Dep't of Educ.*, 96 A.D.3d 1261, 1262 (3d Dept. 2012), citing *New York State Assn. of Nurse Anesthetists v Novello*, 2 N.Y.3d 207, 211

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(2004); see *Matter of Diederich v St. Lawrence*, 78 A.D.3d 1290, 1291 (2010), *lv dismissed and denied* 17 N.Y.3d 782 (2011); *Matter of Humane Socy. of U.S., Inc. v Brennan*, 63 A.D.3d 1419, 1420 (2009). Article 78 standing has traditionally been limited to persons whose interests are directly affected by the action of the body whose action is being challenged. *Black Inst. v. De Blasio*, 2022 NY Slip Op 30521(U), (Sup. Ct. New York Cty. 2022).

It is true that, unlike other plaintiffs, a plaintiff relying upon status as a citizen-taxpayer under State Finance Law § 123-b does not have to demonstrate an injury-in-fact to acquire standing in an appropriate action for declaratory and equitable relief. See, e.g., *Saratoga County Chamber of Commerce v. Pataki*, 100 N.Y.2d 801, 813 (2003). Nevertheless, one may not bring such an action essentially to challenge nonfiscal activities of state actors using the pretext of an expenditure of money to challenge governmental decision making. *Id.*

Petitioners' State Finance Law § 123-b claim fails because they challenge broad policy decisions by the Legislature and a Report generated by Respondent Commission rather than a specific unlawful expenditure. In the second cause of action of the Verified Petition/Complaint, Petitioners challenge an *entire* \$36.6 million appropriation found in separate budget bills for the purposes of adjusting the salaries of judges and justices of the unified court system by repeatedly alleging conclusory claims that the proposed bills were "the product of fraud and flagrant violations of Chapter 60, Part E, of the Laws of 2015." Verified Petition/Complaint, ¶¶ 38-39. However, their claims fail to demonstrate a "wrongful expenditure, misappropriation, misapplication, or any other illegal or unconstitutional disbursement of state funds or state property" within the ambit of State Finance Law § 123-b(1). Instead, Petitioners are attempting to challenge the non-fiscal activities of quasi-state actors (Respondent Commission's conduct in drafting the Report in question) under the pretext of challenging the subsequent proposed

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expenditure of money allegedly based on that activity, which the Court of Appeals has held is not permissible in a citizen taxpayer action. *Saratoga County Chamber of Commerce*, 100 N.Y.2d at 813.

A person's "deep concern" about an issue, without more, does not give such person standing to sue. *Board of Ed. of Mamaroneck U.F.S.D. v. Attorney General*, 25 A.D.3d 637, 638 (2d Dept. 2006). Rather, standing to sue requires the plaintiff to allege not only that *she* has an injury in fact that is distinct from any injury of the general public, but also, that *she* is within the zone of interests protected by the statute or constitutional provision at issue. *See Roulan v. County of Onondaga*, 21 N.Y.3d 902, 905 (2013); *Society of Plastics Indus. v. County of Suffolk*, 77 N.Y.2d 761, 773-774 (1991). And the injury-in-fact may not be speculative or conjectural. *Matter of Clean Water Advocates of N.Y., Inc. v. New York State Dept. of Environmental Conservation*, 103 A.D.3d 1006, 1008 (3d Dept. 2013), *lv. denied*, 21 N.Y.3d 862 (2013).

As further discussed in Point IV, *infra*, the only conceivable harm that Petitioners allege they have suffered in the Verified Petition/Complaint relates to the alleged unlawful appropriations being considered by the New York State Legislature under Senate Bill S8301 and Assembly Bill A8801. *See generally* Verified Petition/Complaint. However, as stated above, those bills are still in committee and have not been voted on, nor signed into law by the Governor. Petitioners' alleged harm, therefore, is purely speculative in addition to not being distinct from any potential harm to the public as a whole.

Furthermore, Petitioners are not within the "zone of interests" protected by the statute that said appropriations allegedly violate. Namely, the purposes of the statute which created Respondent Commission was, on its face, to create a commission "to examine, evaluate and make recommendations with respect to adequate levels of compensation and non-salary benefits for [...]"

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judges and justices of the state-paid courts of the unified court system [...].” L. 2015, ch. 50, Part E. That is precisely what Respondent Commission appears to have done in this case. The statute does not provide for, nor appear to contemplate, providing protections to citizen taxpayers who disagree with the recommendations of the Commission. *Id.* That challenge is properly brought by citizens exercising their right to address their elected representatives in the State Legislature, but it does not allow a single citizen to override the will of the duly elected Legislature.

As such, Petitioners lack standing both under Article 78 and under the doctrine of taxpayer standing, and the Verified Petition/Complaint should be dismissed.

C. All claims brought by Petitioner CJA must be dismissed.

CPLR 321(a) prohibits the appearance of a “corporation or voluntary association” in this judicial proceeding other than by an attorney. *See* CPLR 321(a). The Petition describes Petitioner CJA as “a national, non-partisan, non-profit citizens’ organization...incorporated in 1994 under the laws of the State of New York.” Verified Petition/Complaint, ¶ 5. Petitioners bring this action *pro se* and, upon information and belief, Petitioner Sassower is not an attorney admitted to practice law in the State of New York. *See generally* Verified Petition/Complaint; *see also Ctr. for Judicial Accountability, Inc. v. Cuomo*, Ind. No. 5122-16, at *4 (Sup. Ct., Albany County Dec. 21, 2016).¹ As such, all claims in the Verified Petition/Complaint asserted on behalf of Petitioner CJA by Petitioner Sassower must be dismissed. *See Pelaez v. Silvertone*, 19 N.Y.3d 954 (2012); *Boente v. Peter C. Kurth Off. Of Architecture & Planning, P.C.*, 113 A.D.3d 803, 804 (2d Dept. 2014).

D. Petitioners have failed to state a cause of action against Respondents Stewart-Cousins, N.Y. Senate, Heastie, N.Y. Assembly, Hochul, Delgado, Wilson, Zayas, James, and DiNapoli.

1. Respondents Stewart-Cousins, N.Y. Senate, Heastie, and N.Y. Assembly

¹ Unreported cases cited in this Memorandum of Law are included in an attached Appendix.

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As stated previously, neither budget bill (A8801 and S8301 at issue in the Verified Petition/Complaint (*see* Verified Petition/Complaint, ¶ 38) have left committee, been voted on by either the Senate or the Assembly, or been signed into law by the Governor. No final legislative action has been taken regarding those pending budget bills. As discussed more in depth in Point III(G) *infra*, any alleged violations of legislative rules by any member of the Senate or Assembly during the process of drafting or negotiating those bills cannot be a basis for a cause of action as a matter of law. To the extent that Petitioners seek mandamus relief to compel the Legislative Respondents to exercise oversight, or alternatively allege a cause of action for failure to do so (*see, e.g.,* Verified Petition/Complaint, ¶ 35), Petitioners are not entitled to that relief as it would be a discretionary rather than ministerial act. *See, e.g., N.Y. Civil Liberties Union v. State*, 4 N.Y.3d 175, 184 (2005).

As such, the Verified Petition/Complaint fails to state a cause of action against Respondents Stewart-Cousins, N.Y. Senate, Heastie, and N.Y. Assembly and must be dismissed as it relates to those Respondents.

2. Respondents Hochul and Delgado

Regarding Respondents Hochul and Delgado, the Verified Petition/Complaint's only reference to Governor Hochul is in relation to pending budget bills S8301 and A8801 and the negotiations surrounding those legislative bills. Verified Petition/Complaint, ¶¶ 18, 27, 28, 38. The crux of Petitioners' complaint against Governor Hochul is that the appropriations that Petitioners have taken issue with remain in the proposed Senate and Assembly budget bills despite Petitioners' best efforts to the contrary. *See, e.g.,* Verified Petition/Complaint, ¶ 27. The mere fact that Petitioner Sassower has allegedly provided the Governor (and the Legislature) with an "Opposition Report," regardless how allegedly "so-proven" (*see, e.g. id.* at ¶ 39) it is, does not entitle Petitioners to a response to that document or related complaints (*see id.* at ¶¶ 22, 26, 31),

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nor are Petitioners entitled to compel the recipients to agree with the contents of that Report or complaints, nor are Petitioners entitled to legislative action as Petitioners see fit in response to such a report or complaints. As discussed more in depth in Point III(G) *infra*, Governor Hochul's involvement in budget negotiations is permissible as a matter of law and cannot be the basis for a cause of action.

Furthermore, Lt. Governor Delgado is not mentioned in the Verified Petition/Complaint other than Petitioners' speculative statement that Respondent Delgado "presumably assist[s] the Governor in discharging her duties [...] [and] [p]ursuant to Article IV, § 6, the Lieutenant Governor is also 'the president of the senate.'" *Id.* at ¶ 9. No other facts are alleged in the Verified Petition/Complaint regarding Lt. Governor Delgado. *See generally id.* To the extent that Petitioners seek mandamus relief to compel the Respondent Hochul and Delgado to exercise oversight, or alternatively allege a cause of action for failure to do so (*see, e.g.*, Verified Petition/Complaint, ¶ 35), Petitioners are not entitled to that relief as it would be a discretionary rather than ministerial act. *See, e.g., N.Y. Civil Liberties Union v. State*, 4 N.Y.3d 175, 184 (2005).

As such, the Verified Petition/Complaint must be dismissed as it relates to Respondent Hochul and Respondent Delgado for failure to state a claim.

3. Respondents Wilson and Zayas

The Verified Petition/Complaint is similarly devoid of any factual allegations that would provide a basis for sustaining either of Petitioners' causes of action (or *any* cognizable cause of action) against Respondent Wilson and Respondent Zayas. Respondent Wilson is named apparently based on the fact that he appointed two members of Respondent Commission, and that Respondent Commission sent the Report in question to Judge Wilson. Verified Petition/Complaint, ¶¶ 10, 18. The fact that Judge Wilson did not take action in response to Petitioners' report is not a basis for any cognizable cause of action. No other action by Judge

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Wilson is alleged in the Verified Petition/Complaint. Judge Zayas is not even mentioned in the Verified Petition/Complaint beyond being named as “Chief Administrative Judge of the State of New York, appointed by Chief Judge Wilson.” *Id.* at ¶ 11. To the extent that Petitioners seek mandamus relief to compel the Respondent Wilson and Zayas to exercise oversight, or alternatively allege a cause of action for failure to do so (*see, e.g.*, Verified Petition/Complaint, ¶ 35), Petitioners are not entitled to that relief as it would be a discretionary rather than ministerial act. *See, e.g., N.Y. Civil Liberties Union v. State*, 4 N.Y.3d 175, 184 (2005).

As such, Petitioners have failed to state any cause of action against Respondent Wilson and Respondent Zayas and the Verified Petition/Complaint must be dismissed as it relates to those Respondents.

