Appellate Division Docket #CV-24-1608

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

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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,

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 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.

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

RECORD ON APPEAL

Volume II [R.347 – R.776]

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 .

SUPREME COURT OF STATE OF NEW YORK
COUNTY OF ALBANY

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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

Petitioners' March 29, 2024 Reply Affidavit in Further Support of Order to Show Cause & for Oral Argument & Evidentiary Hearing

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:

1. I am the unrepresented individual petitioner/plaintiff,[1] fully familiar with all the facts, papers, and proceedings herein.

2. This affidavit is submitted to comply with the March 19, 2024 signed order to show cause of Part 1 Duty Judge Justice Christina Ryba (NYSCEF #17) which made petitioners' March 18th order to show cause returnable at 9:30 am on March 29th, with respondents' answering papers to be served by March 27th and petitioners' reply papers by March 29th, presumably by 9:30 am.

3. As was the case at the March 21st oral argument on the TRO (Exhibit A), Respondent Attorney General James is representing herself and all respondents, except the Commission on Legislative, Judicial and Executive Compensation – and appears by Assistant Attorney General Noah Engelhart "of counsel".

4. On March 26th, AAG Engelhart made a cross-motion "to dismiss the Verified Petition/Complaint in its entirety", pursuant to "CPLR 3211(a)(2), CPLR 3211(a)(7), CPLR 7804(f) and CPLR 3001", returnable on April 12th, "on submission only", with petitioners' answering papers due April 5th, by a notice of cross-motion which inconsistently stated, at the top, across from the caption, "Return Date: March 29, 2024" (NYSCEF #28). Embodied in this cross-motion, and not separately presented, is respondents' opposition to the order to show cause (NYSCEF #29, #30, #31).

5. Within half an hour after receipt of AAG Engelhart's cross-motion, *via* NYSCEF, and review thereof, I called the Clerk's Office to ascertain what my obligations were *vis-à-vis* the March 29th return date for my order to show cause. In the absence of any clear response from Clerk Amy Sercese, other than surprise that AAG Engelhart's cross-motion was not, in fact, returnable on March 29th, I stated I would file an affidavit identifying that respondents had not interposed opposition

[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.

papers for the March 29th return date, but, rather, had made a March 26th cross-motion, returnable April 12th, requiring my answering papers by April 5th, which I was in process of preparing.

6. I further stated that AAG Engelhart's opposition to petitioners' order to show cause, embodied in his cross-motion, was frivolous and deceitful, and that I would, at least preliminarily, set forth same in my March 29th reply affidavit. This I now do, modifying the description of AAG Engelhart's opposition to more accurately reflect what it is: fraudulent and "fraud upon the court".

7. The below more than suffices for the granting of the relief sought by the order to show cause that Justice Ryba signed on March 19th (NYSCEF #17) – and I reiterate petitioners' request, appearing in their March 18th proposed order to show cause (NYSCEF #13), which she deleted, without a trace:

> "UPON ORAL ARGUMENT, the parties shall be ready to proceed to an EVIDENTIARY HEARING, with testimony taken, from the witness stand, under oath."

* * *

Respondents' Opposition to the Three-Fold Threshold Relief Sought by Petitioners' Order to Show Cause is Fraudulent

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.

9. **As to petitioners' first branch of requested threshold relief**, stated, in the order to show cause as:

> "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",

the facts and law are presented at ¶¶2-6 of my March 18th moving affidavit (NYSCEF #14).

10. Point I of AAG Engelhart's memorandum of law (pp. 3-4) pertains to this first branch. Titled "Petitioners are Not Entitled to a Transfer to Federal Court", it conceals, totally, the basis for the requested transfer, *to wit*, that ALL New York State justices and acting justices are divested of jurisdiction by Judiciary Law §14 by reason of their direct financial and other interests and "rule of necessity" cannot be invoked because it requires jurisdiction, which the statute removes. He, thereby, concedes, *as a matter of law*, that transfer is required because of the absence of jurisdiction in the state forum – and would face no bar. Indeed, it is only in his third paragraph that AAG Englehart even mentions Judiciary Law §14 and "rule of necessity", but NOT revealing any jurisdictional issue pertaining to them – and concealing that the Appellate Division, Third Department's decision in *CJA v. Cuomo…DiFiore*, 167 A.D.3d 1406, on which he would have the Court rely for the proposition that "Petitioners' argument that Judiciary Law §14 prevents New York courts from hearing this matter is unavailing" and "by necessity permits New York State judges to hear the present matter by Petitioners as well" did not rule on any jurisdictional issue pertaining to Judiciary Law 14 and "rule of necessity". This, notwithstanding I alerted AAG Engelhart to this at the March 21st oral argument on the TRO (Exhibit A, pp. 23-25), when he put forward the Appellate Division's *CJA v. Cuomo…DiFiore* decision in words nearly identical to those of his Point I (Exhibit A, pp. 10-12).

11. Of course, neither at the oral argument – or here – does AAG Engelhart reveal that all decisions in *CJA v. Cuomo…DiFiore* are fraudulent, so-identified by ¶7 of the verified petition, with the proof furnished by its linking to the lawsuit record, and echoed by ¶8 of my moving affidavit in support of the order to show cause.

12. The *CJA v. Cuomo…DiFiore* record contains my "legal autopsy"/analysis of the Appellate Division decision that supported petitioners' March 26, 2019 letter to the Court of Appeals in support of their appeal of right – and both are annexed hereto as Exhibits B-1 and B-2,

respectively, and incorporated by reference. The portions of the decision that AAG Engelhart excerpts for the third paragraph of his Point I are rebutted at pages 7-11, virtually line-by-line – with my overview of how the Appellate Division concealed the Judiciary Law §14 jurisdictional issues with respect to itself, set forth at pages 1-3.[2] The accuracy of all these pages – and the balance of the "legal autopsy/analysis" – has never been denied or disputed by anyone, in any respect

13. **As to petitioners' second branch of requested threshold relief**, stated, in the order to show cause as:

> "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",

the facts and law are presented at ¶¶7-10 of my March 18th moving affidavit (NYSCEF #14).

14. Point II of AAG Engelhart's memorandum of law (pp. 4-6) pertains to this second branch. Titled "Petitioners are Not Entitled to Representation by the Office of The New York Attorney General", it conceals, totally, the basis for petitioners' entitlement, *to wit*, petitioners' January 18, 2024 Opposition Report (NYSCEF #6), whose "most cursory examination" makes obvious:

> "there is NO DEFENSE to its demonstration of statutory violations and fraud by the Commission…[and that] [b]ased thereon, petitioners have an open-and-shut, summary judgment to the relief their verified petition seeks."

15. AAG Engelhart's Point II makes no mention of the Opposition Report, let alone dispute the accuracy of its content, thereby conceding, *as a matter of law*, that it mandates the Attorney General's representation/intervention pursuant to Executive Law §63.1 and State Finance Law, Article 7-A. As to these provisions, his Point II conceals:

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[2] Further substantiating that recitation is petitioners' November 27, 2018 order to show cause to the Appellate Division, Third Department, signed on December 3, 2018, which was Exhibit B to the "legal autopsy"/analysis – and included herein as part of B-1.

- that Executive Law 63.1 makes the AG's litigation posture, either to "Prosecute" or "defend", contingent on "the interest of the state";

- that State Finance Law, Article 7-A, in four separate places, expressly contemplates that that the AG will either be a plaintiff or participate on behalf of plaintiffs. (§123-a(3), §123-c(3), §123-d, §123-e(2)).

16. AAG Engelhart does not claim that the AG made ANY determination as to the "interest of the state", stating only:

> "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))."

17. The "authoriz[ation]" of Executive Law §63.1 and Executive Law §71.1 does NOT extend to defense where there is NO "merits" defense – and evident from the Opposition Report is that there is "NO DEFENSE to its demonstration of statutory violations and fraud by the Commission. Indeed, nowhere in his memorandum does AAG Engelhart defend the statutory violations that the Opposition Report particularizes as committed by the Commission, let alone those which are conditions precedent for "force of law" salary increase recommendations, listed at ¶33 of petitioners' first cause of action. This precluded the Attorney General from defending the "State officers" herein sued, pursuant to Executive Law §63.1.

18. That AAG Engelhart does not purport that the AG's defense of respondents is "in the interest of the state", as Executive Law §63.1 mandates, is because it is NOT. Rather, it is founded on her huge self-interest in covering up the AG's role in the flagrant judicial corruption that findings of fact and conclusions of law as to the Opposition Report would expose. As stated by my moving affidavit:

> "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."

19. AAG Engelhart's concealment of any conflicts of interest involving the Opposition Report concedes them, *as a matter of law* – and the record of both *CJA v. Cuomo…DiFiore, et al.* and *CJA v. JCOPE, et al.* establishes the conflicts of interest, resoundingly.

20. Of course, were AG Engelhart to have confronted the record of those two lawsuits, he could not, as he does, put forward the decisions in each of them as authority on which this Court can rely. Thus, he ends his Point II, as he does his Point I, by citing to the Appellate Division decision in *CJA v. Cuomo…DiFiore*, for the proposition that "the Third Department addressed these same arguments of Petitioners and found them to be without merit".

21. Once again, dispositive of the fraud of the Appellate Division *CJA v. Cuomo…DiFiore* decision – and of the fraud AAG Engelhart commits by his quotation of sentences from it for his Point II – is my "legal autopsy"/analysis (Exhibit B-1), whose pages 11-13 of particulars has never been denied or disputed by the AG or anyone else.

22. **As to petitioners' third branch of requested threshold relief**, stated, in the order to show cause as:

> "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",

the facts and law are presented at ¶10 of my March 18th moving affidavit (NYSCEF #14), stating, in its two-sentence entirety:

> "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."

23. Points III, IV, and V[3] of AAG Engelhart's memorandum of law (pp. 6-21) pertain to this third branch and are titled, respectively,

> "Petitioner Fails to Demonstrate a Likelihood of Success on the Merits by Clear and Convincing Evidence" (pp. 6-19);
>
> "Petitioners Cannot Establish Irreparable Harm" (pp. 19-20);
>
> "A Balancing of the Equities Does Not Tip in Petitioners' Favor and Injunctive Relief is Not in the Public Interest" (pp. 20-21).

Common to all three Points, in addition to their concealment, *in toto*, of the content of petitioners' Opposition Report, or virtually, so, is their falsification of the fact that the April 1, 2024 judicial salary increases recommended by the Commission's December 4, 2023 Report will take effect, automatically, by "force of law", on that date.

24. Thus, the very first sentence of AAG Engelhart's Point III (at p. 6) begins by purporting that petitioners have requested: "a stay on the adoption of a December 4, 2023 Report by Respondent Commission…" – repeating the comparable falsehood in his "Preliminary Statement" (at p. 1) that petitioners seek an order which "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…" Such is the basis for AAG **Engelhart's first section of Point III: "A. Petitioners' claims are not ripe" (pp. 6-7)**, wherein he states:

> "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 SENAE BILL S8301 (last visited March 20, 2024), https://ww.nysenate.gov/legislation/bills/223/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." (underlining added).

25. This is false. The referred-to "ultimate effect" of the Commission's December 4, 2023 Report is NOT to "increase judicial salaries" through "passage of legislation based on that report", but, automatically, by "force of law", effective April 1, 2024, as stated by the petition, the signed order to show cause, and my moving affidavit – and as is explicit from §3.7 and §4 of Chapter 60, Part E, of the Laws of 2015 (NYSCEF #2) .

26. Indeed, IRRESPECTIVE of whether the $34.6M appropriation for the judicial salary increases in Legislative/Judiciary Budget Bill #S.8301/A.8801 is removed by the "three person in a room" behind closed doors" amending of budget bills, now taking place, the judicial salary increases will take effect, automatically, on April 1, 2024, by "force of law", pursuant to Chapter 60, Part E, of the Laws of 2015. And they will be paid out by the Judiciary *via* the "interchange" provision within §2 of Legislative/Judiciary Budget Bill #S.8301/A.8801, which, directly under the word "SCHEDULE" (at p. 12) states:

> "Notwithstanding any provision of law, the amount appropriated for any program or fund within a major purpose within this schedule may be increased or decreased in any amount by interchange with any other program or fund in nay other major purpose, or with any appropriation in section three of this act, with the approval of the chief administrator of the courts."

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[3] This Point V is erroneously identified by AAG Engelhart's memorandum of law as Point III.

27. Tellingly, although AAG Engelhart's "Petitioners' claims are not ripe" subsection seemingly pertains to both petitioners' first and second causes of action, his final single sentence paragraph is confined to the second cause of action only, stating:

> "Therefore, to the extent that Petitioners challenge appropriations found in either bill as unconstitutional or unlawful is clearly premature and Petitioners claims must be dismissed as not ripe for judicial review." (p. 7).

28. The further sections and subsections of AAG Engelhart's Point III (pp. 7-19) are, like its section A, all non-merits, non-substantive, technical objections, likewise founded on fraud and deceit.

29. **AAG Engelhart's "B. Petitioners lack standing" subsection (pp. 7-10)** starts with the deceit:

> "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)."

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)."

30. AAG Engelhart then follows by fraudulently asserting that petitioners do not have citizen-taxpayer standing under State Finance Law §123-b – accomplishing this through the factual falsehoods that they are challenging:

> "broad policy decisions by the Legislature and a Report generated by Respondent Commission rather than a specific unlawful expenditure…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 expenditure of money allegedly based on that activity".

This is a total LIE. The petition (NYSCEF #1) does not challenge "broad policy decisions by the Legislature". Rather, its first cause of action seeks enforcement of the "broad policy decisions" the Legislature and Governor made in enacting Chapter 60, Part E, of the Laws of 2015 (NYSCEF #2), with conditions precedent for the Commission's "force of law" salary increase recommendations, with its second cause of action seeking to strike the $34.6M appropriation in Legislative/Judiciary Budget Bill #S.8301/A.8801 based on the Report.

31. Interwoven in this section is AAG Engelhart's fraud (at p. 8) that petitioners' second cause of action rests on "conclusory claims" that Legislative/Judiciary Budget Bill #S.8301/A.8801 is "the product of fraud and flagrant violations of Chapter 60, Part E, of the Laws of 2015" which "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)" – brazenly falsifying the fact-specific, full-documented content of petitioners' January 18, 2024 Opposition Report (NYSCEF #6).

32. He then tops this with a further brazen fraud (at pp. 9-10) as to the Commission's compliance, by its December 4, 2023 Report, with Chapter 60, Part, E of the Law of 2015, stating:

> "…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 […] judges and justices of the state-paid courts of the unified court system […].' L.2015, ch 50 (sic), Part E. That is precisely what Respondent appears to have done in this case." (underlining added).

33. The foregoing assertion by AAG Engelhart is part of an additional fraud that:

> "Petitioners are not within the 'zone of interests' protected by the statute that said appropriations allegedly violate… 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." (pp. 9-10, underlying added).

In other words, he transmogrifies the Commission's flagrant violations of Chapter 60, Part E, of the Laws of 2015, as demonstrated by petitioners' Opposition Report, into their "disagree[ment]" with the recommendations of the Commission" to make his fraudulent argument that the statute does not provide them with protections they can enforce.

34. **AAG Engelhart's "C. All claims brought by Petitioner CJA must be dismissed" subsection (p. 10)**, is of no consequence – and shameful. Quite apart from the fact that 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, all claims alleged in the petition on behalf of the CJA are also alleged on my behalf, making dismissal of CJA's claims "of little practical consequence". *Cf.*, Cass v. New York, 88 AD2d 305, 308 (3rd Dept. 1982), dismissal of action against the state as being "a result of little practical consequence since the two State officers [Comptroller and Chief Administrative Judge of the courts] remain as parties defendants."

35. **AAG Engelhart's "D. Petitioners have failed to state a cause of action against Stewart-Cousins, N.Y. Senate, Heastie, N.Y. Assembly, Hochul, Delgado, Wilson, Zayas, James, and DiNapoli" (pp. 10-14)** is divided into four subsections for the different groups of respondents, each materially false and misleading and each with the following identical assertions, adjusted only to reflect the different respondent groups:

"1. Respondents Stewart-Cousins, N.Y. Senate, Heastie, and N.Y. Assembly" (pp. 10-11)

> "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 a ministerial act. *See, e.g.*, *N.Y. Civil Liberties Union v. State*, 4 N.Y.3d 175, 184 (2005)." (at p. 11);

"2. Respondents Hochul and Delgado" (pp. 11-12)

> "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)." (at p. 12);

"3. Respondents Wilson and Zayas" (pp. 12-13)

> "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)" (at p. 13);

"4. Respondents James and DiNapoli" (pp. 13-14)

> 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 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)."

36. There is nothing "discretionary" about the checks and balances, oversight duties sought to be enforced by this Article 78 proceeding – starting with VOIDING the Commission's December 4, 2023 Report, based on petitioners' January 18, 2024 Opposition Report – and the only

way AAG Engelhart is able to make such fraudulent claim is by concealing, totally, the content of the Opposition Report – and such specific facial violations of Chapter 60, Part E, of the Laws of 2015 by the Commission's Report as are set forth at ¶33 of the petition.

37. Thus, in AAG Engelhart's subsection 1 (pp. 10-11), pertaining to the legislative respondents, he mentions petitioners' Opposition Report not at all. In subsection 2 (pp. 11-12), pertaining to Respondents Hochul and Delgado, AAG Engelhart disregards the petition's ¶20, reflecting that petitioners furnished the Opposition Report to Respondent Delgado, and conceals the entire content of the Opposition Report in stating:

> "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), 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."

In subsection 3 (pp. 12-13), pertaining to Respondents Wilson and Zayas, AAG Engelhart also disregards the petition's ¶20, reflecting that petitioners furnished the Opposition Report to Respondent Zayas, and conceals the entire content of the Opposition Report in stating:

> "The fact that Judge Wilson did not take action in response to Petitioners' report is not a basis for any cognizable cause of action."

In subsection 4 (pp. 13-24), pertaining to Respondents James and DiNapoli, AAG Engelhart likewise conceals the entire content of the Opposition Report, in stating:

> "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."

38. As for *N.Y. Civil Liberties Union v. State*, 4 N.Y.3d 175, 184 (2005), repetitively cited by AAG Engelhart for the proposition that petitioners are not entitled to mandamus relief, it establishes just the opposite, stating:

> "Inasmuch as plaintiffs seek to test the action or inaction of a public officer, their sole available remedy lies, as the courts below held, in a CPLR article 78 proceeding seeking mandamus to compel. Mandamus is available, however, only to enforce a clear legal right where the public official has failed to perform a duty enjoined by law (*see* CPLR 7803; *Matter of Legal Aid Socy. of Sullivan County, Inc. v. Scheinman,* 53 NY2d 12, 16). Thus, mandamus does not lie to enforce the performance of a duty that is discretionary, as opposed to ministerial (*see Matter of Brusco v. Braun,* 84 NY2d 674, 679). 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' (*Tango v. Tulevech,* 61 NY2d 34, 41)."

39. Petitioners' January 18, 2024 Opposition Report does not permit "different acceptable results". It allows for only one – the VOIDING of the Commission's December 4, 2023 Report, *as a matter of law*, based on its flagrant violations of Chapter 60, Part E, of the Laws of 2015.

40. Presumably, it is for this reason that the Commission, though given notice of this lawsuit, has dodged service (NYSCEF #22) – aided and abetted by the other respondents, most especially Respondent AG James and her "of counsel" AAG Engelhart. Petitioners are plainly entitled to mandamus as to the Commission, pursuant to CPLR §7803(1): "whether the body or officer failed to perform a duty enjoined upon it by law" – and, additionally, to the certiorari relief of CPLR §7803(3): "whether a determination was made in violation of lawful procedure, was affected by an error of law…" – and, here again, there are no "different acceptable results" to the question.

41. Finally, in purporting that petitioners have no cause of action against AAG Engelhart's clients for their wilful failure to discharge their checks-and-balances, constitutional oversight duties, based on petitioners' January 18, 2024 Opposition Report – this being their first cause of action which, as reflected by the petition's "Prayer for Relief", seeks declarations not just

pursuant to Article 78, but CPLR §3001 – AAG Engelhart's does not cite to or discuss CPLR §3001. Indeed, it is only in his notice of cross-motion, which seeks dismissal of the complaint, pursuant thereto, and in his skimpy final "Cross-Motion to Dismiss" section of his memorandum of law (pp. 21-22) that he references it – completely ignoring that "dismissal" pursuant to CPLR §3001 is improper. As stated in New York Practice, Siegel/Connors (6th ed. 2018) §440:

> "If a plaintiff in an ordinary action fails to establish entitlement to relief, the result is a dismissal of the complaint. In a declaratory action, 'the court should make a declaration, even though the plaintiff is not entitled to the declaration he seeks'.[fn1] A mere dismissal is not appropriate.[fn2] The court must determine the rights of the parties to the dispute involved and, if the defendant prevails, the declaration should simply go the defendant's way.[fn3]"

42. Suffice to add that IF, as it appears from AAG Engelhart's memorandum of law that his position is that the respondents he represents have NO checks-and-balances, constitutional oversight duties with respect to the Commission's "force of law" salary increase recommendations, such would be unconstitutional, as expressly stated at ¶34 of the petition – and I furnished him with legal authority for that proposition at the March 21st oral argument on the TRO in response to his similar seeming argument (Exhibit A, pp. 21-22) – such authority being the decisions in *CJA v. Cuomo…DiFiore* and *Delgado v. State of New York*, most importantly, the concurring opinion of then Associate Judge Wilson at the Court of Appeals in *Delgado*, upholding constitutionality based on oversight safeguards, such as the furnishing of a report to the Legislature and the Governor and "strict scrutiny of compliance with the statutes" by the courts.

43. **AAG Engelhart's "E. Respondents Hochul, Delgado, Stewart-Cousins, and Heastie have legislative immunity" (pp. 14-15)** conceals and misrepresents the clearly-stated basis of their being sued – the subject of the petition's first cause of action – and conceals the law pertaining to legislative immunity and the Speech and Debate Clause.

Thus, in *People v. Ohrenstein*, 77 N.Y.2d 38 (1990), the Court of Appeals stated:

> "Historically the Speech or Debate Clause serves to preserve the integrity of the Legislature by preventing other branches of government from interfering with legislators in the performance of their duties. But no matter how far the immunity may extend under the State Constitution, it cannot be said that it was intended to provide a sanctuary for legislators who would defraud the State…". (at p. 54).

And, in a dissent on other grounds, Judge Simon noted:

> "Legislators are trustees of the public treasury. They may appropriate and spend State funds to the extent authorized, but if they do so to benefit themselves or others personally, they commit a crime." (at p. 64).

In *Larabee v. Governor*, 65 AD3d 74, 90-91 (2009), the First Department rejected the Speech and Debate Clause defense of the Senate and Assembly defendants, stating, in pertinent part:

> "We find that legislative immunity is unavailable to shield defendants from plaintiffs' separation of powers claim. Since no member of the Legislature has been named a defendant in his or her individual capacity, we need not be concerned with the historical and entirely appropriate concern that a legislator might be harmed by the prospect of civil or even criminal liability as a consequence of his or her unfettered discharge of legislative duties." (at p. 91, underlining added).

In so-holding, the First Department had before it the argument against the Speech and Debate Clause defense put forward by the judges, who were the plaintiffs, and of *amici* such as then Chief Judge Kaye and the Unified Court System Court, whose October 23, 2008 brief (at p. 39) included the following:

> "The Chief Judge's and Judiciary's salary-inadequacy claim under the separation-of-powers doctrine, as well as the Compensation Clause claims in this case and in *Kaye v. Silver*…straightforwardly allege that legislative and executive actions and inactions themselves violate the State Constitution. That, of course, is exactly the sort of straightforward 'judicial review of legislative acts' that unquestionably '[l]egislative immunity does not…bar.' *Powell*, 395 U.S. at 503…."