4. Respondents James and DiNapoli

Finally, as for Respondents James and DiNapoli, a charitable reading of the Verified Petition/Complaint appears to name Attorney General James as a party solely because she is allegedly subject to “mandatory duties” to “step[] in” upon receipt of Petitioners’ January 18, 2024 Opposition Report and that failure to do so was in violation of her constitutional duties. *See, e.g.*, Verified Petition, ¶¶ 35-36. The only specific allegations contained in the complaint about Comptroller DiNapoli state that he is the State Comptroller “whose duty, as the state’s chief fiscal officer, is to safeguard taxpayer monies.” *Id.* at ¶ 17. Petitioners also allege that Respondent DiNapoli was subject to certain mandatory duties and that failure to act upon Petitioners’ Opposition Report was unlawful and in violation of those duties. *Id.* at ¶¶ 35-36. Petitioners point to no specific responsibilities imposed upon the Attorney General or the Comptroller in relation to the consideration and enactment of the State Budget or any commission reports from which the budget is derived. *See generally id.* To the extent that Petitioners seek mandamus relief to compel the Respondents James and DiNapoli to exercise oversight, or alternatively allege a cause of action

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for failure to do so (*see, e.g.*, Verified Petition/Complaint, ¶ 35), Petitioners are not entitled to that relief as it would be a discretionary rather than ministerial act. *See, e.g., N.Y. Civil Liberties Union v. State*, 4 N.Y.3d 175, 184 (2005). Therefore, Respondent James and Respondent DiNapoli are not proper parties and the verified complaint should be dismissed as against them for failure to state a cause of action. *Sobel v. Higgins*, 151 Misc.2d 876, 878 (Sup. Ct. New York Co. 1991) (citing *Federal National Mortgage Association*, 383 F.Supp. 1294, 1296 (S.D.N.Y. 1974)) (finding the Attorney General to be an improper party because he had no specific enforcement responsibilities relating to the statute at issue); *Cheevers v. State*, 2002 Misc. LEXIS 834, at *6-7 (Sup. Ct. Albany Co., July 10, 2002) (finding the Comptroller to be an improper party because the case was not challenging a disbursement by the Comptroller). In fact, in a nearly identical action by Petitioners, the Albany Supreme Court dismissed Respondents James and DiNapoli on identical grounds. *Ctr. for Judicial Accountability, Inc. v. Cuomo*, Ind. No. 1788-14, at *6 (Sup. Ct., Albany County Oct. 9, 2014).

For all of the above reasons, the Verified Petition/Complaint must be dismissed for failure to state a claim against the above Respondents.

E. Respondents Hochul, Delgado, Stewart-Cousins, and Heastie have legislative immunity.

“[T]he United States Supreme Court has ruled that there is a common law immunity applicable to state and local legislators, similar to that provided to members of Congress under the United States Constitution (art. I, § 6), that also grants immunity to members of the executive branch ‘when they perform legislative functions.’” *Larabee v. Spitzer*, 19 Misc. 3d 226, 237 (Sup. Ct. New York County 2008), *aff’d sub nom.*, 65 A.D. 3d 74 (1st Dep’t 2009). The Speech or Debate Clause of the N.Y. Constitution has been interpreted to afford a legislator immunity from any proceeding challenging lawful action taken in his or her official capacity. *Rivera v. Espada*,

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98 N.Y.2d 422 (2002) (*Per curiam*). As this Court has previously held, legislative immunity shields legislators and the Governor not only from the consequences of litigation, but also protects them from the burden of defending themselves in court as long as their actions fall within the “sphere of legitimate legislative activity.” *Matter of Maron v. Silver*, 2007 N.Y. Misc. LEXIS 8086, at *8-10 (Sup. Ct. Albany Co. 2007) (McNamara, J.), *aff’d in part and modified in part on other grounds*, 14 N.Y.3d 230 (2010).

Regarding the legislative leaders named in the Verified Petition/Complaint, Petitioners’ claims clearly relate to their legislative function. Regarding Respondents Hochul and Delgado, the Verified Petition/Complaint’s only reference to Governor Hochul is in relation to what would presumably be the Governor’s prospective but still-pending duties pertaining to budget bills S8301 and A8801 and the negotiations surrounding those legislative bills, which are clearly legislative functions. Verified Petition/Complaint, ¶¶ 18, 27, 28, 38. Lt. Governor Delgado is not mentioned in the Verified Petition/Complaint other than Petitioners stating that Respondent Delgado “presumably assist[s] the Governor in discharging her duties [...] [and] [p]ursuant to Article IV, § 6, the Lieutenant Governor is also “the president of the senate,” all of which in the context of this case would be legislative functions. *Id.* at ¶ 9.

Therefore, to the extent Petitioners complain of the legislative activities of the Governor, Lieutenant Governor, and legislative leaders, those Respondents are entirely immune from suit and as such Petitioners claims against those Respondents must be dismissed.

F. Respondents Wilson and Zayas have judicial immunity.

The doctrine of judicial immunity exempts judges from liability for all acts taken in the exercise of a judicial function. *See Salzano v. Town of Poughkeepsie*, 300 A.D.2d 716, 717 (2002); *Tarter v State*, 68 N.Y.2d 511, 517-518 (1986). “As with other forms of immunity, ‘judicial immunity is an immunity from suit, not just from ultimate assessment of damages.’” *Lodichand*

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v Kogut, 30 Misc 3d 891, 895 (Sup. Ct., Nassau County 2011), citing *Mireles v. Waco*, 502 U.S. 9, 11 (1991).

“Few doctrines were more solidly established at common law than the immunity of judges from liability for damages for acts committed within their judicial jurisdiction.” *Pierson v. Ray*, 386 US 547, 553-554 (1967). As Courts have routinely explained, “[a]bsolute immunity is . . . necessary to assure that judges, advocates, and witnesses can perform their respective functions without harassment or intimidation . . . and discourages inappropriate collateral attacks on court rulings and fosters judicial independence by protecting courts and judges from vexatious litigation.” *Best v. State*, 116 A.D.3d 1198, 1199 (3d Dept. 2014) (internal quotation marks and citations omitted). Indeed, judicial acts are absolutely immune from civil liability “even when such acts are in excess of [a judge’s] jurisdiction and are alleged to have been done maliciously and corruptly.” *Gookins v. State*, 33 Misc. 3d 1215[A], 2011 WL 5119482, *2 (N.Y. Ct. Cl. 2011) (citing *Stump v. Sparkman*, 435 U.S. 349, 356 (1978)); *Murray v. Brancato*, 290 N.Y. 52, 55, (1943); see *Tarter*, 68 N.Y.2d at 518 (“Judges have long been immune even from tort liability suits alleging that their decisions were tainted by improper motives”); *Mertens v. State of New York*, 73 A.D.3d 1376 (3d Dept 2010) (“allegations of improper motives and even malicious wrongdoing are insufficient to circumvent absolute immunity”).

There are only two recognized exceptions to judicial immunity; namely, “when an action is not taken in the judge’s judicial capacity, and when the action, though judicial in nature, is taken in the complete absence of jurisdiction.” *Fraccola v. State*, 40 Misc. 3d 1203[A], 2013 WL 3215244, at *4 (N.Y. Ct. Cl. 2013) (citing *Mireles*, 502 U.S. at 11–12).

The Plaintiff-Petitioners have not shown, through either direct allegations or facts from which an inference could be drawn, that either exception to judicial immunity applies. In fact, as

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noted in Point III(D)(3) *supra*, the Verified Petition/Complaint is devoid of any factual allegations that would provide a basis for sustaining either of Petitioners' causes of action (or *any* cognizable cause of action) against Respondent Wilson and Respondent Zayas. Respondent Wilson is named apparently based on the fact that he appointed two members of Respondent Commission, and that Respondent Commission sent the Report in question to Judge Wilson. Verified Petition/Complaint, ¶¶ 10, 18. No other action by Judge Wilson is alleged. Judge Zayas is not even mentioned in the Verified Petition/Complaint beyond being named as "Chief Administrative Judge of the State of New York, appointed by Chief Judge Wilson." *Id.* at ¶ 11.

There has been no showing by Petitioners that any conceivable action taken by Judge Wilson or Judge Zayas even remotely related to this case was done outside of their respective judicial capacity or jurisdiction. As such, even if Petitioners succeeded in stating a claim against Respondent Wilson or Respondent Zayas, which they do not do, any claims would be barred by the doctrine of judicial immunity and must be dismissed.

G. Petitioners fail to state a cause of action based on the Legislature's alleged failure to follow protocol.

Finally, to the extent that the Verified Petition/Complaint is read to allege causes of action against Respondents, namely Respondents Hochul, Stewart-Cousins, N.Y. Senate, Heastie, and N.Y. Assembly for failure to follow proper legislative protocol or negotiating rules (*see, e.g.*, ¶¶ 27-28, those claims must also be dismissed as a matter of law.

As in this case, in *several* prior cases by this same Petitioner, Petitioner Sassower challenged the "three people in a room" budget negotiations. *See, e.g. CJI I*, at 1412-13; *Ctr. for Judicial Accountability, Inc. v. NYS Legislative Ethics Commission*, Index No. 904235-22 (Sup. Ct. Albany County Nov. 23, 2022). The Third Department affirmed the dismissal of a challenge to the constitutionality of "three-men-in-a-room" budget negotiations between the Governor and

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the Legislature, because budget negotiations between the Governor and the leaders of the Senate and Assembly are not prohibited. *CJA I*, at 1412-13. Indeed, the Court of Appeals has observed that state budgets are often a “product of such *negotiations, often extremely protracted ones.*” *Id.* (citing *Pataki v New York State Assembly*, 4 N.Y.3d 75, 85, (2004) (emphasis added).

Thus, Petitioners’ claim that the budget bills S8301 and A8801 are unconstitutional because of “three people in a room” budget negotiations should be dismissed.

To the extent that it is read that Petitioners also allege that the Senate and Assembly acted in violation of their own rules in considering said budget bills (*see* Verified Petition, ¶¶ 27-29), those claims are not actionable. It well settled that any such procedural matters are “wholly internal” to the Legislature and thus beyond judicial review under the separation of powers. *Heimbach v. State*, 59 N.Y.2d 891, 893 (1983), app. dismissed, 464 U.S. 956 (1983) (determining whether a legislative roll call was incorrectly registered is a legislative matter beyond judicial review); *Urban Justice Ctr. v. Pataki*, 38 A.D.3d 20, 27 (1st Dept. 2006) (holding it is not the province of the courts to direct the Legislature on how to do its work, particularly where the internal practices of the Legislature are involved).