44. At bar, Respondents Hochul, Delgado, Stewart-Cousins, and Heastie are not named in their individual capacities in petitioners' "straightforward" challenge to the constitutionality and lawfulness of their inaction in face of petitioners' January 18, 2024 Opposition Report. Nor would dismissal as to Respondents Stewart-Cousins and Heastie have any practical effect, as they are part

of Respondents Senate and Assembly, as to which AAG Englehart does not assert a Speech and Debate Clause defense.[4]

45. As for AAG Engelhart's attempt to extend Speech and Debate Clause immunity to Respondents Hochul and Delgado, this is fashioned on falsifying the basis of their being sued, having nothing to do with any "legislative functions" on their part, but, as reflected by the petition's first cause of action, on their wilful and deliberate violation of their mandatory checks and balances, constitutional, oversight duties upon being furnished with petitioners' Opposition Report.

46. **AAG Engelhart's "F. Respondents Wilson and Zayas have judicial immunity" (pp. 15-17)** conceals and misrepresents the basis of their being sued – as embodied in the petition's first cause of action – namely, their failure to discharge constitutional, check-and-balances, constitutional, oversight duties, mandated by petitioners' January 18, 2024 Opposition Report, with which they were presented.[5] Judges have no immunity from lawsuits, in their official capacity, brought by Article 78 or for declaratory judgments.

47. **AAG Engelhart's "G. Petitioners fail to state a cause of action based on the Legislature's alleged failure to follow protocol" (pp. 17-18)** is fraudulent. Petitioners have brought no cause of action based thereon – and the Appellate Division decision in *CJA v. Cuomo…DiFiore* and the unpublished November 23, 2022 Supreme Court decision in *CJA v.*

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[4] As stated by the Court of Appeals in *Maron v. Silver*, 14 NY3d 230 (2010), which consolidated *Larabee* with two other lawsuits brought by judges for judicial pay raises:

> "The Speech or Debate Clause applies to only 'members' and to 'any speech or debate in either house.' Nowhere does the Clause state that such immunity applies to either house of the Legislature as a whole, and therefore, it does not apply to the Assembly or the Senate. ...' (at p. 257)."

[5] Despite the fact that Respondent Zayas' fraud, by his advocacy before the Commission, is chronicled by the Opposition Report – which is part of the petition, so-identified by its footnote 2 – AAG Engelhart falsely presents Respondent Zayas here and in his Point III(D)(3) (at p.4) as having no connection to the subject matter of the lawsuit.

JCOPE, et al. al., to which he refers the Court in support, are frauds,[6] as he knows from the Opposition Report, the petition, and my January 18, 2024 moving affidavit in support of petitioners' order to show cause.

48. **AAG Engelhart's Point IV "Petitioners Cannot Establish Irreparable Harm (pp. 19-20)**, is fraudulent, not only concealing that the Commission's December 4, 2023 Report will result in "force of law" judicial salaries increases for New York's judges on April 1, 2024, but making NO assertion that monies paid out, pursuant thereto – including from the $34.6M appropriation in Legislative/Judiciary Budget Bill #S.8301/A.8801 – will be fully recompensed to the state. This, notwithstanding the final words of my March 18, 2024 moving affidavit in support of the order to show cause:

> "injunctive relief is warranted to avoid the slightest possibility of any unrecoverable financial loss to the state resulting from disbursement." (¶10).

49. Suffice to add that the extent of what AAG Engelhart here has to say about the Opposition Report – without, in fact mentioning it, is by the following:

> "The Report claimed 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." (at p. 20).

50. **AAG Engelhart's Point V "A Balancing of the Equities Does Not Tip in Petitioners' Favor and Injunctive Relief is Not in the Public Interest" (pp. 20-21)** is based on the fraud that petitioners are "attempting to strike down a statute as facially unconstitutional", which they are not – and upon concealing my assertion as to the equities, stated at ¶10 of my March 18, 2024 moving affidavit as:

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[6] AAG Engelhart includes the November 23, 2022 decision in *CJA v. JCOPE, et al.* in his "Appendix of Unreported Cases" (**NYSCEF #31**) – and petitioners' rebuttal thereto, linking to my "legal autopsy"/analyses of its four included decisions is Exhibit C hereto.

> "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"

and which I comparably reiterated at the oral argument:

> "Now, as far as the equities, the judges, who are the beneficiaries of the pay raises, procured [the December 4, 2023] Report through their fraud and that's been demonstrated by the Opposition Report." (Exhibit A, p. 23) –

the truth of which AAG Engelhart has not denied.

51. Notably, AAG Engelhart here concedes a constitutional duty that he elsewhere does not acknowledge, as he states:

> "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." (at p. 21).

52. I will have more to say concerning the foregoing in my opposition papers to AAG Engelhart's March 26th cross-motion to dismiss the petition, which, pursuant to the notice of cross-motion (NYSCEF #28), will be served by April 5th, seven days before the designated April 12th return date.

ELENA RUTH SASSOWER

March 29, 2024
White Plains, New York

TABLE OF EXHIBITS

Exhibit A: Transcript of March 21, 2024 oral argument before Part 1 Duty Judge/Justice Christina Ryba on petitioners' order to show cause for a TRO

Exhibit B-1: Petitioners' "legal autopsy"/analysis of the Appellate Division, Third Department's December 27, 2018 decision in *CJA v. Cuomo…DiFiore*, accompanying their March 26, 2019 letter to the Court of Appeals in support of their appeal of right – with its Exhibit B November 27, 2018 order to show cause to the Appellate Division, Third Dept., signed December 3, 2018

Exhibit B-2: Petitioners' March 26, 2019 letter to the Court of Appeals in support of their appeal of right in *CJA v. Cuomo…DiFiore*

Exhibit C: Rebuttal to AAG Engelhart's "Appendix of Unreported Cases" (NYSCEF #31)

Ex. A to Petitioners' March 29, 2024 Reply Affidavit in Further Support of OSC [R.368-399]

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ALBANY

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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~~,

Petitioner(s)/Plaintiff(s),

-ag- Index # 902654-24

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,

Respondent(s)/Defendant(s).

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(Oral Argument)

ALBANY COUNTY COURTHOUSE
16 Eagle Street
Albany, New York 12207
March 21, 2024

BEFORE: THE HONORABLE CHRISTINA L. RYBA; JSC.
Justice of the Supreme Court

APPEARANCES: Elena Ruth Sassower
Pro-Se Plaintiff/Petitioner

(Appearances continued on the next page)

JC Conrow
New York State Senior Court Reporter

NEW YORK STATE
OFFICE of the ATTORNEY GENERAL
Attorneys for the Defendants
The Capitol
Albany, New York 12224-0341
BY: NOAH ENGELHART, ESQ.

THE COURT: Good afternoon.

We're here, this afternoon, in the matter of Center for Judicial Accountability, Incorporated 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, as petitioners, against New York State Commission on Legislative Judicial and Executive Compensation, Kathy Hochul and Antonio Delgado, in their official capacities, Rowan Wilson and Joseph Zayas, in their official capacities, Andrea Stewart-Cousins, Carl Heastie, in his official capacity, Letitia James, in her official capacity, and Thomas DiNapoli in his official capacity.

Can you, please, state your names and who you represent, starting with petitioner.

MS. ~~MISS~~ SASSOWER: I am the unrepresented individual petitioner/plaintiff, Elena Sassower, individually, and on behalf of the People of the State of New York, and the public interest.

I'm not represented nor the corporate plaintiff/petitioner.

THE COURT: Thank you.

Mr. Engelhart.

MR. ENGELHART: Good afternoon, Your Honor.

Assistant Attorney General Noah Engelhart, 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.

THE COURT: You also represent the New York State Commission on Legislative, Judicial and Executive Compensation?

MR. ENGELHART: Your Honor, at this time, I do not. Our office is not aware whether or not that commission has been served, or been provided notice of that lawsuit, Regardless of that service, or notice, we have not received a request for representation, from any individual who, or from the entity, or the commission itself, so, as of this time, I cannot represent to you that I'm appearing on behalf of the commission.

THE COURT: Thank you.

And before we begin, chambers received an e-mail from an individual named ~~Prionka (ph)~~ Priyanka Parity ~~(ph)~~ Pariti. She indicates that she would like to

attend this oral argument in her capacity as somebody who -- let me just look at her e-mail clearly. She claims she's part of the claim that's been filed and would like to observe this oral argument.

Does either of you have an objection to her observing the oral argument this afternoon?

MS. SASSOWER: I have no objection. It was about her case, that I spoke before the Commission on Legislative, Judicial and Executive Compensation, handing up evidence, at that time, and, subsequently, as well, to the Commission on Legislative, Judicial and Executive Compensation, so she is part of the Opposition Report, which is the document, exhibit E, on which the verified petition complaint rests.

THE COURT: All right.

Mr. Engelhart, do you have an objection to her watching the oral argument?

MR. ENGELHART: No, Your Honor.

I would defer to the Court on the matter.

THE COURT: I'm going to let her watch the oral argument. We're going to pause for a minute to get her connected to this Teams, all

right?

We will be right back.

(Whereupon a brief recess was taken.)

THE COURT: Back on the record.

I just want to remind everybody, who is in the Teams, that, unless you are speaking, please, mute yourself, and only ~~Miss~~ Ms. Sassower and Mr. Engelhart will be doing oral argument today, there will be no other commentary.

So, ~~Miss~~ Ms. Sassower, since it is your order to show cause, that you filed, I'm going to give each side 10 minutes to place their arguments on the record.

We will begin with you.

Would you like to reserve any of your time, Miss Sassower?

MISS SASSOWER: Yes. I'd like to preserve five minutes.

But, before I begin, there is a threshold issue --

THE COURT: Okay.

MISS SASSOWER: -- as to the authority.

THE COURT: ~~Miss~~ Ms. Sassower, please, before you begin, you have 10 minutes, so that

will be part of your 10 minutes. We're going to reserve 5.

So you may proceed.

Lori, please keep the time, thank you.

MISS SASSOWER: Okay.

Mr. Engelhart purports to be representing all of the respondents, except for the Commission on Legislative, Judicial and Executive Compensation, because, with respect to the Commission, he's not even sure that they have been served.

Is Mr. Engelhart not aware that I attempted to make service at the Attorney General's Office, at, about, 1:15 this afternoon, and it was declined?

THE COURT: All right.

So, basically, you need to argue, so this is not a time to ask questions. We're on the record.

Ms. ~~MISS~~ SASSOWER: But, but --

THE COURT: What I was saying is that, you need to put your arguments on the record. If you are arguing something about service you can state it on the record. This is not a time to ask each other questions --

MS SASSOWER: Okay.

THE COURT: -- this is oral argument. Please proceed. Thank you.

MS SASSOWER: The entitlement here, of the petitioners, to a TRO, to a preliminary injunction, is because there is no defense to the January 18th Opposition Report on which this lawsuit rests. The Report of the Commission on Legislative, Judicial and Executive Compensation here challenged is statutorily violative, fraudulent, unconstitutional and so - demonstrated.

The attorney general, and all of the respondents, have had two months in which to verify the facts set forth. They have not denied or disputed its sufficiency, its overwhelming sufficiency. There is no basis for the attorney general to be representing -- the attorney general's duty rests on executive law 63.1,

And it is to either prosecute or defend, depending upon the interest of the state. Likewise, under the citizen's taxpayer statute, the attorney general is recognized as having the ability to come in, as a plaintiff, to intervene on behalf of plaintiffs. There is no defense here to the Opposition Report, to the showing.

We have a summary judgment entitlement. There is no state interest.

Unless Mr. Engelhart disputes the summary judgment entitlement, to the voiding of the Report of the Commission on Legislative, Judicial and Executive Compensation, and striking of the appropriation, in the legislative judiciary bill, to fund the pay raises of 34.6 million dollars, unless he has some merits defense, any defense, to the Opposition Report, to show ~~it~~ its ~~is~~ ing, he has no business appearing for ~~what~~ anyone but the attorney general, a respondent/defendant.

I reserve the balance of my time.

THE COURT: Thank you.

Mr. Engelhart?

MR. ENGELHART: Yes, Your Honor, just very brief; if I may be heard.