The independence of the legislature and judiciary compels that each must be “confined to its own functions and can neither encroach upon nor be made subordinate to” each other. *Matter of Davies*, 168 N.Y. 89, 102 (1901); *Urban Justice Ctr.*, 38 A.D.3d at 27. To this end, the branches must “be free from interference, in the discharge of its own functions and particular duties, by either of the others.” *Matter of Gottlieb v. Duryea*, 38 A.D.2d 634, 635 (3d Dept. 1971), *affd.*, 30 N.Y.2d 807 (1972), *cert. denied*, 409 U.S. 1008 (1972); *see People ex rel. Burby v. Howland*, 155 N.Y. 270, 282 (1898). Simply put, “[it] is not the province of the courts to direct the legislature how to do its work.” *Heimbach*, 59 N.Y.2d at 893 (quoting *N.Y. Public Interest Research Group*

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v. Steingut, 40 N.Y.2d 250, 257 (1976)). *See also People ex rel. Hatch v. Reardon*, 184 N.Y. 431 (1906). Any other result would foist this Court into an “improvident intrusion into the internal workings of a coequal branch of government.” *Smith v. Espada*, Index No. 4912-09 (Sup. Ct., Albany Cty., June 16, 2009).

Further, Petitioners lack standing to bring any claims relating to the Legislature's alleged violations of its own rules and procedures because they cannot allege an injury “distinct from that suffered by the public at large.” *Urban Justice Center v. Silver*, 66 A.D.3d 567, 567 (1st Dept. 2009) (court held that the organizational plaintiff lacked standing to challenge certain rules and practices adopted by the Senate and the Assembly because it “failed to allege a personally concrete and demonstrable injury distinct from that suffered by the public at large”). For these reasons, Petitioner’ claims relating to alleged violations of Senate and Assembly rules should be dismissed.

POINT IV

PETITIONERS CANNOT ESTABLISH IRREPARABLE HARM

A party seeking a preliminary injunction must establish irreparable harm that is immediate, specific, nonspeculative, and nonconclusory. *Matter of N.Y. State Inspection, Sec. & Law Enforcement Empls. v. Cuomo*, 64 N.Y.2d 233, 240 (1984). A party must show by clear and convincing evidence, and not just a mere possibility that the party will be irreparably harmed, that the party is likely to suffer irreparable harm if equitable relief is denied. *Bank of Am., N.A. v. PSW NYC LLC*, 918 N.Y.S.2d 396 (Sup. Ct., New York County 2010). In the context of a request for a preliminary injunction, irreparable harm must also be an injury for which a monetary reward would not be an adequate remedy. *Town of Liberty Volunteer Ambulance Corp. v. Catskill Reg'l Med. Ctr.*, 30 A.D.3d 739, 739 (3d Dept 2006); *CGI Techs. & Sols., Inc. v. N.Y. State Office of Mental Health*, 2019 N.Y. Misc. LEXIS 6870, at *15 (Sup. Ct., Albany County Aug 28, 2019).

Here, as discussed previously in the context of Petitioners' standing, Petitioners have not, and cannot, demonstrate that they have suffered any harm at all, much less any irreparable harm. The Report complained of in the Verified Petition/Complaint, that is allegedly a "false instrument," has not resulted in any legislation being passed as of yet. Verified Petition/Complaint, ¶ 19. Petitioners state that the Report resulted in allegedly unlawful or unconstitutional appropriations in Budget Bill S8301 and A8801. *Id.* at ¶ 27. However, as stated previously, as of the date of the filing of the Verified Petition/Complaint and the OTSC, neither of those bills have been voted on by either the Senate or the Assembly, nor has the Governor signed them into law. In fact, both bills remain in committee. As such, even if this Court does find that Petitioners have sufficient standing in this case based on their status as a taxpayer, the Petitioners certainly cannot establish any harm beyond mere speculation, as the complained-of Senate and Assembly bills have not even been passed yet.

The Verified Petition/Complaint is otherwise devoid of any other showing of harm to Petitioners, other than generally as taxpayers. Even if the Assembly and Senate bills were signed into law, all of Petitioners' claim of harm, if any, would remain entirely speculative and monetary in nature. As such, Petitioners have not and cannot demonstrate any irreparable harm in this case, and their request for a preliminary injunction should be denied.

POINT III

A BALANCING OF THE EQUITIES DOES NOT TIP IN PETITIONERS' FAVOR AND INJUNCTIVE RELIEF IS NOT IN THE PUBLIC INTEREST

In addition to showing a likelihood of success on the merits and irreparable harm, a Petitioners must show that a balance of the equities tips in his favor and that his interests outweigh the public interest. *Matter of Riccelli Enters., Inc. v. N.Y. Workers' Comp. Bd.*, 2012 N.Y. Misc.

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LEXIS 2241, at *244-46 (Sup. Ct., Onondaga County Apr. 30, 2012). Petitioner cannot show either.

Despite claiming to represent the “People of the State of New York and the Public Interest” (*see* Verified Petition/Complaint, Caption), Petitioners requested relief is actually contrary to the public interest. The New York State Legislature, composed of duly elected representatives from across the state, are Constitutionally charged with protecting the public interest and drafting laws to that effect. *See* N.Y. CONST., Art. III. As such, public interest weighs in favor of the judiciary permitting the Legislature to function unimpeded, short of direct violations of the state or federal constitutions proven beyond a reasonable doubt, which is not the case here. Statutes enacted² by the legislature enjoy a “strong presumption of constitutionality,” and a “party attempting to strike down a statute as facially unconstitutional bears the ‘heavy burden’ of proving ‘beyond a reasonable doubt’ that the statute is ‘in conflict with the Constitution.’” *People v. Viviani*, 36 N.Y. 3d 564, 576 (2021) (internal citations omitted). Such a conflict can only be shown after “every reasonable mode of reconciliation of the statute with the Constitution has been resorted to, and reconciliation has been found impossible.” *Matter of Wolpoff v. Cuomo*, 80 N.Y. 2d 70, 78 (1992). As such, the balancing of the equities does not weigh in favor of Petitioner and his request for a preliminary injunction should be denied.

POINT IV

CROSS-MOTION TO DISMISS

For all the above reasons for which this Court should deny the preliminary injunction in this matter, this Court should also dismiss the Verified Petition/Complaint as a matter of law for lack of subject matter jurisdiction pursuant to CPLR § 3211(a)(2), for failure to state a cause of

² Again, it must be noted that Petitioners appear to be challenging the lawfulness and constitutionality of potential *future* legislation.

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action pursuant to CPLR § 3211(a)(7), and pursuant to CPLR § 7804(f) and CPLR § 3001. As set forth more fully above, Petitioners' claims are not ripe for judicial review,³ Petitioners' lack standing to sue in this matter,⁴ many of the Respondents have legislative⁵ or judicial immunity from suit, Petitioner CJA cannot appear in this matter without being represented by an attorney, and Petitioners have failed to allege sufficient facts to state cognizable causes of action against all Respondents. For these reasons, discussed in more detail above, the Verified Petition/Complaint must be dismissed in its entirety and with prejudice.

CONCLUSION

For the reasons discussed above, the preliminary injunctive relief sought by Petitioners should be denied in its entirety and Respondents cross-motion to dismiss be granted.

Dated: March 26, 2024

LETITIA JAMES

Attorney General

State of New York

Attorney for Respondents Kathy

Hochul, Antonio Delgado, Rowan

Wilson, Joseph Zayas, Andrea

Stewart-Cousins, the New York State

Senate, Carle Heastie, the New York

³ While the undersigned does not represent Respondent Commission, it should be noted that this basis for dismissal would equally apply to Petitioners' claims against Respondent Commission as it does to the other Respondents.

⁴ See Footnote 2.

⁵ See Footnote 3.

Respondent AG James' March 26, 2024 Memorandum of Law [R.281-344]

*State Assembly, Letitia James, and
Thomas DiNapoli*
The Capitol
Albany, New York 12224

By: s/ *Noah C. Engelhart*

Noah C. Engelhart
Assistant Attorney General, of Counsel
Telephone: 518-776-2701
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TO: Elena Ruth Sassower
Petitioner Pro Se
(Via NYSCEF)

Center for Judicial Accountability, Inc.
Petitioner
(Via NYSCEF)

Respondent AG James' March 26, 2024 Memorandum of Law [R.281-344]**STATEMENT PURSUANT TO 22 NYCRR 202.8-b**

I, Noah C. Engelhart, affirm under penalty of perjury pursuant to CPLR 2106 that the total number of words in the foregoing memorandum of law, inclusive of point headings and footnotes and exclusive of pages containing the caption, table of contents, table of authorities, and signature block, is 6,886. The foregoing memorandum of law complies with the word count limit set forth in 22 NYCRR 202.8-b. In determining the number of words in the foregoing memorandum of law, I relied upon the word count of the word-processing system used to prepare the document.

s/ Noah C. Engelhart

Noah C. Engelhart

Respondent AG James' "Appendix of Unreported Cases" [R.309-344]

Appendix of Unreported Cases

Respondent AG James' "Appendix of Unreported Cases" [R.309-344]

**STATE OF NEW YORK
SUPREME COURT**

COUNTY OF ALBANY

CENTER FOR JUDICIAL ACCOUNTABILITY, INC.
and ELENA RUTH SASSOWER, individually and as
Director of the Center for Judicial Accountability, Inc.,
acting on their own behalf and on behalf of the People
of the State of New York & the Public Interest,

Plaintiffs,

-against-

DECISION AND ORDER

Index No.: 1788-14

RJI No.: 01-14-113240

ANDREW M. CUOMO, in his official capacity as
Governor of the State of New York, DEAN SKELOS
in his official capacity as Temporary Senate President,
THE NEW YORK STATE SENATE, SHELDON
SILVER, in his official capacity as Assembly Speaker,
THE NEW YORK STATE ASSEMBLY, ERIC T.
SCHNEIDERMAN, in his official capacity as Attorney
General of the State of New York, and THOMAS
DiNAPOLI, in his official capacity as Comptroller of
the State of New York

Defendants.

(Supreme Court, Albany County All Purpose Term)

Appearances:

Elena Ruth Sassower
Self-Represented Plaintiff
Post Office Box 8101
White Plains, NY 10602

Eric T. Schneiderman
Attorney General
State of New York
Attorney for Respondent
The Capitol
Albany, NY 12224
(Adrienne J. Kerwin, Esq., Assistant
Attorney General)

Roger D. McDonough, J.:

This Court (Justice Michael Lynch) executed an Order to Show Cause ("OTSC") on March 28, 2014 directing defendants to show cause as to why an Order should not be made enjoining defendants from voting on, signing, and disbursing monies for the 2014/2015 Budget Bill. Plaintiffs also requested a Temporary Restraining Order enjoining defendants from voting on, signing and disbursing monies for the Budget Bill. Justice Lynch denied the TRO request and the Budget Bill was passed on March 31, 2014. In response to plaintiffs' request for a preliminary injunction, defendants have moved to dismiss the underlying complaint pursuant to CPLR § 3211(a)(1), (2) & (7). Plaintiffs responded with a cross-motion seeking: (1) to convert defendants' motion to dismiss into a motion for summary judgment; (2) the Court to "so-order" plaintiffs' notice to furnish papers; (3) compelling the Assistant Attorney General ("AAG") who has appeared in this matter to provide certain material to the Court regarding, *inter alia*, the Attorney General's representation of defendants in this case; (4) disqualifying the Attorney General from this matter for conflict of interest; (5) imposing costs, sanctions and penal law punishment against the AAG, and all complicit supervisory lawyers in the Attorney General's and Comptroller's respective offices; (6) referring the AAG, and all complicit supervisory lawyers in the Attorney General's and Comptroller's respective offices to the appropriate disciplinary authorities; and (7) other and further relief including motion costs. Defendants oppose the relief requested in the cross-motion.