As Your Honor is aware, a TRO and a preliminary injunction is a drastic remedy that is only to be issued very sparingly, with great caution, and only in urgent situations of great necessity, and based only on the clearest of the evidence.

Petitioner's request three distinct points of relief in their proposed and signed

order to show cause. I'll address them each in turn.

The first is a request to transfer this hybrid proceeding to a federal court.

As Your Honor is aware federal courts are courts of limited jurisdiction, and only can hear matters involving questions of federal law, or involving a diversity of citizenship. As such, federal court would lack jurisdiction over this special proceeding, under state law, and any attempt to transfer to such a court would be futile.

Furthermore, the petitioners chose this venue, and chose to file this action in Albany County Supreme Court, and it's, generally, well settled law that a plaintiff who selects an improper venue, or an allegedly improper venue, forfeits their right to later select a correct venue, that's both under federal and state law.

And, finally, petitioners's argument that Judiciary Law, Section 14, prevents New York courts from hearing this matter is furthermore unavailing.

The Appellate Division, Third Department, has ruled on this very issue,

involving almost identical claims, by these same petitioners. That's the case of Center for Judicial Accountability, Incorporated versus Cuomo, *et al*, 167 A.D.3d 1406, a third department case, from 2018. In that case the third department held that the justice in question was not required to recuse based on his alleged self-interest in the outcome of the case because it involved judicial compensation.

THE COURT: I'm sorry.

I'm going to pause you there, Mr. Engelhart.

I forgot to state, at the beginning, neither side can videotape or record this proceeding.

So if anybody is doing that they must cease.

You can continue.

Thank you.

MR. ENGELHART: Certainly.

As I was just mentioning, the third department has ruled that the justice in question, in that particular case, was not required to recuse based on his alleged self-interest in the outcome of the case, because it involved judicial

compensation.

The Third Department held that that would equally apply to all judges, in New York State, and still allow a particular justice to hear the case, which would, necessarily, permit New York justices to continue to hear this present matter as well.

So, for those reasons, the petitioner's request for transfer, of this Article 78 proceeding, should be denied.

The order to show cause also requests a preliminary injunction, a TRO granting petitioners representation by the office of the New York Attorney General.

No where in Executive Law 63 does it entitle private citizens to be represented by the attorney general, neither does State Finance Law Section 123-C empowers citizen tax payers to compel the attorney general to intervene as a plaintiff.

In that same Third Department case, I just cited, the Third Department also addressed the same arguments of the petitioners, where it was requested that the Attorney General's Office be compelled to intervene on their behalf, and

found them to be without merit. Again, finding the Third Department holding that Executive Law Section 63, nor the State Finance Law, required the attorney general to represent private citizens, or to compel the Attorney General's Office to provide representation to such citizens in civil actions.

So, for those reasons, as a matter of law, the petitioner's request for representation, through the Attorney General's Office, should be ~~not~~ denied, ~~not even withstanding~~ And the fact that the Attorney General's Office is a named respondent, in this case, would require the attorney general to both represent the petitioner against itself as a respondent.

And, finally, as to the remaining request for relief, in the order to show cause, namely a preliminary injunction, or a TRO, voiding a Report by Respondent Commission, and enjoining dispersement of appropriations, by the legislature, based on that Report, the petitioners have failed to establish, by clear and convincing evidence, that they are entitled to such relief. Namely, they failed to show that they have a likelihood of success on the merits required for a

TRO, or a preliminary injunction based on numerous legal impediments to those claims.

First, and foremost, is the fact that the petitioners' claims are not yet ripe, in this case, for judicial review.

Petitioner is effectively requesting this court prevent the legislature from appropriating certain amounts of money, in senate and assembly bills, which are not yet enacted into law, which are still pending in committee review process, and have not been voted on by the legislature, or signed into law by the Governor.

As the Court of Appeals has held, in New York Public Interest Research Group, Incorporated v Carey, 42 N.Y.2d 527, "Courts should not entertain declaratory judgment actions when any decree that the court might issue will become effective only upon the occurrence of some future event that may not come to pass. The Court should not cite the constitutionality of a statute when a party is challenging a statute that has not yet become effective until such statute or ordinance is passed a declaratory judgment would be premature."

So, as I mentioned, previously,

neither bill complained of, in the petitioner's papers, which is senate bill 8301, and assembly bill 8801, neither of those bills have left committee, neither of them have been voted on, by either body of the legislature, and neither have been signed into law by the Governor, and, therefore, any relief requested, regarding those pending bills, is premature and the petitioner's claims must be dismissed for lack of ripeness.

Petitioners also lack standing, in this matter, as another threshold matter, generally Article 78 standing, which is what this action is has, presumably, been filed partially. Article 78 standing is, traditionally, limited to only persons who are directly affected by the action, and not those who suffer a general harm similar to the general public. Which, in this case, is clearly not the case. Petitioners clearly served their standing based as a citizen taxpayer.

However, its been held, by the Court of Appeals, in Saratoga County Chamber of Commerce v Pataki 100 N.Y.2d 801, "That a party cannot bring a citizen taxpayer action, essentially, to challenge non-fiscal activities of state actors

using the pretext of expenditure of money to challenge governmental decision making."

In this particular case petitioners are, clearly, trying to challenge the non-fiscal activities of state actors, quasi state actors, in the form of the ~~r~~espondent Commission's conduct in drafting the ~~r~~eport that they objected to, under the pretext of challenging the subsequent proposed expenditure of money, that was, allegedly, based on that activity, which, as I noted, the Court of Appeals has held is not permissible in a citizen taxpayer action.

Standing to sue ordinarily would require the plaintiff to allege that not only she has an injury ~~of act~~ in fact, distinct from any injury to the general public, but, also, that she's within the zone of interest, protected by the statute or provision at issue which is, simply, not the case under the petitioner's papers that have been filed.

Finally, just briefly, the corporation petitioner claims, based on behalf of the corporation petitioner, must be dismissed, as a matter of law. Petitioner Sassower can't represent the interests of corporate petitioner,

in this matter, because she's not an attorney, and corporations attorneys are required to be represented under the CPLR by an attorney in any action on their behalf.

Petitioners have, also, failed to state a cause of action against nearly every respondent in this case. Again, the New York State legislature, both the heads of their respective bodies, of the legislature, and the two bodies of the legislature themselves, no final legislative action has been taken, in this case, nor none has been alleged in the petition. These bills that are at issue have not yet been passed, or voted on by the legislature, and still remain in committee.

Governor Hochul and Lieutenant Governor Delgado, the petition and complaints allege no involvement of the governor, or the lieutenant governor, whatsoever, other than the fact that they are the Governor and the Lieutenant Governor.

Similarly, Judge Wilson and Judge Zayas are named in the petition and complaint. The petition alleges no direct involvement of them, whatsoever, other than naming them as chief judge and chief administrative judge.

And, finally, the petitioners have failed to state causes of action against Attorney General James and Comptroller DiNapoli. They appear both, Respondent James and Respondent DiNapoli, appear to be named solely in the complaint because of alleged mandatory duties to, "Step in" upon receipt of the petitioner's January 18, 2024, Opposition Report, and that their failure to do so was somehow in violation of their constitutional duties.

However, the Albany County Supreme Court has already dismissed similar claims, by the same petitioners, against both Respondent James and Respondent DiNapoli on identical grounds, for failure to state a cause of action against them, that was in Center for Judicial Accountability, Incorporated versus Cuomo, *et al*, index number 1788-14 Supreme Court Albany County.

THE COURT: Mr. Engelhart, you are out of time; if you want to wrap up that final thought.

MR. ENGELHART: Just that the petitioner's have failed to state causes of action against almost all of the respondents, many of whom also enjoy legislative and judicial immunity,

in this matter, and, based on that lack of success, and lack of any demonstrated irreparable harm, or balancing of the equities, any preliminary relief should be denied in this matter.

THE COURT: Thank you.

~~Miss~~ Ms. Sassower, you have six minutes left.

Would you like to respond, ~~Miss~~ Ms. Sassower?

MISS SASSOWER: The presentation was frivolous, shameful.

Let's go, in the first instance, to this court. Judiciary law 14 is explicit that where there is interest a judge shall not take any part, shall not sit, shall not act. This Court and every other judge ~~had~~ have massive ~~but~~ and direct financial interest and other interests.

THE COURT: I'm going ask you, ~~Miss~~ Ms. Sassower, because, right now, you are just arguing the TRO.

~~MISS~~ MS. SASSOWER: Okay.

THE COURT: I already signed the TRO. I signed an order to show cause, I crossed out the TRO, then you asked to be able to argue why the

TRO should be --

MISS SASSOWER: I'd like a hearing on petitioners' entitlement to the relief of the voiding of the report of the Commission on Legislative, Judicial and Executive Compensation, because there is no --

THE COURT: Stop for a second.

You are arguing the underlying merits of the case. Today you need to tell me why the TRO should be put in place. For a TRO to take place you need to argue the balance of the equities are in your favor, the likelihood of success, on the merits, and that you will suffer irreparable harm if you don't get the temporary restraining order, so you need to limit your arguments to that, because that's the only reason why you are here today.

I already signed the order to show cause which had the TRO crossed out.

Tell me why the TRO should remain.

MISS SASSOWER: Because any examination, of the opposition report, establishes -- any comparison between the Commission's report, and the statute, establishes flagrant statutory violations. The violations of

a conditions precedent for judicial pay raise recommendations, okay?

There is no --

THE COURT: ~~Miss~~ Ms Sassower, please just pause for a second and try to tell me, specifically, if you can meet the criteria because --

~~MISS~~ MS SASSOWER: On April --

THE COURT: ~~Miss~~ Ms Sassower, tell me if you can meet the standard for a TRO, and I just told you what that was, balancing of the equities, likelihood of success on the merits and irreparable harm. You need all three, not just one out of three, or two out of three.

Can you meet all three?

~~MISS~~ MS SASSOWER: Yes.

There is 100 percent entitlement to a merits determination in petitioner/plaintiff's favor, because ~~that opposition~~ the Commission's Report must be voided as violative of the statute pursuant to which it purports to be rendered.

That is clear both in Center for Judicial Accountability against Cuomo, *et al*, and the Delgado case, in which Your Honor was the trial judge.

You know that the safeguards, the guardrails, what is purported as the safeguards, the guardrails, the restrictions have to be followed by the Commission in order for that statute to be constitutional and there has to be oversight.

If you look at the Court of Appeals decision, and Judge Wilson's concurring opinion, he said there has to be strict scrutiny of compliance, with the statutes, in order -- okay. And there has to be oversight. There hasn't been oversight.

This Report has the force of law predicated on compliance with the statute. The Commission hasn't complied with the statute. It will take effect April 1st having nothing to do with the appropriation's bill -- the 46 point -- the 36.4 million dollars; there is no defense here.

It's the attorney general's duty, where there is no merits defense. The attorney general has standing. The comptroller has standing to protect the public, that's their duty in the absence of their doing so, Center for Judicial Accountability and I have stepped in, on

behalf of the public interest, and the people of the State of New York, to prevent this larceny from taking place. There are no technical objections here based upon the citizen taxpayer action statute and the case law as to standing.

For Mr. Engelhart to argue that there is no standing. No. There is a merits entitlement and it's the duty of the public officers to uphold the public's rights.

Now, as far as the equities, the judges, who are the beneficiary of the pay raises, procured this report through their fraud and that's been demonstrated in the opposition report.

As for this Court's jurisdiction none of the cases have addressed the jurisdictional bar of Judiciary Law 14. It's not just a disqualification statute, and rules of necessity can't be invoked. There is no jurisdiction, and there must be a forum within which to bring it.

Upon information and belief the attorney general can make a removal application, and this Court can transfer -- because this Court has no jurisdiction to do anything.

And, apart from the TRO, I am requesting an evidentiary hearing on the

entitlement to a preliminary injunction, because there is no defense to the report of the Commission on Legislative, Judicial and Executive Compensation, and what all of the predecessor lawsuits have in common, Center for Judicial -- the Court didn't address the violations of prior Commission reports, except by the fraud that nothing was presented, same thing in the Delgado case, where the petition actually alleged noncompliant violations of the statute which Your Honor eliminated in making its decision.

THE COURT: Ms Sassower, you are out of time. If you want to finish that final thought, please.

MS SASSOWER: Thank you. Thank you.

This Court's duty, as difficult as it is, is to respect the law and the threshold law is as to this Court's lack of jurisdiction under Judiciary Law 14, which was not addressed.

The jurisdictional issue has never been addressed by any case in New York, has obscured it by citing to US against Will the Supreme Court -- the US Supreme court case, but there is no analog, in the federal system, that divests jurisdiction by reason of self-interest,

and Judiciary Law 14 does. That's why, in the federal court, where they have an interest, they can invoke rule of necessity because they have jurisdiction. Here the statute --

THE COURT: You are out of time.

Thank you for your argument, thank you for your arguments on both sides.

As I stated earlier -- first, I just want to indicate, for the record, that I do respect the law and I take my job as a judge very seriously. I did look at your papers, Ms Sassower, that you filed, and I find that you have not met the standard for a TRO.

You did not address the irreparable harm, because this is about money, and there is no irreparable harm that you indicated, and that I find, so I'm not allowing a TRO to stand, and, so, the original order to show cause that I signed, on March 19th, will still be in place, and it looks like the return date on that is March 29th at 9:30, so the judge that gets that case, you will be aware of who that is, and that judge will determine whether or not he, or she, wants oral argument, on the 29th, with regard to the underlying merits of this matter.

And I thank you both for placing your arguments --

MISS SASSOWER: I'm --

THE COURT: I'm not done speaking, Miss Sassower.

I thank you both for placing your arguments on record, this is the Court's decision.

Does either side wish to be heard, briefly, before we adjourn?

Go ahead, Miss Sassower.

MISS SASSOWER: Service issues, okay?

So there are issues of service and that is I made three attempts, today, to serve the Commission on Legislative, Judicial and Executive Compensation.

Initially, I asked counsel, for the governor, to accept service, since the governor appointed three of the seven members; that was declined.

I went to the Attorney General's Office, thereafter, and, also, they said that they could not accept for the Commission on Legislative, Judicial and Executive Compensation. They gave me the -- I asked -- where would I serve it? Where would I serve it? Do I go to the -- I

thought maybe the Secretary of State, so, Bill, who works there, was very kind, he brought back a paper with the address, okay, to go to the office of the Secretary of State. I went there and senior attorney Richard Digiovana (ph) came down and he said, "No, they are not authorized to take service for the Commission on Legislative, Judicial and Executive Compensation." He had no clue. He said, "Well, why don't you go to the attorney general?" I said, "I've been to the attorney general."

So, now, is Mr. Engelhart saying that he won't accept service for the Commission on Legislative, Judicial and Executive Compensation? And, if so, where do you propose I should serve it?

THE COURT: You can answer the question, Mr. Engelhart.

MR. ENGELHART: I do not represent the Commission as of yet. I cannot accept service on their behalf, and I am not their attorney. I'm not permitted to accept service on somebody's behalf that I don't represent. I don't know where they need to be served. I don't believe there is anything -- I don't know where they would need to

be served, that's a service issue; it's a plaintiff's issue.

MISS SASSOWER: Well, your clients have enacted the statute establishing the Commission, have appointed the members of the Commission, and you can't tell me where I can go to effect service?

So I ask the Court to advise how it would like me to handle that issue; that's number one.

THE COURT: I'm going to answer the question. I can't advise; I'm the judge. I can't give either side advice as to service, that's inappropriate, that would violate my role as a judge, so I'm not doing that today.

You can ask me your second question.

Go ahead.

MISS SASSOWER: Okay.

So do I understand that other than the guests, who is with us, okay, the only other individuals, who are spectators here, are Chris Puma, Lori Nicola, who is in your staff, your office, right?

THE COURT: Yes.

MISS SASSOWER: And James Conrow. I

don't know -- who are you, sir?

THE COURT: Our reporter, ~~Miss~~ Ms. Sassower. He's the one that takes down everything that's said. He's the stenographer.

~~MISS~~ Ms. SASSOWER: Okay. If --

THE COURT: I'm not done.

~~MISS~~ Ms. SASSOWER: Okay.

THE COURT: If you want a copy of the transcript JC will give you his e-mail address and you can purchase it.

~~MISS~~ Ms. SASSOWER: So the reason I mentioned this is because I assumed that the other counsel, from the different offices, such as Lisa Evans, who I understood was going to be appearing, representing, participating on behalf of the chief judge, and the chief administrative judge, was going to be present here. I don't see her.

My question is, because apart from the Commission on Legislative, Judicial and Executive Compensation I have served everyone except for Chief Administrative Judge Zayas.

I went to the Court of Appeals --

THE COURT: ~~Miss~~ Ms. Sassower, stop.

Mr. Engelhart said, in the beginning, that he represented the chief judge and Zayas, so

he said he represented everybody today, except for the Commission on Legislative, Judicial and Executive Compensation, so he's here on behalf of all of the respondents, except for the New York State Commission on Legislative, Judicial and Executive Compensation.

MISS SASSOWER: So then do I understand that, Mr. Engelhart, you are waiving service of an additional copy of the verified petition, and the order to show cause papers, on Chief Administrative Judge Zayas, because when I went to the Court of Appeals, Heather Davis, the deputy clerk, I think is her title, she declined to accept service on behalf of Chief Administrative Judge Zayas. She accepted for Chief Judge Wilson.

So my question was, do I need to serve -- is Mr. Engelhart saying I do not need to serve a hard copy of these documents on the Chief Administrative judge or, if so, where is -- where do I serve it?

And because Miss Davis couldn't tell me, I said, "Where does OCA live here in Albany?" Where can I go to effect service? You are not accepting service for --

THE COURT: ~~Miss~~ Ms. Sassower, I understand your question.

Mr. Engelhart, can you answer it, please?

MR. ENGELHART: Your Honor, at this point, for the record, I'm not waiving any service requirements as required by statute.

THE COURT: All right.

Oral argument is complete.

The order to show cause, that I signed, on March 19th, remains in place, and you will find out what judge is presiding on 29th.

Thank you so much.

We're in adjournment.

MR. ENGELHART: Thank you, Your Honor.

(Whereupon the proceedings were completed.)

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C E R T I F I C A T I O N

Certified to be a true and correct transcript of the proceedings held above.

JC CONROW

New York State Senior Court Reporter

"LEGAL AUTOPSY"/ANALYSIS OF THE DECEMBER 27, 2018 MEMORANDUM AND ORDER OF THE APPELLATE DIVISION, THIRD DEPARMENT

Center for Judicial Accountability, et al. v. Cuomo...DiFiore – Citizen-Taxpayer Action
AD3d #527081

This analysis constitutes a "legal autopsy"[1] of the December 27, 2018 "Memorandum and Order"[2] of a four-judge Appellate Division, Third Department panel, purporting to "affirm" the November 28, 2017 decision and judgment of Acting Supreme Court Justice/Court of Claims Judge Denise A. Hartman, but, actually, *sub silentio*, modifying it, in material respects.

Identical to Judge Hartman's appealed-from decision and judgment [R.31-41][3], the Appellate Division's Memorandum 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". The Memorandum wipes out any semblance of "due process of law", falsifying the record, *in toto*, and upending ALL ethical, adjudicative, and evidentiary standards – including with regard to its *sub silentio* modifications.

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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 There is no reference to "Memorandum" in the Practice Rules of the Appellate Divisions – 1250.16(a) entitled "Decisions, Orders and Judgments...", nor in the Appellate Division, Third Department's Rule 850.16, comparably titled. The Appellate Division, Third Department's Clerk refused to furnish answers or records in response to a written request about this and asking: "(1) what is the Court's meaning of the term 'Memorandum'?; (2) how does it differ from 'Decision'?; (3) what is the legal authority for the Court's substituting the term 'Memorandum' for 'Decision' in its disposition of appeals?; and (4) under what circumstances does the Court adjudicate an appeal by 'Memorandum and Judgment' as opposed to 'Memorandum and Order'?" (Exhibits A-3, A-5).

According to Black's Law Dictionary, 8th ed., a "memorandum opinion" is:

> "A unanimous appellate opinion that succinctly states the decision of the court; an opinion that briefly reports the court's conclusions, usu. without elaboration because the decision follows a well-established legal principle or does not relate to any point of law. – Also termed *memorandum decision*; *memorandum disposition*". (underlining added)

3 This and similar record references are to appellants' three-volume record on appeal, filed with their appeal brief on July 25, 2018 at the Appellate Division.

This is easily verified. It requires nothing more than a reading of appellants' brief, chronicling the record before Judge Hartman, and a reading of appellants' reply brief, chronicling the record before the Appellate Division. EVERYTHING presented by those two briefs – ALL the particularized facts, law, and legal argument – are omitted from the Appellate Division's "affirmance". Likewise omitted are ALL the particularized facts, law, and legal argument presented by appellant Sassower directly to the four-judge appeal panel at the November 13, 2018 oral argument of the appeal – even the fact that oral argument was held on that "Calendar Date".

The November 13, 2018 oral argument – of which there are VIDEOS[4] – suffices to establish that the December 27, 2018 Memorandum must be voided – and that the threshold reason is because the four justices of the appeal panel were without jurisdiction to render it, pursuant to Judiciary Law §14, by reason of their direct financial and other interests in the lawsuit.

Indeed, based on what transpired at the oral argument, appellants filed a November 27, 2018 order to show cause to disqualify the appeal panel for demonstrated actual bias and for certification of Questions to the Court of Appeals. This is also omitted by the Memorandum – as are appellants' three prior appellate motions, similarly designed to safeguard the integrity of the appellate proceedings. All four motions were denied by Appellate Division decisions improper *on their face* – without ANY facts, without ANY law, and without ANY reasons.

Appellants' November 27, 2018 order to show cause is annexed, without exhibits, to this "legal autopsy"/analysis as Exhibit B and incorporated herein by reference. The Questions of constitutional magnitude it sought to have the appeal panel certify to the Court of Appeals, pursuant to Article VI, §3b(4) of the New York State Constitution – threshold to its determination of the constitutional questions that are the substantive content of the appeal – were as follows:

(a) Inasmuch as Judiciary Law §14 bars judges from adjudicating matters in which they are "interested", are there any state judges who, pursuant to Judiciary Law §14, would not be barred by HUGE financial interest from adjudicating this citizen-taxpayer action, challenging the constitutionality and lawfulness of commission-based judicial salary increases, the judiciary budget, and the state budget "process"?

(b) Can retired judges, not benefiting from the commission-based judicial salary increases, be vouched in? Or can the case be transferred/removed to the federal

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[4] CJA's website, www.judgewatch.org, posts the full record of this citizen-taxpayer action, in Supreme Court/Albany County, in the Appellate Division, Third Department, and now, at the Court of Appeals, accessible *via* the prominent link "CJA's Citizen-Taxpayer Actions to End NYS's Corrupt Budget 'Process' and Unconstitutional 'Three-Men-in-a-Room' Governance". This includes the VIDEOS of the November 13, 2018 oral argument of the appeal. The direct link to the webpage with the VIDEOS is here: http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/appeal/11-13-18-oral-argument.htm.

courts, including pursuant to Article IV, §4 of the United States Constitution: "The United States shall guarantee to every State in this Union a Republican Form of Government…"?

(c) Can "interested" judges who Judiciary Law §14 divests of jurisdiction nonetheless invoke the judge-made "rule of necessity" to give themselves the jurisdiction the statute removes from them?

(d) What are the safeguarding prerequisites to ensure that a judge invoking the "rule of necessity" will not use it for purposes of acting on bias born of interest? Would the "remittal of disqualification" procedures specified by §100.3F of the Chief Administrator's Rules Governing Judicial Conduct be applicable – starting with a statement by the judge that he believes he can be fair and impartial notwithstanding the existence of grounds for his disqualification pursuant to §100.3E.

(e) As Executive Law §63.1 predicates the attorney general's litigation posture on "the interest of the state", does his representation of defendants-respondents by litigation fraud, because he has no legitimate defense, establish that his representation of them is unlawful and that his duty is to be representing plaintiffs-appellants, or intervening on their behalf, in upholding public rights?