During the pendency of the Court's consideration of said motions, Ms. Sassower brought an OTSC with TRO seeking to prevent the destruction of certain records and directing that said records be furnished to the Court. Defendants provided the Court with, what they represented to be, a copy of the only documents in their possession that may arguably be those described in the OTSC. Defendants also consented to maintaining the original version of said documents until the completion of the underlying action. Plaintiff's reply papers on the OTSC set forth her conclusions that, *inter alia*, (1) the AAG's submission on the document destruction issue was a flagrant fraud on the Court; (2) the AAG's submission revealed that defendants had violated

Respondent AG James' "Appendix of Unreported Cases" [R.309-344]

Legislative Law § 67¹; and (3) the AAG and her collaborating superiors and defendants are in contempt of the TRO set forth in the OTSC.

Discussion**Destruction of Documents**

The record reflects that defendants have represented to the Court that they have produced all responsive documents in their possession to the Court and have agreed to maintain the original version of said documents until the completion of the underlying action. Accordingly, the Court will Order that said original documents not be destroyed until the completion of the underlying action. To the extent plaintiffs seek additional relief from the June 16, 2014 OTSC, said requested relief is not properly before this Court and/or is wholly without merit. In particular, the Court notes that: (1) plaintiffs' complaint does not set forth any cause of action asserting that any of the defendants violated Legislative Law § 67; and (2) the plaintiffs have not brought a formal motion for contempt and/or sanctions.

Plaintiffs' Cross-Motion

Based upon the Court's review of plaintiffs' complaint and the submissions in this matter, the Court finds that conversion of the motion to dismiss is inappropriate (*see generally*, Bailey v Fish & Neave, 30 AD3d 48, 55-56 [1st Dept. 2006]). The Court also finds that CPLR § 2214(c)

¹ Legislative Law § 67 provides that:

All books, papers, transcripts of records, pamphlets, statements, reports, documents, data, memoranda and written or printed matter used by or submitted to the finance committee of the senate and ways and means committee of the assembly during any session of the legislature shall be preserved until the adjournment of the next ensuing annual session of the legislature, in the senate finance committee room. All such matters and things in the committee room of the ways and means committee of the assembly at the close of an annual session of the legislature shall be transferred to the committee room of the senate finance committee. The duty of caring for such matters and things, and keeping them intact, between sessions of the legislature shall devolve on the superintendent of public buildings.

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does not warrant the apparent type of discovery relief requested by plaintiffs herein. CPLR § 2214(c) requires the moving party, in this case the plaintiffs, to furnish all papers not already in possession of the Court necessary to the consideration of the questions involved. The Court notes that plaintiffs' Notice specifically refers to documents to be produced regarding plaintiffs' OTSC for a TRO and preliminary injunction. As such, the Court will not "so order" plaintiffs' Notice to Furnish Papers.

Also, the Court has searched the records and found absolutely no basis to award sanctions² in this matter or to take any type of disciplinary action against the AAG or any other lawyers affiliated with defendants. Additionally, the Court has not been persuaded that any legal basis exists to compel the AAG to provide the requested information concerning representation of the defendants. Further, the Court finds insufficient basis to disqualify the Attorney General's office or the Attorney General from representing all defendant in this matter. Finally, in light of the Court's findings, the Court declines to award plaintiffs any motion costs on the cross-motion.

Defendants' Motion to Dismiss

Plaintiffs' complaint sets forth four causes of action. The first three involve purported violations of Article VII, § 1 of New York's Constitution. Said section reads as follows:

For the preparation of the budget, the head of each department of state government, except the legislature and judiciary, shall furnish the governor such estimates and information in such form and at such times as the governor may require, copies of which shall forthwith be furnished to the appropriate committees of the legislature. The governor shall hold hearings thereon at which the governor may require the attendance of heads of departments and their subordinates. Designated representatives of such committees shall be entitled to attend the hearings thereon and to make inquiry concerning any part thereof.

² As to the AAG's suggestion that sanctions against plaintiffs are warranted, the Court declines to entertain such argument absent a formal motion. Plaintiffs are respectfully reminded that frivolous conduct includes the making of a frivolous motion for costs or sanctions (N.Y. Ct. Rules, § 130-1.1).

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Itemized estimates of the financial needs of the legislature, certified by the presiding officer of each house, and of the judiciary, approved by the court of appeals and certified by the chief judge of the court of appeals, shall be transmitted to the governor not later than the first day of December in each year for inclusion in the budget without revision but with such commendations as the governor may deem proper. Copies of the itemized estimates of the financial needs of the judiciary also shall forthwith be transmitted to the appropriate committees of the legislature.

Plaintiffs' fourth cause of action alleges that the legislative processes at issue violated legislative statutory and rule safeguards.

First Cause of Action

Plaintiffs' first cause of action alleges that the Budget is unconstitutional because it was not adequately certified and does not contain itemized estimates of the financial needs of the legislature. The itemization challenge clearly must be dismissed as it is nonjusticiable (*see, Urban Justice Ctr v Pataki*, 38 AD3d 20, 30 [1st Dept. 2006]). As to the certification issue, the Court finds that the documentary evidence submitted by defendants conclusively demonstrates that defendants have complied with the letter and spirit of the constitutional requirement for certification (*see generally, Matter of Schneider v Rockefeller*, 31 NY2d 420, 434 [1972]). Accordingly, the first cause of action must be dismissed.

Second Cause of Action

Plaintiffs' second cause of action principally alleges that the Senate and the Assembly are unable to comprehend the Judiciary's proposed budget for 2014-2015 because the cumulative dollar amount and percentage increase over the prior year's budget is not capable of being discerned. The Court finds that the documentary evidence submitted by defendants clearly and conclusively establishes a defense to this cause of action. Said information is readily discernible throughout the Judiciary's proposed budget. Accordingly, the second cause of action must be dismissed. Additionally, this cause of action would also appear to fall under the type of itemization argument already found to be nonjusticiable.

Third Cause of Action

Plaintiffs' third cause of action alleges that the Legislative Budget transmitted to the Governor by Senator Skelos and Speaker Silver contained no reappropriations. They further contend that the Governor's budget contains nineteen pages of reappropriations. Accordingly, they contend that the reappropriations constitute revisions in violation of New York's Constitution. The Court finds that the documentary evidence submitted by defendants clearly and conclusively establishes a defense to this cause of action. Said submissions clearly establish that the "reappropriations" at issue do not constitute executive revisions to the proposed Budget. Accordingly, the third cause of action must be dismissed.

Fourth Cause of Action

Plaintiffs' complaint adequately sets forth a viable cause of action alleging, *inter alia*, that defendants violated Legislative Law § 32-a regarding public hearings for New York's Budget. Defendants argue that the cause of action should be dismissed because plaintiffs lack standing to challenge internal legislative rules. The Court has not been persuaded that Legislative Law § 32-a constitutes an internal legislative rule. Additionally defendants' submissions did not include any documentary evidence establishing a defense to said cause of action. Accordingly, defendants' motion to dismiss must be denied as to plaintiffs' fourth cause of action.

In light of the Court's findings as to causes of action 1-3, plaintiffs' request for a preliminary injunction is also denied.

Plaintiffs' remaining arguments and requests for relief have been considered and found to be lacking in merit. Defendants' additional arguments in support of dismissal for causes of action 1-3 are unnecessary to reach in light of the Court's findings set forth above. Additionally, the Court finds that the Attorney General and Comptroller are entitled to dismissal of the action in its entirety as plaintiffs' complaint does not adequately state a single cause of action as to either defendant. Finally, based upon the Court's review of the submissions, the Court finds that oral argument is unnecessary in this matter.

Respondent AG James' "Appendix of Unreported Cases" [R.309-344]

Based upon the foregoing, it is hereby

ORDERED that plaintiffs' request for a preliminary injunction is denied based upon the Court's dismissal of the first three causes of action of plaintiffs' underlying complaint; and it is further

ORDERED that plaintiff's cross-motion is hereby denied in its entirety; and it is further

ORDERED that defendants are hereby enjoined from destroying the original versions of the documents attached to AAG Kerwin's July 2, 2014 affirmation until the completion of the underlying action including any and all appeals from the instant Decision and Order; and it is further

ORDERED that any additional relief requested relative to plaintiff's June 16, 2014 OTSC is hereby denied in its entirety; and it is further

ORDERED that defendants' motion to dismiss is hereby granted as to causes of action 1-3 and in its entirety as to the Attorney General and the Comptroller; and it is further

ORDERED that defendants' motion to dismiss is hereby denied as to plaintiffs' fourth cause of action; and it is further

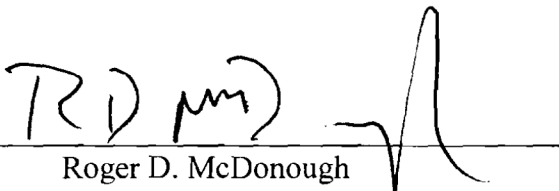
ORDERED that the AAG and Elena Ruth Sassower are directed to confer and thereafter propose to the Court a discovery schedule and/or summary judgment briefing schedule as to the remaining cause of action, said proposal to be submitted to the Court within forty-five (45) days of the date of this Decision and Order. In the event the AAG and Ms. Sassower are unable to agree as to scheduling matters, they should so inform the Court at the expiration of said forty-five (45) day period.

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This shall constitute the Decision and Order of the Court. The original decision and order is being returned to the counsel for defendants who is directed to enter this Decision and Order without notice and to serve plaintiff with a copy of this Decision and Order with notice of entry. The Court will transmit a copy of the Decision and Order and the papers considered to the Albany County Clerk. The signing of the decision and order and delivery of a copy of the decision and order shall not constitute entry or filing under CPLR Rule 2220. Counsel is not relieved from the applicable provisions of that rule respecting filing, entry and notice of entry.

ENTER.