In support of these certified Questions, appellant Sassower's November 27, 2018 moving affidavit had stated:

> "it appears that the appeal panel is intending to render a decision on the appeal, without ruling on its jurisdiction to do so, because – as is clear from Judiciary Law §14, caselaw, and treatise authority – it has NO jurisdiction by reason of the HUGE financial interest of each of its four justices – a state of affairs whose acknowledgment would prevent it from 'throwing' the appeal by a fraudulent judicial decision, which is the ONLY way it can uphold the unconstitutional, statutorily-violative, and fraudulent judicial salary increases that are the subject of appellants' sixth, seventh, and eighth causes of action, to which, as appellants' brief and reply brief establish, respondents have NO defense, as, likewise, NO defense to appellants' seven other causes of action." (at ¶9, underlining and capitalization in the original).

This is precisely what happened. Not only did the appeal panel not certify the Questions nor itself answer them, when, by its December 19, 2018 decision, it denied the order to show cause, without reasons, but, eight days later, its December 27, 2018 Memorandum, "throwing" the appeal", did not identify the panel's financial and other interests in the appeal, did not invoke the "rule of necessity" to decide it, and did not make any statement that its four justices believed themselves to be fair and impartial.

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

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The First Page of the Appellate Division's Memorandum

The Memorandum begins by modifying the actual case caption. It removes the corporate plaintiff, Center for Judicial Accountability, Inc. (CJA), as appellant. It also removes, from the caption, the identifying clause that both CJA and the individual plaintiff, Elena Sassower, are "acting on their own behalf and on behalf of the People of the State of New York & the Public Interest".

No asterisk explains this two-fold caption change. However, the removal of CJA is explained by the first footnote, on page 4, which reads:

> "We note that no appeal has been asserted on behalf of the CJA by an attorney (see Schaal v. CGU Ins., 96 AD3d 1182, 1183 n 2 [2012])."

This is materially misleading. An appeal was "asserted on behalf of the CJA", but it was by individual plaintiff-appellant Sassower, who was NOT, as the first page of the Memorandum purports, an "appellant pro se". Rather, she and CJA were both unrepresented appellants, who, "on behalf of the People of the State of New York & the Public Interest", had asserted their entitlement to the Attorney General's representation and/or intervention, either directly or through independent counsel. They did this by their January 10, 2018 "pre-calendar statement" [R.3-8], filed with their notice of appeal – and took steps to secure such representation/intervention by an order to show cause, filed on July 25, 2018, simultaneous with their filing of their appeal brief. The second branch of the order to show cause sought an order:

> "directing that Attorney General Barbara D. Underwood identify who has determined 'the interest of the state' on this appeal – and plaintiffs-appellants' entitlement to the Attorney General's representation/intervention pursuant to Executive Law §63.1 and State Finance Law, §123 *et seq.*, including *via* independent counsel, and how, if at all, she has addressed her own conflicts of interest with respect thereto". (underlining added).

The Memorandum's first page also identifies "Barbara D. Underwood, Attorney General" as having represented respondents on the appeal – with "Frederick A. Brodie of counsel". The unlawfulness of this was embraced by the second branch, as well.

As for the first branch of appellants' July 25, 2018 order to show cause, it sought an order:

> "pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct, disclosing, on the record, the financial interests of this Court's justices in this appeal and in the TRO and preliminary injunction herein sought, as well as their personal, professional, and political relationships impacting upon their fairness and impartiality; and, pursuant to §100.3E of the Chief Administrator's Rules, disqualifying Associate Justice Michael Lynch for demonstrated actual bias".

The Memorandum makes no mention of the July 25, 2018 order to show cause – or of appellants' subsequent three orders to show cause, dated September 10, 2018, October 18, 2018, and November 27, 2018[5] – all four raising comparable threshold integrity issues pertaining to the Attorney General and Appellate Division justices, each denied, *without* facts, *without* law, and *without* reasons by four-judge panels.

Of the ten justices of the Appellate Division, Third Department, nine participated in these four orders to show cause. The only justice who did not was Justice Lynch who, on the November 13, 2018 "Calendar Date" indicated by the Memorandum's first page, sat with "McCarthy, J.P., Clark, Mulvey and Rumsey, JJ", hearing oral argument of eight appeals on that day's calendar, excepting one – this one – as to which, without any stated reason, he did not sit.

The Memorandum's first page identifies "McCarthy, J.P., Clark, Mulvey and Rumsey, JJ", as being the four justices on this appeal, without referencing that Justice Lynch had recused himself, or the reason, or that the appeal was argued before them on the November 13, 2018 "Calendar Date", rather than, as might be inferred, submitted.

The Memorandum's author, according to the first page, is "Rumsey, J." and, according to the last page, "McCarthy, J.P., Clark and Mulvey, JJ., concur" in what he wrote.

The Memorandum's Opening Recitation (at pp. 1-2)

The first sentence of the Memorandum, starting on page 1, is a one-sentence paragraph reading:

> "Appeal from a judgment of the Supreme Court (Hartman, J.), entered December 8, 2017 in Albany County, which, among other things, granted defendants' cross motion for summary judgment."

This is followed by a lengthy paragraph, spanning the whole of the second page, purporting to summarize the case before Judge Hartman, leading up to her appealed-from November 28, 2017 decision and judgment [R.31-41]. Its skeletal recitation, failing to identify that appellants' "action" is a citizen-taxpayer action pursuant to State Finance Law Article 7-A, is particularly noteworthy in two further respects:

- It conceals that appellants are challenging the constitutionality of the whole of the executive budget [R.87-392; R.671-746], not just Legislative/Judiciary Budget Bill #S.6401/A.9001 and Chapter 60, Part E, of the Laws of 2015, establishing the Commission on Legislative, Judicial and Executive Compensation. This is significant because six pages later (at p. 8), when the Memorandum "affirms", in two sentences, Judge Hartman's dismissal of the fifth cause of action by *sub silentio* substituting its own *sua sponte* grounds, it conceals that the

[5] These are the dates on which the orders to show cause were served on the Attorney General and sent to the Appellate Division.

fifth cause of action [R.108-109 (R.177-186, R.214-219) and R.737] is a challenge to the whole of the executive budget, as is the fourth cause of action [R.106-108 (R.170-187; R.264-268; R.302-310) and R.735-736] and the ninth cause of action [R.115 (R.214-219) and R.740];

- It identifies that Judge Hartman dismissed "9 of the 10 causes of action" of appellants' complaint – by her December 21, 2016 decision [R.527-535] – "den[ying] defendants' motion to dismiss the sixth cause of action, which challenged the law that created the Commission on Legislative, Judicial and Executive Compensation…(see L 2015, ch 60, part E) on various constitutional and procedural grounds". It does not purport that the undismissed sixth cause of action was not fully preserved by the December 21, 2016 decision. This is significant because five pages later (at p. 7), in a footnote (fn. 3), the Memorandum affirms, in one sentence, Judge Hartman's dismissal of section E of the sixth cause of action on grounds it does not specify – a dismissal which is a LIE, as it was NOT made by her December 21, 2016 decision [R.528, 532-533, R.534], contrary to her June 26, 2017 decision [R.68-79] and November 28, 2017 decision [R.31-41] purporting that it was [at R.77, R.34].

The Memorandum's Disposition of "Several Threshold Issues" (at pp. 3-4)

Pages 3-4 of the Memorandum purports to "first consider several threshold issues" relating to Judge Hartman and the Attorney General. This consideration consists of four paragraphs, concealing ALL the facts, law, and legal argument relating to appellants' presentation of threshold integrity issues, set forth by their brief and reply brief – and reiterated by their appellate motions. These threshold integrity issues, pertaining to Judge Hartman and the Attorney General, were the subject of appellants' first, second, and third subquestions of their brief (at pp. iv-v), whose single, overarching "Question" was:

> "Is the lower court's appealed-from November 28, 2017 decision and judgment defensible – indeed constitutional" (at pp. iv).

The Memorandum conceals this overarching "Question" and the first three subquestions, either totally or materially,

In full, the first of the Memorandum's four paragraphs pertaining to "threshold issues" (at p. 3) reads:

> "We first consider several threshold issues. Sassower contends that Supreme Court erred by denying her motion for recusal. Sassower correctly notes that Justice Hartman has a pecuniary interest in this action because she is paid in accordance with the salary schedule that is being challenged. Ordinarily, recusal is warranted when a judge has an interest in the litigation (See Matter of Maron v. Silver, 14 NY3d 230, 249 [2010]). 'However, 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 be otherwise heard' (Pines v. State of New York, 115 AD3d 80, 90 [2014] [internal quotation marks, brackets and citations omitted], appeal dismissed 23 NY3d 982 [2014]; see Matter of Maron v Silver, 14 NY3d at 249). The 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. Accordingly, the Rule of Necessity permitted Justice Harman to decide this action on the merits (see Pines v State of New York, 115 AD3d at 90-91)."

This paragraph starts and ends with LIES.

Appellant Sassower did NOT contend that Judge Hartman "erred by denying her motion for recusal" – as if Judge Hartman had mistakenly decided a single such motion. To the contrary, appellant Sassower contended that Judge Hartman's denials of appellants' motions for her disqualification were by decisions that were "criminal frauds", obliterating ALL ethical, adjudicative, and evidentiary standards – and she substantiated that contention by evidence: "legal autopsy"/analyses of each decision.

As for "Rule of Necessity", this paragraph conceals, *in toto*, what appellants had to say about it:

> (1) that Judiciary Law §14 – to which the Memorandum does not here refer – divests interested judges of jurisdiction to sit – with the consequence that the judge-made "Rule of Necessity" cannot be invoked to confer jurisdiction that the statute removes. This was highlighted by appellant Sassower's November 13, 2018 oral argument, by appellants' motion papers prior thereto, and by their culminating November 27, 2018 order to show cause. As for the cited decisions in *Maron v. Silver* and *Pines v. New York State*, neither are applicable as neither cite Judiciary Law §14 – and this was pointed out, by appellants as to *Maron v. Silver*, including by their November 27, 2018 order to show cause (Exhibit B, ¶12).
>
> (2) that Judge Hartman did NOT herself invoke "Rule of Necessity" – nor could she, as she had LIED that she had "no interest" when, by her May 5, 2017 decision [R.49-51], she denied appellants' first recusal motion. This was identified by appellants' brief (at pp. 30, 49-50) and by appellant Sassower at the November 13, 2018 oral argument in stating:
>
> > "The judge, on the issue of interest, the judge purported she had no interest. She didn't invoke the rule of necessity, even in her final decision that passingly referred to it."[6]

---

[6] The referred-to "final decision that passingly referred to ['Rule of Necessity']" was Judge Hartman's appealed-from November 28, 2017 decision [at R.32-33].

(3) that "Rule of Necessity" has NO applicability to Judge Hartman's disqualification for "demonstrated actual bias" which was the explicit and first ground upon which appellants' motions for her disqualification were based [R.536-609; R.997-1066]. This, too, was identified by their brief (at pp. 49-50).

(4) that "Rule of Necessity" also has NO applicability to Judge Hartman' bias arising from her employment in the Attorney General's office and her personal and professional relationships arising therefrom. Appellants' brief had also identified this (at pp. 49-50).

The second paragraph (at p. 3) reads:

> "Nor was Justice Hartman required to recuse herself for any other reason. 'Absent a legal disqualification under Judiciary Law §14, which is not at issue here, 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, 926 [2008] [internal question marks and citations omitted], lv denied 11 NY3d 716 [2009]). We perceive no abuse of discretion here. Justice Hartman's prior employment by the Attorney General's office does not mandate recusal (see e.g. People v. Lee, 129 AD3d 1295, 1296 [2015], lv denied 27 NY3d 1001 [2016]; People v Curkendall, 12 AD3d 710, 714 [2004], lv denied 4 NY3d 743 [2004])."

By "any other reason", the appeal panel is here referring to reasons other than the "pecuniary interest" identified in the prior paragraph without reference to Judiciary Law §14. The appeal panel then falsely implies, by its quote from *Kampfer v Rase*, that "legal disqualification under Judiciary Law §14" is not here at issue – replicating the deceit of respondents' brief (at p. 58), objected to by appellants' reply brief (at p. 5).

The appeal panel's pretense – by inference – that "legal disqualification under Judiciary Law §14" is not involved herein relieves it of having to confront the issue – allowing it to shift to boilerplate deference to "the personal conscience of the court", in the absence of "abuse of discretion". The appeal panel purports to "perceive" no "abuse of discretion" – referencing, in conclusory fashion, Judge Hartman's "prior employment by the Attorney General's office" as not "mandat[ing] recusal". In so doing, it identifies NONE of the facts summarized by appellants' brief and established by the underlying record as to how Judge Hartman's "prior employment by the Attorney General's office" impacted on her conduct. This includes her willful and deliberate failure to disclose, let alone herself address, the issue of her "prior employment by the Attorney General's office", in violation of §100.3F of the Chief Administrator's Rules Governing Judicial Conduct – simultaneously concealing appellants' repeated requests for this and other disclosure – of which she made NONE.

The disclosure issue was the subject of appellants' second subquestion, which, with their appended comment was as follows:

> "2. Is the lower court's concealment of appellants' requests that it disclose its financial interests and relationships with defendants – and its failure to make any disclosure – sufficient, in and of itself, to mandate vacatur of its November 28, 2017 decision and judgment – and of its underlying prior decisions – *as a matter of law*?
>
> *The lower court concealed plaintiffs' requests for disclosure – of which it made none.*"

The appellate panel totally conceals this second subquestion, apparently unable to otherwise uphold Judge Hartman's "personal conscience" and "discretion".

The third paragraph (at pp. 3-4) then opens:

> "Moreover, Supreme Court's decisions do not evince any instance of fraudulent conduct, concealment or misrepresentation. In that regard, Sassower argues that the court acted fraudulently by failing to specifically address each of her arguments and disagreeing with her legal conclusions. A court need not address, in its decision, every argument raised by a party, and a ruling that is not to a litigant's liking does not demonstrate either bias or misconduct (see Gonzalez v L'Oreal USA, Inc., 92 AD3d 1158, 1160 [2012], lv dismissed 19 NY3d 874 [2012]. ..."

The first sentence – "Supreme Court's decisions do not evince any instance of fraudulent conduct, concealment or misrepresentation" – is the closest the appeal panel comes to identifying that "demonstrated actual bias" was the basis for appellants' motions for Judge Hartman's disqualification [R.536-609; R.997-1066] – and the basis for the first subquestion of their brief:

> "1. Was the lower court duty-bound to have disqualified itself for demonstrated actual bias – and is its November 28, 2017 decision and judgment [R.31-41] and all prior decisions void by reason thereof?"

However, the appeal panel does not reveal ANY of the evidence appellants furnished in substantiation, as, for instance, their "legal autopsy"/analyses of Judge Hartman's decisions, *to wit*,

- appellants' "legal autopsy"/analysis of Judge Hartman's December 21, 2016 decision [R.554-577], annexed as Exhibit U to their February 15, 2017 order to show cause for her disqualification for the actual bias manifested by her December 21, 2016 decision [R.527-535] – relief her May 5, 2017 decision denied [R.49-51];

- appellants' analysis of Judge Hartman's May 5, 2017 decision and May 5, 2017 amended decision [R.1002-1007], furnished at ¶¶5-8, 10-11 of their June 12, 2017 order to show cause for reargument/renewal/vacatur thereof –

relief her November 28, 2017 decision and judgment denied [R.31-41];

- appellants' "legal autopsy"/analysis of Judge Hartman's June 26, 2017 decision [R.1293-1319], annexed as Exhibit I to appellant Sassower's August 25, 2017 reply affidavit in further support of their June 12, 2017 order to show cause – which her November 28, 2017 decision and judgment denied [R.31-41];

- appellants' "legal autopsy"/analysis of Judge Hartman's November 28, 2017 decision and judgment [R.9-30], annexed to their January 10, 2018 notice of appeal therefrom [R.1], as part of their pre-calendar statement [R.3-8] – and embodied in the "Argument" of their appeal brief (at pp. 46-69).

Nor does the appeal panel reveal the state of the record with respect to these "legal autopsy"/analyses, namely, that the Attorney General did not contest the accuracy of a single one, either before Judge Hartman or before the Appellate Division, instead concealing them, just as Judge Hartman had, in her decisions. It is this concealment that enables the appeal panel to make the conclusory first sentence that Judge Hartman's decisions "do not evince any instance of fraudulent conduct, concealment or representation", followed by two sentences besmirchingly characterizing what "Sassower argues" and that she doesn't know the difference between a ruling not to her liking and bias or misconduct. All three sentences are brazen LIES, having NO basis in the record, other than the fraudulent appellate advocacy of Assistant Solicitor General Brodie, including by his respondents' brief (at pp. 59-60) – to which appellants objected by their reply brief (at p. 3) and then embodied in their October 18, 2018 order to show cause to strike it, for a declaration that the Attorney General's appellate representation of respondents was unlawful, and for sanctions and other relief.

The third paragraph then shifts, with a single sentence, from Judge Hartman to the Attorney General, stating (at p. 4):

> "Similarly, the Attorney General's office was not required to address every argument made by Sassower; under our adversarial system, each party is permitted to make the arguments that he or she believes are most favorable to his or her position."

In such conclusory fashion – and not using the word "misconduct" – the appeal panel disposes of the issue of the Attorney General's litigation fraud before Judge Hartman, adopting the identical conclusory deceits of respondents' brief (at p. 56-58), repeated by Assistant Solicitor General Brodie at oral argument – as to which appellants objected by their reply brief (at pp. 8-10), thereafter seeking sanctions and to strike it, by their October 18, 2018 order to show cause and by their November 27, 2018 order to show cause (Exhibit B).

The appeal panel then follows with two more sentences, similarly devoid of facts, and now misrepresenting the law, stating (at p. 4):

> "We similarly find unavailing Sassower's argument that the Attorney General, who is a defendant, must be disqualified from representing the Attorney General's codefendants based on a conflict of interest. The Attorney General has a statutory duty to represent defendants in this action, who are united in interest (see Executive Law §63 [1]; Matter of Grzyb v. Constantine, 182 AD2d 942, 943 [1992], lv denied 80 NY2d 755 [1992]).

Such conclusory falsehoods are rebutted by appellants' supposedly "unavailing…argument" – all particulars of which are here concealed – argument highlighted, in particular, by their appellate motions, over and beyond by their appeal briefs and the record below.

The final fourth paragraph (at p. 4) is, as follows:

> "Supreme Court properly dismissed the claims asserted by the CJA because it was not represented by counsel.[fn1] Corporations are required to appear by attorney to prosecute or defend a civil action (CPLR 321[a]). Causes of action asserted by a corporation are properly dismissed when the corporation does not appear by attorney (see Moran v. Hurst, 32 AD3d 909, 910 [2006]; Ficalora v Town Bd. Govt. of E. Hampton, 276 AD2d 666, 666 [2002], appeal dismissed 96 NY2d 813 [2001]. We further find unavailing Sassower's argument that Executive Law §63(1) and State Finance Law 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."

This conclusory paragraph is also fashioned on concealment:

> – concealing that appellants even had "arguments" as to why Judge Hartman's dismissal of CJA's claims was wrongful;
>
> – concealing what Sassower's "unavailing…arguments" were as to why she was entitled to the Attorney General's representation and/or intervention.

And, of course, the appeal panel conceals that Judge Hartman neither adjudicated nor identified, ANY of the threshold issues appellants had presented relating to:

> (1) the Attorney General's duty, pursuant to Executive Law §63.1 and State Finance Law Article 7-A, to be representing or intervening on appellants' behalf:

(2) the Attorney General's litigation fraud;

(3) the Attorney General's conflict-of-interest.

The appeal panel's adjudication of these – which is not an "affirmance" of either facts or law by Judge Hartman – was the subject of appellants' third subquestion of their brief:

> "3. Is the lower court's concealment of appellants' three threshold issues pertaining to the Attorney General – and its failure to adjudicate same – sufficient, in and of itself, to mandate vacatur of its November 28, 2017 decision and judgment – and of its underlying prior decisions – *as a matter of law*?"

The Memorandum "Turn[s] to the Merits" –
Beginning with Appellants' Sixth Cause of Action (at pp. 5-7)

Having disposed of the "several threshold issues" by substituting, *in toto*, conclusory assertions, mischaracterizations, and falsehoods for the particularized facts and law of appellants' brief and reply brief, the Memorandum "[t]urn[s] to the merits" (at p. 5), stating:

> "Turning to the merits, Supreme Court properly granted defendants' cross-motion for summary judgment dismissing the sixth cause of action, which was divided into sections A through E, and which alleged that the enabling statute that created the Commission is facially unconstitutional with respect to judicial compensation. '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 from wholesale constitutional impairment. In other words, the challenger must establish that no set of circumstances exists under which the [legislation] would be valid' (Matter of Moran Towing Corp. v Urbach, 99 NY2d 443, 448 [2003] [internal quotation marks and citations omitted]). Sassower failed to meet this heavy burden."

This conclusory first paragraph (at p. 5) and the four paragraphs that follow pertaining to appellants' sixth causes of action conceal the ENTIRE content of the 19-pages of appellants' brief (at pp. 50-69) under the title heading:

> "Judge Hartman's Indefensible and Fraudulent Grant of Summary Judgment to Defendants on Plaintiffs' Sixth Cause of Action".

The accuracy of these 19 pages was uncontested by respondents' brief, but the appeal panel conceals this, as well. So, too, the adjudicative standard governing summary judgment, recited by appellants' brief (at pp. 53-54):

> "The party moving for summary judgment bears the burden of submitting evidence in admissible form demonstrating entitlement to judgment as a matter of law. Once the moving party has met its burden, the burden shifts to the party opposing summary judgment to submit evidence in admissible form that establishes that a material issue of fact exists (*Nomura Asset Capital Corp. v. Cadwalader, Wickersham & Taft LLP*, 26 NY3d 40, 49 [2015]; *Staunton v. Brooks*, 129 AD3d 1371, 1372 [3d Dept 2015])."

This standard, which Judge Hartman had recited in her June 26, 2017 decision denying appellants summary judgment on their sixth cause of action [R.72] – violating that standard in doing so and then violating it again in her November 28, 2017 judgment granting summary judgment to defendants – is just as brazenly violated here by the appeal panel, which does not cite to it.

The second paragraph pertaining to the sixth cause of action (at p. 5) reads:

> "In sections A and B of the sixth cause of action, Sassower alleged that the enabling statute unconstitutionally delegated legislative authority to the Commission in contravention of the separation of powers doctrine and without reasonable safeguards or standards. 'While the Legislature cannot delegate its lawmaking functions to other bodies, there is no constitutional prohibition against the delegation of power to an agency or commission to administer the laws promulgated by the Legislature, provided that power is circumscribed by reasonable safeguards and standards' (Matter of Retired Pub. Empls. Assn., Inc. v. Cuomo, 123 AD3d 92, 97 [2014] [internal quotation marks, brackets and citations omitted])."

The appeal panel here furnishes not a single specific of the factual and legal basis upon which appellants' sections A and B of their sixth cause of action [R.109-111 (R.187-193)] asserted that the delegation of legislative authority to the Commission "was in contravention of the separation of powers and without reasonable standards and safeguards".

So too the third paragraph (at pp. 5-6), devoid of a single specific of what the prefatory paragraphs to sections A and B allege as to the predecessor Commission on Judicial Compensation [R.187 (¶386)] – or the "legal autopsy"/analysis of the Court of Appeals' February 23, 2010 *Maron v. Silver* decision that is part of the record[7]:

> "A predecessor to the Commission – the Commission on Judicial Compensation – was created in 2010 in response to the Court of Appeals decision in

---

[7] Appellants' "legal autopsy"/analysis of the February 23, 2010 Court of Appeals decision in *Maron v. Silver* appears at pages 3-10 of their July 19, 2011 letter to then Attorney General Schneiderman. The letter is Exhibit E-1 to their October 27, 2011 opposition report to the Commission on Judicial Compensation's August 29, 2011 report. It is also Exhibit J to their March 30, 2012 verified complaint in their declaratory judgement action, *CJA v. Cuomo, et al.*, challenging the constitutionality and lawfulness of the Commission on Judicial Compensation and its report – beginning with the enabling statute, Chapter 567 of the Laws of 2010.