Dated: Albany, New York
October 9, 2014



Roger D. McDonough
Supreme Court Justice

Respondent AG James' "Appendix of Unreported Cases" [R.309-344]Papers Considered³:

Order to Show Cause, executed by Justice Lynch on March 28, 2014⁴;
Plaintiffs' Summons, Verified Complaint and annexed exhibits, dated March 28, 2014;
Plaintiffs' Unsigned Notice to Furnish Papers, dated March 26, 2014, with annexed exhibit;
Defendants' Notice of Motion, dated April 16, 2014;
Affirmation of Adrienne J. Kerwin, Esq., AAG., dated April 18, 2014, with annexed exhibits;
Plaintiffs' Notice of Cross-Motion, dated May 16, 2014;
Affidavit of Elena Ruth Sassower, sworn to May 16, 2014, with annexed exhibits;
Affirmation of Adrienne J. Kerwin, Esq., AAG., dated May 30, 2014,
Order to Show Cause, executed on June 16, 2014;
Affidavit of Elena Ruth Sassower, sworn to June 6, 2014, with annexed exhibit;
Affidavit of Elena Ruth Sassower, sworn to June 16, 2014, with annexed exhibits;
Affirmation of Adrienne J. Kerwin, Esq., AAG., dated July 2, 2014, with annexed exhibit;
Affidavit of Elena Ruth Sassower, sworn to July 7, 2014, with annexed exhibits.⁵

³ Both sides also submitted several memoranda of law in support of their respective positions.

⁴ The Order to Show Cause indicates that it is based upon an annexed affidavit and plaintiffs' verified complaint with annexed exhibits. The affidavit attached to the Original Order to Show Cause was unsworn. Additionally, the verified complaint and annexed exhibits were not provided to this Court. The Court retrieved the verified complaint and annexed exhibits from the County Clerk's file. The unsworn affidavit was not considered.

⁵ Plaintiff submitted two "corrected" pages to this affidavit in order to correct typographical errors. The corrections were done on notice to the AAG and were not objected to. The Court has attached the unsworn "corrected" pages to the affidavit.

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**STATE OF NEW YORK
SUPREME COURT****COUNTY OF ALBANY**

CENTER FOR JUDICIAL ACCOUNTABILITY,
INC., and ELENA RUTH SASSOWER,
individually and as Director of the
Center for Judicial Accountability, Inc.,
acting on their own behalf and on
behalf of the People of the State of
New York & the Public Interest

Plaintiffs,

**DECISION AND
ORDER**

-against-

ANDREW M. CUOMO, in his official capacity
as Governor of the State of New York,
JOHN J. FLANAGAN in his official capacity
as Temporary Senate President, THE NEW
YORK STATE SENATE, CARL E. HEASTIE,
in his official capacity as Assembly
Speaker, THE NEW YORK STATE ASSEMBLY,
ERIC T. SCHNEIDERMAN, in his official
capacity as Attorney General of the State
of New York, THOMAS P. DINAPOLI, in his
official capacity as Comptroller of the
State of New York, and JANET M. DIFIORE,
in her official capacity as Chief Judge of
the State of New York and chief judicial
officer of the Unified Court System,

Index No. 5122-16
RJI No. 01-16-122174

Defendants.

APPEARANCES:

ELENA RUTH SASSOWER
Plaintiff pro se
PO Box 8101
White Plains, New York 10602

ERIC T. SCHNEIDERMAN, ATTORNEY
GENERAL OF THE STATE OF NEW YORK
Adrienne J. Kerwin, of Counsel
Attorney for Defendants
The Capitol
Albany, New York 12224-0341

Hartman, J.

Plaintiffs Center for Judicial Accountability and Elena Sassower seek a declaratory judgment under the State Finance Law that the Legislature's and Judiciary's proposed 2016–2017 budgets are improper and that the budgeting process violates various New York State Constitutional and statutory provisions, and an injunction blocking certain disbursements under the 2016–2017 legislative and judicial budget bill, including judicial pay raises and district attorney salary grants. Plaintiffs also move for a preliminary injunction preventing disbursement of funds.

Defendants move to dismiss the complaint to the extent it seeks to assert claims on behalf of the Center for Judicial Accountability. They also move to dismiss the complaint against defendants Andrew M. Cuomo, Temporary Senate President John J. Flanagan, the New York State Senate, and Chief Judge Janet M. DiFiore for lack of personal jurisdiction. Defendants further move to dismiss each cause of action pursuant to CPLR 3211 (a) (7).

Plaintiff's motion for preliminary relief is denied. Defendants' motion to dismiss the complaint to the extent it seeks to assert claims on behalf of the Center for Judicial Accountability is granted. Defendants' motion to dismiss for lack of personal jurisdiction is denied. Defendants' motion to dismiss pursuant to CPLR 3211 (a) (7) is granted to the extent that all causes of action except the sixth are dismissed.

Background

Plaintiffs commenced a similar action in 2014 to challenge the Legislature's 2014–2015 budget. In October 2014, Supreme Court (McDonough, J.) dismissed three of the complaint's four causes of action. With leave of the Court, plaintiffs served and filed a supplemental complaint, which expanded their challenge to include the 2015–2016 budget, adding four new causes of action that mirrored the first four. In August, 2016, the Court dismissed the supplemental complaint and made a number of declarations validating the challenged budgets. The Court denied plaintiffs' motion to serve a second supplemental complaint, which would have added an additional eight causes of action and which included the 2016–2017 budget, explaining that proposed causes of action 9–12 were "patently devoid of merit" and that proposed causes of action 13–16 arose "out of materially different facts and legal theories" than those that had been alleged in the 2014 complaint.

In this action, plaintiffs' first four causes of action are essentially identical to the first four causes of action asserted in the 2014 action, as well as causes of action 9–13 asserted in the proposed second supplemental complaint in that action. Cause of action five in this complaint replicates part of causes of action 12 and 16 from the 2014 proposed second supplemental complaint. And causes of action 6–9 in this complaint correspond to causes of action 13–16 from the 2014 proposed second supplemental complaint. Cause of

action 10 in this complaint does not appear to have a counterpart from the 2014 action.

The Complaint's Assertion of Claims on Behalf of the Center for Judicial Accountability Dismissed

CPLR 321 (a) requires corporations to appear by attorney. Plaintiff Elena Ruth Sassower is not an attorney. Accordingly, the complaint is dismissed to the extent that it seeks to assert causes of action on behalf of the Center for Judicial Accountability (*see Pelaez v Silverstone*, 19 NY3d 954 [2012]; *Boente v Peter C. Kurth Off. of Architecture & Planning, P.C.*, 113 AD3d 803, 804 [2d Dept 2014]).

Personal Jurisdiction

The Office of the Attorney General argues that the Court lacks personal jurisdiction over defendants Andrew M. Cuomo, Temporary Senate President John J. Flanagan, the New York State Senate, and Chief Judge Janet M. DiFiore because plaintiff herself made service upon them. "Although CPLR 2103 (a) requires service to be made by a person who is not a party to the action, a violation of this provision is a mere irregularity which does not vitiate service" where, as here, no resulting prejudice is shown" (*Neroni v Follender*, 137 AD3d 1336, 1337 [3d Dept 2016] [internal quotation marks omitted]). Accordingly, the motion to dismiss for lack of personal jurisdiction is denied.

The First Five Causes of Action Are Dismissed

In its April 2016 decision, the Court held that causes of action 9–12 in the proposed second supplemental complaint were “patently devoid of merit,” given the Court’s dismissal of similar causes of action regarding prior budget years (*citing Lucido v Mancuso*, 49 AD3d 220, 229 [2d Dept 2008]). Because causes of action 1–4 are identical to those the Court held “patently devoid of merit,” they are barred (*see Maki v Bassett Healthcare*, 141 AD3d 979, 981 [3d Dept 2016]). Likewise, the fifth cause of action, which alleges violations of New York State Constitution Article VII, §§ 4, 5, 6, must be dismissed because it restates arguments and claims already rejected by the Court in its prior decisions.

Causes of Action Seven through Ten Are Dismissed

Causes of action seven and eight both challenge the actions of the Commission on Legislative, Judicial, and Executive compensation, which is not a party to this action. Accordingly, these causes of action must be dismissed. The ninth cause of action challenges the constitutionality of “three-men-in-a-room” budget negotiation. As defendants point out, the negotiation of the 2016–2017 budget is moot, because the budget has passed (*see N.Y. Pub. Interest Research Group, Inc. v Regan*, 91 AD2d 774 [3d Dept 1982], *lv denied* 58 NY2d 610 [1983]). Assuming without deciding that the exception for issues capable of repetition but evading review applies, plaintiff has failed to state a cause of

action. Taking all the allegations in the complaint as true, plaintiff has not alleged a violation of law. None of the authority cited by plaintiff prohibits the Governor and leaders of the Senate and Assembly from holding budget negotiations (*see Pataki v N.Y. State Assembly*, 4 NY3d 75, 85 [2004]; *Urban Justice Ctr. v Pataki*, 38 AD3d 20, 27–30 [1st Dept 2006], *appeal dismissed, lv denied* 8 NY3d 958 [2007]).

The tenth cause of action must also be dismissed. Plaintiff's itemization arguments are non-justiciable (*Pataki*, 4 NY3d at 96; *Urban Justice Ctr.*, 38 AD3d at 30). And the district attorney salary appropriation plaintiff challenges specifically supersedes any law to the contrary. Lastly, the reference to fiscal year 2014–2015 rather than 2016–2017 is a typographical error that does not invalidate the challenged legislation (*see Matter of Morris Bldrs., LP v Empire Zone Designation Bd.*, 95 AD3d 1381, 1383 [3d Dept 2012]).

Cause of Action Six States a Claim

“When considering these pre-answer motions to dismiss the complaint for failure to state a cause of action, we must give the pleadings a liberal construction, accept the allegations as true and accord the plaintiffs every possible favorable inference” (*Chanko v Am. Broadcasting Cos. Inc.*, 27 NY3d 46, 52 [2016]). The key question before the court on a CPLR 3211 (a) (7) motion to dismiss is “whether the facts alleged fit within any cognizable legal theory

(*Loch Sheldrake Beach & Tennis Inc. v Akulich*, 141 AD3d 809, 814 [3d Dept 2016]).

Plaintiff argues that the 2015 legislation that created the Commission on Legislative, Judicial & Executive Compensation (Commission) violates the New York State Constitution (*see* Chapter 60, Laws of 2015 [Part E]). In particular, she argues that the provision therein that gives the Commission's recommendations the "force of law" violates the separation of powers doctrine and improperly delegates legislative function to the Commission. She further argues that the legislation violates Article XIII, § 7 of the New York State Constitution, which states that the compensation of public officers "shall not be increased or diminished during the term for which he or she shall have been elected or appointed." Plaintiff raises additional challenges to the form and timing of the bill by which the legislation was introduced, among other things.

Here, on the record before it, the Court cannot say that plaintiff's claim is not cognizable. Defendants argue that the Appellate Division has already approved of commissions similar to the Commission here (*see McKinney v Commr. of the N.Y. State Dept. of Health*, 41 AD3d 252 [1st Dept 2007]). But the Court does not consider *McKinney* to be sufficiently analogous to this case to foreclose any and all challenge to the Commission legislation. Nor does *McKinney* address all the arguments raised by plaintiff.

Motion for Preliminary Injunction Denied

Plaintiff has not demonstrated a likelihood of success on the merits or irreparable harm. Thus, she is not entitled to preliminary relief (*Nobu Next Door, LLC v Fine Arts Hous., Inc.*, 4 NY3d 839, 840 [2005]; *Eklund v Pinkey*, 31 AD3d 908, 909 [3d Dept 2006]).

Accordingly, it is

ORDERED that plaintiff's motion for preliminary relief is denied; it is

ORDERED that defendants' motion to dismiss the causes of action asserted by the Center for Judicial Accountability is granted; it is

ORDERED that defendants' motion to dismiss the complaint against defendants Andrew M. Cuomo, Temporary Senate President John J. Flanagan, the New York State Senate, and Chief Judge Janet M. DiFiore for lack of personal jurisdiction is denied; it is

ORDERED that the motion to dismiss for failure to state a cause of action is granted with respect to causes of action one through five and seven through ten and those causes of action are dismissed; it is

ORDERED that the motion to dismiss for failure to state a cause of action is denied with respect to cause of action six; it is

ORDERED that defendants have 30 days from the date of this order to answer; it is

ORDERED that plaintiff's request for oral argument is denied.

Respondent AG James' "Appendix of Unreported Cases" [R.309-344]

This constitutes the Decision and Order of the Court. The original Decision and Order is being transmitted to defendant's counsel. All other papers are being transmitted to the County Clerk for filing. The signing of this Decision and Order does not constitute entry or filing under CPLR 2220 and counsel is not relieved from the applicable provisions of that rule respecting filing and service.

Dated: Albany, New York
December 21, 2016


Denise A. Hartman
Acting Supreme Court Justice

Respondent AG James' "Appendix of Unreported Cases" [R.309-344]

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

CENTER FOR JUDICIAL ACCOUNTABILITY,
INC., and ELENA RUTH SASSOWER,
individually and as Director of the
Center for Judicial Accountability, Inc.,
acting on their own behalf and on
behalf of the People of the State of
New York & the Public Interest

Plaintiffs,

DECISION AND
JUDGMENT

-against-

ANDREW M. CUOMO, in his official capacity
as Governor of the State of New York,
JOHN J. FLANAGAN in his official capacity
as Temporary Senate President, THE NEW
YORK STATE SENATE, CARL E. HEASTIE,
in his official capacity as Assembly
Speaker, THE NEW YORK STATE ASSEMBLY,
ERIC T. SCHNEIDERMAN, in his official
capacity as Attorney General of the State
of New York, THOMAS P. DINAPOLI, in his
official capacity as Comptroller of the
State of New York, and JANET M. DIFIORE,
in her official capacity as Chief Judge of
the State of New York and chief judicial
officer of the Unified Court System,

Index No. 5122-16
RJI No. 01-16-122174

Defendants.

APPEARANCES:

ELENA RUTH SASSOWER
Plaintiff pro se
PO Box 8101
White Plains, New York 10602

ERIC T. SCHNEIDERMAN, ATTORNEY
GENERAL OF THE STATE OF NEW YORK
Adrienne J. Kerwin, AAG, of Counsel
Attorney for Defendants
The Capitol
Albany, New York 12224-0341

Hartman, J.

In this citizen-taxpayer action for declaratory and injunctive relief, pro se plaintiff Elena Ruth Sassower challenges legislation enacted in 2015 that created the Commission on Legislative, Judicial & Executive Compensation (Commission) and budget legislation for the 2016-2017 fiscal year. In its December 21, 2016 Decision and Order, the Court granted in part defendants' pre-answer motion and dismissed nine of ten causes of action, but denied the motion with respect to the cause of action challenging the 2015 legislation. On May 5, 2017, this Court issued a Decision and Order denying plaintiff's application for disqualification and reargument, renewal, and vacatur of the Court's December 21, 2016 Decision and Order. On that same date, the Court issued an Amended Decision and Order correcting the recitation of papers considered in the December 21, 2016 Decision and Order.

Plaintiff now moves, by order to show cause, for disqualification, reargument, renewal, and vacatur of the Court's May 5, 2017 Decision and Order and the May 5, 2017 Amended Decision and Order. Once again plaintiff has failed to establish matters of fact or law that the Court overlooked or misrepresented that would warrant reargument, or new facts that would warrant renewal (*see* CPLR 2221 [d, [e]]). Nor has she established grounds for disqualification and vacatur (*see Matter of Maron v Silver*, 14 NY3d 230, 249 [2010] [Rule of Necessity]; *Pines v State of N.Y.*, 115 AD3d 80, 90-91

[2d Dept 2014] [same], *appeal dismissed* 23 NY3d 982 [2014]). Plaintiff's motion is therefore denied.

Respondents, having answered, cross-move for summary judgment on the sole remaining cause of action, both for lack of standing and on the merits, and for sanctions against plaintiff. Defendants waived their right to raise standing as a defense by failing to raise it in their pre-answer motion to dismiss or answer (*see Matter of Plainview-Old Bethpage Congress of Teachers v NY State Health Ins. Plan*, 140 AD3d 1329, 1330 [3d Dept 2016]; *Schulz v Silver*, 212 AD2d 293, 296 [3d Dept 1995]). In any event, plaintiff has asserted a sufficient nexus to the fiscal activity of the State to confer standing under State Finance Law § 123-b (1) (*see Saratoga County Chamber of Commerce v Pataki*, 100 NY2d 801, 813–814 [2003]).¹ But because defendants have demonstrated entitlement to judgment as a matter of law and plaintiff has not raised a material issue of fact in opposition, the motion for summary judgment is granted. The motion for sanctions, however, is denied.

Procedural Background

By Decision and Order dated December 21, 2016, as amended on May 5, 2017, the Court dismissed all of the complaint's causes of action but the sixth,

¹ Because plaintiff Sassower is not an attorney, this Court in its December 21, 2016 Decision and Order dismissed causes of action she seeks to assert on behalf of the Center for Judicial Accountability.

which challenged as unconstitutional the 2015 legislation that created the Commission on Legislative, Judicial & Executive Compensation (Commission) (L 2015, ch 60, Part E § 3 [5]; S4610/A6721 2015). In its Decision and Order dated June 26, 2017, the Court denied plaintiff's motion for summary judgment on the sixth cause of action. In that decision, the Court divided the sixth cause of action into six sub-causes, labelled A–E. As the Court held, the law of the case disposes of Sub-Cause E—allegations that the budget bill that created the Commission was procured by fraud and in violation of due process failed to state a cause of action. The remaining sub-causes must also be resolved in favor of defendants.

The issues plaintiff raises must be viewed through the lens of the strong presumption of the constitutionality of legislative enactments. Where, as here, a plaintiff makes a facial challenge to a legislative enactment, that enactment will not be held unconstitutional unless the plaintiff demonstrates with “proof beyond a reasonable doubt” that “no set of circumstances exists under which the [enactment] would be valid” (*Moran Towing Corp. v Urbach*, 99 NY2d 443, 448 [2003] [internal citations and quotation marks omitted]; see *Local Govt. Assistance Corp. v Sales Tax Asset Receivable Corp.*, 2 NY3d 524, 535 [2004]; *Hunter v Bd. of Supervisors*, 21 AD3d 622, 624 [3d Dept 2005]).

Sub-Causes A & B—Improper Delegation of Authority Claims

Plaintiff alleges in Subcauses A and B that the 2015 legislation unconstitutionally delegates legislative authority to the Commission. Although “the Legislature cannot pass on its law-making functions to other bodies[,] there is no constitutional prohibition against the delegation of power, with reasonable safeguards and standards, to an agency or commission to administer the law as enacted by the Legislature” (*Boreali v Axelrod*, 71 NY2d 1, 10 [1987]).

As defendants argue, the Commission’s enabling legislation contains both standards and reasonable safeguards. The legislation provides a specific task to the Commission and defined guidelines for it to consider in furtherance of that task. It directs the Commission to “examine, evaluate and make recommendations with respect to adequate levels of compensation” for judges and members of the Legislature. The Commission must

“take into account . . . overall economic climate; rates of inflation; changes in public-sector spending; the levels of compensation and non-salary benefits received by executive branch officials and legislators of other states and of the federal government; the levels of compensation and non-salary benefits received by professionals in government, academia and private and nonprofit enterprise; and the State’s ability to fund increases in compensation and non-salary benefits.”

Respondent AG James' "Appendix of Unreported Cases" [R.309-344]

(L 2015, ch 60, Part E § 2 [3]). The Commission must also have access to and use court and agency data (L 2015, ch 60, Part E § 3 [5]). Finally, the legislation gives the Legislature and Governor an opportunity to veto the recommendations before they take on the force of law by following the usual constitutional process for enacting a statute (L 2015, ch 60, Part E § 3 [7]). This constitutes “adequate guidance” (see *Matter of Retired Public Employees Assn. v Cuomo*, 123 AD3d 92, 97 [3d Dept 2014]).

“Enabling statutes even broader than this one have been found constitutional” (*McKinney v Commr. of the N.Y. State Dept. of Health*, 41 AD3d 252, 253 [1st Dept 2007], *lv denied* 9 NY3d 815 [2007], *appeal dismissed* 9 NY3d 891 [2007]; see also e.g. *Shattenkirk v Finnerty*, 62 NY2d 949, 951 [1984]). In short, because “the basic policy decisions underlying the [Commission] have been made and articulated by the Legislature,” the Commission legislation is not an unconstitutional delegation of legislative power (*N.Y. State Health Facilities Assn. v Axelrod*, 77 NY2d 340 [1991]; see *Dalton v Pataki*, 5 NY3d 243, 262–263 [2005]; compare *St. Joseph’s Hospital v Novello*, 43 AD3d 139 [4th Dept 2007] [declining to address constitutionality of delegation of authority that allowed for de facto legislative veto])). Thus, defendants are entitled to judgment as a matter of law on sub-causes A and B.

Sub-Cause C—New York Constitution Article XIII, Section 7

Plaintiff alleges that the State Constitution forbids the increase of judicial and legislative salaries during the term for which the judge or legislator was elected. As the Court noted in its earlier decision, although the Constitution does forbid increases for legislators during the term for which they were elected, it contains no such prohibition against increases in judges' salaries. Rather, the provision that applies to judicial salaries expressly forbids decreases but does not mention increases (*Compare* Article VII, § 7 *with* Article VI, § 25 [a]). Thus, the Court needs to look no further than the plain text of the State Constitution to dispose of plaintiff's argument with respect to the judiciary. And as the Court previously held with respect to legislative raises, plaintiff cannot prove that "no set of circumstances exists under which the Act would be valid" because the Commission has not recommended any pay raise for legislators (*see Moran Towing*, 99 NY2d at 448 [internal quotation marks omitted]).

Sub-Cause D—Article VII, Sections 2, 3, and 6

Plaintiff alleges that the budget bills resulting in the enactment of the law creating the Commission (S4610/A6721 2015) violated New York State Constitution Article VII, Sections 2, 3, and 6. When the Governor submits a budget to the Legislature, he must also submit bills containing all appropriations and proposed legislation (*see* NY Const Art VII, § 3). The

Governor may submit supplemental budget bills and amendments “within thirty days” of submitting the budget and, “with the consent of the legislature, at any time before the adjournment thereof” (*id.*). “No provision shall be embraced in any appropriation bill submitted by the governor or in such supplemental appropriation bill unless it relates specifically to some particular appropriation in the bill” (NY Const Art VII, § 6).

Plaintiff argues that the bill creating the Commission must be invalidated because it was not introduced by the Governor and was not submitted within the prescribed 30-day window. Plaintiff also argues that the bill establishing the Commission violated the requirement that items in appropriation bills relate specifically to an appropriation in the bill.

Assuming without deciding justiciability (*see Pataki v N.Y. State Assembly*, 4 NY3d 75, 97 [2004]; *Saxton v Carey*, 44 NY2d 545, 549-551 [1978]), this sub-cause of action must be denied. With regard to timeliness, Article VII, Section 3 allows the submission of budget bills “at any time” with the consent of the Legislature. Although no formal consent appears in the record, the Legislature’s consideration and passage of the bill is effective consent in itself. In any event, the 30-day timeframe appears to be precatory, not mandatory. Unlike, for instance, Article III, Section 14, which states that “[n]o bill shall be passed or become a law unless it has been printed and upon the desks of the members, in its final form, at least three calendar legislative days prior to its

final passage,” Article VII, Section 6 contains no such mandatory language (*cf.* (*Maybee v State*, 4 NY3d 415, 419-421 [2005] [holding that rationale underlying a Governor’s statement of necessity to allow a bill to be passed without being before Legislature for three days is not susceptible to judicial review]). Nor does the Commission bill violate Article VII, Section 6 of the State Constitution. The creation of the Commission relates specifically to items of appropriation in the 2015 budget for judicial and legislative pay and is not “essentially non-budgetary” (*Pataki*, 4 NY3d at 98-99; *see Schuyler v S. Mall Constructors*, 32 AD2d 454 [3d Dept 1969]).

Prudential considerations further weigh against invading the province of the Governor and Legislature. “[T]he consequences of judicial second-guessing of the Governor’s and the Legislature’s choice” to create the Commission by budget bill outside the 30-day window could be “draconian” (*Maybee*, 4 NY3d at 420; *see Schulz v State*, 81 NY2d 336, 348-349 [1993]). If the Court “accepted plaintiff’s argument here, any statute, no matter how important to the state,” would be subject to invalidation if passed under similar circumstances (*Maybee*, 4 NY3d at 420).

Finally, the particular circumstances of this case also counsel restraint. Plaintiff did not commence this action until September 2016, well after the Commission bill was signed by the Governor in April 2015, the Commission issued its Final Report on Judicial Compensation on December 24, 2015, and

its recommendations took on the force of law on April 1, 2016. While the Court recognizes that invalidation of the Commission and of the raises that followed is precisely the relief plaintiff seeks, the relief she requests in her sixth cause of action must be denied (*see Schulz*, 81 NY2d 336, 348-349 [1993]).

Accordingly, it is

ORDERED that plaintiff's motion for disqualification, reargument, renewal, and vacatur is denied;

ORDERED that defendants' motion for sanctions is denied;

ORDERED that summary judgment is granted in favor of defendants; and

ORDERED AND ADJUDGED AND DECLARED that plaintiff has not demonstrated that the Laws of 2015, ch 60, Part E § 3 [5], which created the Commission on Legislative, Judicial & Executive Compensation, is facially unconstitutional.

This constitutes the Decision and Judgment of the Court. The original Decision and Judgment is being transmitted to defendant's counsel. All other papers are being transmitted to the County Clerk for filing. The signing of this Decision and Judgment does not constitute entry or filing under CPLR 2220 or 5016 and counsel is not relieved from the applicable provisions of those rules

Respondent AG James' "Appendix of Unreported Cases" [R.309-344]

respecting filing and service.

Dated: Albany, New York
November 28, 2017



Denise A. Hartman
Acting Justice of the Supreme Court

Papers Considered

1. Order to Show Cause Dated June 16, 2017 and Moving Affidavit, with Exhibits A-G
2. Defendants' Affirmation in Opposition to Plaintiff's Order to Show Cause and in Support of Defendants' Cross-Motion, with Exhibits A-AA
3. Defendants' Memorandum of Law in Opposition to Plaintiff's Order to Show Cause and in Support of Defendants' Cross-Motion
4. Plaintiff's Letter Dated July 27, 2017
5. Plaintiff's Affidavit in Reply and in Opposition, with Exhibits H-J
6. Plaintiff's Memorandum of Law in Reply and in Further Support

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

Elena Ruth Sassower, Center for Judicial Accountability, Inc.,
Elena Ruth Sassower individually and as Director of the Center
for Judicial Accountability, Inc., acting on their own behalf and
on behalf of the People of the State of New York & the Public
Interest,

**DECISION, ORDER
and JUDGMENT**
Index No. 904235-22

Petitioners/Plaintiffs,

-against-

Present:
David M. Gandin, JSC

New York State Joint Commission on Public Ethics, Legislative
Ethics Commission, New York State Inspector General, Kathy
Hochul in her official capacity as Governor of the State of New
York, Andrea Stewart-Cousins in her official capacity as
Temporary Senate President, New York State Senate, et al,
Respondents/Defendants.

The following papers were read and considered on this special proceeding:

1. Notice of Petition and Verified Petition with Exhibits A-M-5;
2. Verified Amendment to June 6, 2022 Petition;
3. Notice of Cross-Motion;
4. Memorandum of Law;
5. Affidavit of Emily Logue;
6. Affidavit of Leslie M. Arp;
7. Notice of Motion;
8. Memorandum of Law;
9. Affidavit in Opposition to Cross Motion and in Support with Exhibits A-D;
10. Attorney Affirmation;
11. Memorandum of Law in Reply;
12. Affidavit in Reply with Exhibits A-C-2;
13. Memorandum of Law in Reply.

This is a hybrid Article 78/declaratory judgment action. Petitioners seeks remedies in the nature of mandamus and prohibition to compel state entities to investigate and prosecute petitioners' complaints of public corruption and ethics violations in government. They also challenge as unconstitutional the Ethics Commission Reform Act of 2022 ("ECRA"), the 2022-2023 New York State budget, the 2022-2023 Legislative/Judiciary Budget Bill, various appropriations made on behalf of the judiciary within the bill, and Public Officers Law (POL) § 108(2)(b). After commencing this proceeding with the filing of their verified petition, petitioners moved for a temporary restraining order and preliminary injunction to enjoin enactment of the ECRA. Following

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oral argument, the Court declined to issue a temporary restraining order and set a briefing schedule. Respondents then cross-moved to dismiss. In response, petitioners moved for sanctions, disqualification of counsel, recusal of the Court, summary judgment and other relief.

Petitioners ten causes of action center around respondent New York State Joint Commission on Public Ethics ("JCOPE") handling of various complaints petitioner Elena Sassower filed beginning in 2013 alleging breaches of public trust. The petition alleges that most recently, on or about April 13, 2022, Sassower filed a complaint with JCOPE claiming that the fiscal year 2022-2023 state budget and legislative and judiciary budget bills were unconstitutional. Sassower further claims that high-ranking public figures in state government conspired to adopt the ECRA in an effort to insulate themselves from public corruption investigations. The rationale cited in support of this assertion is petitioners' contention that once enacted, ECRA would dissolve JCOPE and in its place establish the Commission on Ethics and Lobbying in Government ("CELG"), a successor organization charged with the investigation of ethical conduct violations in government. Petitioners maintain that the jurisdiction conferred by ECRA to CELG is less than that of JCOPE and thus CELG will not be able to adequately investigate complaints of public corruption.

Petitioners further allege that JCOPE violated former Executive Law § 94(13)(a), which required JCOPE to send a letter to the complained-of subject named in a report within 15 days of receipt of such complaint. The statute stated that the letter shall set forth the sections of the law alleged to have been violated and provide a 15 day period for the subject to respond to the allegations with "evidence, statements and proposed witnesses." Petitioners maintain that JCOPE did not issue letters to the subjects named in their complaints because it "knew the ... public officers and employees would be unable to deny ... their [POL] § 74 violations." Petitioners point to the use of the word "shall" within the statute in support of their position that the statute imposes a nondiscretionary duty upon JCOPE and thus mandamus is the appropriate remedy. Lastly, petitioners contend that JCOPE's failure to issue the 15 day letters impaired its ability to properly investigate and detect procedural and substantive misconduct which renders the 2022-2023 state budget and the legislative and judiciary budget bill unconstitutional.

In support of their motion to dismiss and in opposition to the motion for a preliminary injunction, respondents contend that petitioners have failed to demonstrate a likelihood of success on the merits of their claims. Specifically, they maintain that petitioners lack standing to assert a challenge to JCOPE's purported violation of Executive Law § 94. Additionally, they maintain that several of petitioners' claims are time barred or have been rendered moot by enactment of ECRA on July 8, 2022. They further assert that mandamus and prohibition are unavailable because petitioners have not demonstrated an entitlement to a clear legal right. Lastly, they assert that petitioners' constitutional challenges to the state budget, budget bills and POL § 108(2)(b) must be dismissed as they fail to articulate allegations that, if taken as true, support their claims of unconstitutionality.

Petitioners seek recusal claiming that the Court demonstrated "actual bias" based on its denial of their July 7, 2022 application for a temporary restraining order. "A judge shall not sit as such in,

Respondent AG James' "Appendix of Unreported Cases" [R.309-344]

or take any part in the decision of, an action, claim, matter, motion or proceeding to which...he is interested..." Judiciary Law § 14. "Absent a legal disqualification under Judiciary Law § 14...a trial judge is the sole arbiter of recusal and his or her decision, which lies within the personal conscience of the court, will not be disturbed absent an abuse of discretion." *Kampfer v. Rase*, 56 AD3d 926 (3d Dept 2008) (internal quotation marks omitted). An allegation that a judge has previously ruled adverse to a party does not establish a statutory basis for recusal. See *Patrick UU. v. Frances VV.*, 200 AD3d 1156 (3d Dept 2021). The Court rejects petitioners' claim that it has a pecuniary interest in the outcome of this proceeding because the state budget has provisions governing judicial compensation. The same contention could be raised before any Justice of the Supreme Court presiding over this proceeding. Thus, this Court bears no unique self-interest in the outcome of this proceeding and can fairly and impartially adjudicate it on its merits. See *Ctr. for Jud. Accountability, Inc. v. Cuomo*, 167 AD3d 1406, 1408 (3d Dept 2018).

Where respondents to an Article 78 proceeding move to dismiss under CPLR § 7804(f), objections in point of law are limited to threshold objections of the kind listed in CPLR § 3211(a) which are capable of disposing of the case without reaching the merits. *Matter of Hull-Hazard, Inc. v. Roberts*, 129 AD2d 348 (3d Dept 1987). Furthermore, only the petition may be considered and all of its allegations must be deemed to be true. *Mattioli v. Casscles*, 50 AD2d 1013 (3d Dept 1975).

Initially, all claims asserted on behalf of petitioner Center for Judicial Accountability, Inc. must be dismissed as it is not represented by counsel. Excluding exceptions not relevant here, a corporation must appear in a civil action by attorney. CPLR § 321(a).

With respect to Sassower's remaining claims, her first and third causes of action must be dismissed for lack of standing. To have standing to challenge a governmental action, a petitioner must show: (1) injury in fact, meaning that the petitioner will actually be harmed by the administrative action; and (2) that the alleged injury falls within the zone of interests or concerns sought to be promoted or protected by the statutory provision under which the agency has acted. *New York State Ass'n of Nurse Anesthetists v. Novello*, 2 NY3d 207, 211 (2004). "As the term itself implies, the injury [in fact] must be more than conjectural." *Id.* "Tenuous and ephemeral harm ... is insufficient to trigger judicial intervention." *Id.* at 214. Here, Sassower asserts that, by failing to send the subjects of her complaints a 15 day letter informing them of the complaints and presenting the option to submit evidence to rebut her allegations, JCOPE was denied the proof that would have substantiated her claims of public corruption. Such allegations do not constitute injury in fact. Sassower's line of reasoning contemplates hypothetical harm too remote and speculative to confer standing. Moreover, the language of the former EL§ 94(13)(a) makes clear that the provision directing JCOPE to send a letter informing a subject of a pending complaint was enacted for the protection of the subject, not the complainant. Therefore, Sassower also lacks standing as she falls outside of the class of persons sought to be protected by the statute. Similarly, the third cause of action which seeks an order directing the appointment of a ninth member to the Legislative Ethics Commission (LEC) must be dismissed as Sassower fails to demonstrate that she has or will suffer an actual, tangible injury from the vacancy on the LEC.

Respondent AG James' "Appendix of Unreported Cases" [R.309-344]

Sassower's second cause of action seeking mandamus to compel JCOPE to file an annual report pursuant to the former EL § 94(9)(1)(i) detailing complaints received as well as their disposition has been rendered moot by the enactment of ECRA on July 8, 2022. By Sassower's own admission, ECRA abolished JCOPE and in its place established CELG. As JCOPE no longer exists, it cannot be compelled to file an annual report. Similarly, Sassower's fourth cause of action in the nature of mandamus to compel the LEC to issue annual reports for the years 2020 and 2021 is moot as the reports have been published on the organization's official website. As further judicial determination of these issues will not affect the rights of the parties, the claims are dismissed. See *Sportsmen's Tavern LLC v. New York State Liq. Auth.*, 195 AD3d 1557 (4th Dept 2021).

Sassower's fifth cause of action in the nature of mandamus to compel the Office of the Inspector General (OIG) to investigate her allegations of public corruption in state government also lack merit. "Mandamus to compel is available only to enforce a clear legal right where the public official has failed to perform a duty enjoined by law." *Matter of Glenman Indus. & Commercial Contr. Corp. v. New York State Off. of State Comptroller*, 75 AD3d 986 (3d Dept 2010). "Thus, mandamus does not lie to enforce the performance of a duty that is discretionary, as opposed to ministerial." *New York Civ. Liberties Union v. State*, 4 NY3d 175, 184 (2005). "A discretionary act involve[s] the exercise of reasoned judgment which could typically produce different acceptable results whereas a ministerial act envisions direct adherence to a governing rule or standard with a compulsory result." *Id.*, quoting *Tango v. Tulevech*, 61 NY2d 34, 41 (1983). Contrary to Sassower's assertion, EL § 53(1) does not impose a mandatory obligation upon the OIG to investigate each and every complaint it receives. "Whether a given provision in a statute is mandatory or directory is to be determined primarily from the legislative intent gathered from the entire act and the surrounding circumstances, keeping in mind the public policy to be promoted and the results that would follow one or the other conclusion." *989 Hempstead Turnpike, LLC v. Town Bd. of Town of Hempstead*, 67 Misc3d 1234(A), 4 (Sup Ct 2020), quoting Statutes Law § 171. Notwithstanding the legislature's use of the word "shall," the interpretation Sassower espouses would lead to an absurd result by obligating the OIG to waste time and public resources investigating allegations of corruption no matter how patently devoid of merit they may be on their face. Having found the complained-of governmental actions are discretionary in nature, Sassower cannot seek enforcement through mandamus.

As a matter of law, Sassower's sixth, seventh, eighth and ninth causes of action challenging the constitutionality of ECRA, the state budget and legislative and judicial budget bill fail to state a cause of action. A legislative enactment is entitled to a "strong presumption of constitutionality and...will be declared unconstitutional by the courts only when it can be shown beyond reasonable doubt that it conflicts with the Constitution after every reasonable mode of reconciliation of the statute with the Constitution has been resorted to, and reconciliation has been found impossible". *Harkenrider v. Hochul*, 38 NY3d 494, 509 (2022) (internal quotation marks omitted). "A party mounting a facial constitutional challenge bears the substantial burden of demonstrating that in any degree and in every conceivable application, the law suffers wholesale constitutional impairment. *Moran Towing Corp. v. Urbach*, 99 NY2d 443, 448 (2003) (internal quotation marks omitted). Here, Sassower alleges both procedural and substantive illegality in the budget approval process.

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Sassower's challenge to the constitutionality of "three people in the room" budget negotiations has previously been rejected by the Appellate Division, Third Department. See *Ctr. for Jud. Accountability, Inc.*, supra. To the extent that she asserts that the budget was unconstitutionally enacted, the petition makes only conclusory, unsupported allegations that unnamed members of the legislature violated various provisions of the state constitution. Moreover, "[t]he manner in which bills are voted out of committee is entirely determined by internal rules of proceedings, which article III, § 9 of the Constitution vests in each house of the Legislature." *Urban Justice Ctr. v. Pataki*, 38 AD3d 20, 30 (1st Dept 2006). "[I]t is not the province of the courts to direct the legislature how to do its work, particularly when the internal practices of the Legislature are involved." *Id.*, at 27 (internal quotation marks omitted). With respect to Sassower's substantive challenges to specific approvals for funding contained within the state budget and budget bills and the methodology employed to arrive at those figures, no court may substitute its judgment for that of the legislature in this regard. *Id.*, quoting *Saxton v. Carey*, 44 NY2d 545, 549 (1978) ("It is not 'a proper function of the courts to police the degree of itemization necessary in the State budget,' a task for which the courts 'are neither constituted, suited, nor, indeed, designed,' but rather 'is a decision which is best left to the Legislature'").

Finally, Sassower's tenth cause of action seeking to invalidate POL § 108(2)(b) as unconstitutional on its face and in its application must be dismissed. In support of her claims, Sassower merely asserts that the law conflicts with Art. 3, § 10 of the state constitution. Her pleadings fail to allege non-speculative facts legally sufficient to overcome the strong presumption of constitutionality of the statute. "The performance of legislative function requires the private, candid exchange of ideas and points of view among members of each political party concerning the public business to come before legislative bodies." *Urban Justice Center*, at 31. In this spirit, private discussions between members of the state legislature concerning the state budget are not violative of the state constitution or the Open Meetings Law. For similar reasons, Sassower's "as-applied" challenge to the statute fails as the petition lacks an analysis of facts specific to her particular claims to determine whether the application of a statute deprived her of a protected right. See *Field Day, LLC v. County of Suffolk*, 463 F3d 167 (2d Cir 2006). Wherefore, it is

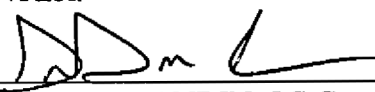
ORDERED that respondents' motion is granted and that the petition is dismissed. It is further

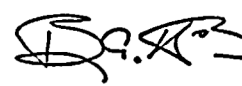
ORDERED that petitioners' cross-motion is denied.

The foregoing constitutes the decision and order of the Court. The signing of this decision and order shall not constitute entry or filing under CPLR §2220. Counsel is not relieved from the applicable provisions of that rule regarding notice of entry.

Dated: November 23, 2022
Kingston, New York

ENTER:


DAVID M. GANDIN, J.S.C.



Respondent AG James' "Appendix of Unreported Cases" [R.309-344]

Pursuant to CPLR §5513, an appeal as of right must be taken within thirty (30) days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty (30) days thereof.

Respondent AG James' March 26, 2024 No Fee Authorization [R.345-346]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

In the Matter of the Application of
CENTER FOR JUDICIAL ACCOUNTABILITY, INC.
and ELENA RUTH SASSOWER, individually and as
Director of the Center for Judicial Accountability Inc.,
acting on their own behalf and on behalf of the People
of the State of New York & the Public Interest,

Petitioners,

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

-against-

NEW YORK STATE COMMISSION ON
LEGISLATIVE, JUDICIAL, AND EXECUTIVE
COMPENSATION, KATHY HOCHUL and
ANTONIO DELGADO, in their official capacities as
Governor and Lieutenant Governor of the State of New
York, ROWAN WILSON and JOSEPH ZAYAS, in
their official capacities as Chief Judge and Chief
Administrative Judge of the State of New York,
ANDREA STEWART-COUSINS, in her official
capacity as Temporary Senate President, THE NEW
YORK STATE SENATE, CARL HEASTIE, in his
official capacity as Assembly Speaker, THE NEW
YORK STATE ASSEMBLY, LETITIA JAMES, in her
official capacity as the Attorney General of the State of
New York, and THOMAS DINAPOLI, in his official
capacity as Comptroller of the State of New York,

Respondents.

This office is exempt from the filing fee requirement pursuant to CPLR §8017
and Executive Law §161.

LETITIA JAMES

Attorney General of the State of New York

*Attorney for Respondents Kathy Hochul,
Antonio Delgado, Rowan Wilson, Joseph*

**NO FEE
AUTHORIZATION**

Index No. 902654-24

Respondent AG James' March 26, 2024 No Fee Authorization [R.345-346]

*Zayas, Andrea Stewart-Cousins, the New
York State Senate, Carle Heastie, the New
York State Assembly, Letitia James, and
Thomas DiNapoli*

The Capitol
Albany, New York 12224

By: s/ *Noah C. Engelhart*

Noah C. Engelhart
Assistant Attorney General, of Counsel
Telephone: (518) 776-2701
Fax: (518) 915-7740 (Not for service of papers)

TO: Elena Ruth Sassower
Petitioner Pro Se
(Via NYSCEF)

Center for Judicial Accountability, Inc.
Petitioner
(Via NYSCEF)