> Matter of Maron v Silver (14 NY3d 230) to remedy a separation of powers violation by requiring that the proper level of judicial compensation be determined on a regular basis based on objective factors independent of other political considerations (see Larabee v Governor of the State of N.Y., 27 NY3d 469, 472 [2016]; Senate Introducer's Mem in Support, Bill Jacket, L 2010, ch 567). [Fn2] As relevant here, the Commission was directed to examine, on four-year intervals, the prevailing adequacy of judicial compensation and to make recommendations regarding whether such compensation warrants adjustment during the ensuing four-year period (see L 2015, ch 60, part E, 4). Recommendations regarding judicial compensation are required to be submitted by December 31 of the year in which the Commission is appointed and have the force of law, unless modified or abrogated by statute prior to April 1 of the succeeding year (see L 2015, ch 60, part E; see also Larabee v Governor of the State of N.Y., 27 NY3d at 472)."

As for the fourth paragraph (at p. 6), also pertaining to sections A and B, it ends with the sentence "Thus, we conclude that the statute does not unconstitutionally delegate legislative power to the Commission." The predecessor sentences up to and including this final sentence read:

> "In the 2015 enabling statute at issue here, the Legislature made the determination that judicial salaries must be appropriate and adequate. The Legislature directed the Commission to examine judicial salaries and make recommendations regarding the adequacy of judicial compensation based on numerous factors specified by the Legislature, including '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' (L 2015, ch 60, part E). The factors established by the Legislature provide adequate standards and guidance for the exercise of discretion by the Commission. Moreover, the enabling statute contains the safeguard of requiring that the Commission report its recommendations directly to the Legislature so that it would have sufficient time to exercise its prerogative to reject any Commission recommendations before they become effective. Thus, we conclude that the statute does not unconstitutionally delegate legislative power to the Commission."

In other words, the appeal panel's three paragraphs pertaining to sections A and B of appellants' sixth cause of action (at pp. 5-6) achieve their concluding determination of constitutionality by not revealing ANY of the facts, law, and legal argument presented by those two sections as to unconstitutionality [R.109-111 (R.187-193)] and the record pertaining thereto – replicating precisely what appellants' brief highlighted (at pp. 54-57) that Judge Hartman had done to achieve such determinations under her title heading "Sub-Causes A & B – Improper Delegation of Authority

Claims" [R.35-36].

Tellingly, the appeal panel includes only one of the decisions cited by Judge Hartman in support of the constitutionality of sections A and B [R.35-36]: "Matter of Retired Pub. Empls. Assn., Inc. v. Cuomo, 123 AD3d, 92, 97 [2014]" – a Third Department decision in which appeal panel Justice Clark participated. Yet that decision has nothing to do with whether the Legislature may constitutionally delegate its legislative power to a temporary commission for purposes of raising the salaries of legislative, judicial, and executive constitutional officers, let alone where, as at bar, its configuration and the statutory factors it is required to "take into account" are constitutionally deficient in the respects specified by appellants' section B.

As for the two other decisions on which the appeal panel's three paragraphs pertaining to sections A & B rely, neither pertain to delegation of legislative power, period. They are "Matter of Maron v. Silver (14 NY3d 230)", the Court of Appeals' 2010 decision on the three judicial pay raise cases brought by judges and the judiciary; and "Larabee v. Governor of the State of N.Y., 27 NY3d 469, 472 [2016]", the Court of Appeals subsequent decision in one of those three judicial pay raise cases. In other words, the appeal panel has NO legal precedent for what appellants' section A had explicitly asserted to be without legal precedent, stating:

> "390. In *St. Joseph Hospital, et al. v. Novello, et al.*, 43 A.D.3d 139 (2007), a case challenging a statute that gave 'force of law' effect to a special commission's recommendations – Chapter 63, Part E, of the Laws of 2005 – then Appellate Division, Fourth Department Justice Eugene Fahey, writing in dissent, deemed the statute unconstitutional, violating the presentment clause and separation of powers:
>
> > 'It is apparent that the Legislation inverts the usual procedure utilized for the passage of a bill. According to the usual procedure, a bill is presented to the Governor for his or her signature or veto after passage by the Senate and the Assembly. Should the Governor sign the bill, it becomes law; should the bill be vetoed, the veto may be overridden by a two-thirds vote of the Legislature. Here, the Legislation creates a process that allows the recommendations of the Commission to become law without ever being presented to the Governor after the action of the Legislature.' *Id*, 152.
>
> 391. Justice Fahey's dissent was cited by the New York City Bar Association's *amicus curiae* brief to the Court of Appeals in a different case challenging the same statute, *Mary McKinney, et al. v. Commissioner of the New York State Department of Health, et al.*, 15 Misc.3d 743 (S.Ct. Bronx 2006), affm'd 41 A.D.3d 252 (1st Dept. 2007), appeal dismissed, 9 N.Y.3d 891 (2007), appeal denied, 9 N.Y.3d 815; motion granted, 9 N.Y.3d 986. It characterized 'the force of law' provision as:
>
> 'a process of lawmaking never before seen in the State of New York' (at p. 24);

> a 'novel form of legislation…in direct conflict with representative democracy [that] cannot stand constitutional scrutiny (at p. 24)';
>
> a 'gross violation of the State Constitution's separation-of-powers and…the centuries-old constitutional mandate that the Legislature, and no other entity, make New York State's laws' (at p. 25);
>
> 'most unusual [in its]…self-executing mechanism by which recommendations formulated by an unelected commission automatically become law…without any legislative action' (at p. 28);
>
> unlike 'any other known law' (at p. 29);
>
> 'a dangerous precedent' (at p. 11) that
>
> 'will set the stage for the arbitrary handling of public resources under the guise of future temporary commissions that are not subject to any public scrutiny or accountability (at p. 36).[fn]"

Appellants quoted this, in their reply brief (at pp. 31-33), in the context of rebutting Assistant Solicitor General Brodie's false claim, in his respondents' brief (at pp. 36-37), that "Similarly-structured commissions have been held constitutional" (bold and underlining added) – which he then repeated at the November 13, 2018 oral argument, without challenge from the appeal panel – and so-particularized by appellants' November 27, 2018 order to show cause. All of this the appeal panel conceals in making it appear that there is nothing unprecedented in the legislative delegation of power it is upholding, when there is – and on a monumental scale.

In a similar fashion – and by a lengthy fifth paragraph (at pp. 6-7) – the Memorandum disposes of appellants' sections C, D, and E of their sixth cause of action. It, too, does not identify any of the facts, law, and legal argument asserted by those three sections [R.111-112 (R.193-201)] – or in the record with respect to them, highlighted by appellants' brief (at pp. 50-54, 57-69) and reply brief (at pp. 33-37). The paragraph reads:

> "Supreme Court also properly dismissed sections C and D of the sixth cause of action. With respect to section C, we agree that there is no constitutional prohibition against increasing judicial salaries during the term of office (see NY Const, art VI, §25[a]). In section D, Sassower alleged that the bill creating the Commission violated NY Constitution, article VII, §§2, 3 and 6. Pursuant to article VII, §2, defendant Governor was required to submit a budget to the Legislature, as relevant here, by February 1, 2015. Inasmuch as Sassower acknowledged that the executive budget was submitted on January 21, 2015, there was no violation of this section. The original executive budget did not provide for creation of the Commission; rather, the enabling legislation was included in a supplemental budget

> bill that was submitted by the Governor on March 31, 2015 (see 2015 NY Senate-Assembly Bill S4610-A, A6721-A). However, as relevant here, article VII, §3 allows submission of supplemental budget bills at any time with the consent of the Legislature. Although there is no evidence of formal consent, the Legislature's consideration and passage of the bill without objection is effective consent (cf. Winner v Cuomo, 176 AD2d 60, 64 [1992]). Article VII, §6 requires that all provisions of any appropriation bill, or supplemental appropriation bill, submitted by the Governor must specifically relate to an appropriation in the bill. The purpose of this article is 'to eliminate the legislative practice of tacking on to budget bills propositions which had nothing to do with money matters; that is, to prevent the inclusion of general legislation in appropriation bills' (Schuyler v South Mall Constructors, 32 AD2d 454, 456 [1969]). There was no violation of article VII, §6 because the purpose for which the Commission was created — to provide for periodic review of the compensation of state officers — relates to items of appropriation in the budget (see id.)[fn3] . Based on the foregoing, Supreme Court properly determined that defendants were entitled to summary judgment dismissing the sixth cause of action."

The annotating footnote 3 (at p. 7) reads:

> "We find no error in Supreme Court's prior dismissal of section E of the sixth cause of action."

Starting first with the annotating footnote 3, so total is its concealment of the facts, law, and legal argument presented by section E [R.112 (R.197-201)] that it does not even reveal what section E concerns, identified in Judge Hartman's appealed-from decision as "the budget bill that created the Commission was procured by fraud and violation of due process" [R.34]. This black-out of even the general subject of section E is because such content precludes the so-called "effective consent" that the Memorandum here adopts from Judge Hartman's November 28, 2017 decision to justify why the March 31, 2015 introduction of budget bill #S.4610/A.6721 is not an Article VII, §3 violation. Indeed, appellants' brief (at p. 59) explicitly identified that section E precluded any claim of "effective consent", stating:

> "Judge Hartman states [R.38] that the record before her contains 'no formal consent'. Yet, rather than acknowledging that such PRECLUDES summary judgment to defendants, she purports – *unsupported by any law* – that 'consideration and passage of the bill is effective consent' – completely ignoring that the facts in the record PRECLUDE 'effective consent', *as a matter of law*. These are the facts detailed by sub-cause E [R.197-201] as to the fraud by which Budget Bill #S4610-A/A.6721-A was introduced and enacted – facts unrefuted by defendants – and which, by the particulars and evidence recited, are clearly irrefutable and dispositive of plaintiffs'

> entitlement to summary judgment on sub-cause E,[fn6] as well as on sub-cause D pertaining to the Article VII, §3 violation [R.193-196]." (capitalization and italics in the original).

As for the footnote's bald assertion that there was "no error" in Judge Hartman's "prior dismissal of section E", this is a LIE, revealed as such by the absence of any detail about the "prior dismissal". Such "prior dismissal" does NOT exist – and this was chronicled by appellants' brief (at pp. 50-53), showing that the fictional dismissal of section E originated with Assistant Attorney General Helena Lynch, who, having no defense to section E upon appellants' March 29, 2017 order to show cause for summary judgment on their sixth cause of action [R.636, 639-640], purported, by her April 21, 2017 opposition memorandum of law [R.772, 774] that Judge Hartman's December 21, 2016 decision had dismissed it [R.527-535], which Judge Hartman then adopted in her June 26, 2017 decision denying summary judgment to appellants on their sixth cause of action [R.77]. Assistant Attorney General Adrienne Kerwin then used the June 26, 2017 decision in her July 21, 2017 cross-motion for summary judgment for defendants on the sixth cause of action [R.1257-1258, 1263, 1105a] – which Judge Hartman accommodated by her November 28, 2017 decision [R.34], reiterating a non-existent prior dismissal of section E. This was not denied by respondents' brief.[8]

Nor would there be any basis for Judge Hartman's December 21, 2016 decision to have dismissed section E – let alone for failure to state a cause of action. For such dismissal, if it actually existed, to not have been "error", it would have had to identify all the presumed-true allegations of section E [R.112 (R.197-201)] which, nonetheless, failed to state a cause of action. Judge Hartman's December 21, 2016 decision did not do this [R.527-535] – just as Assistant Attorney General Kerwin had not done this by her initial September 15, 2016 dismissal cross-motion [R.421-422].

Thus, the appeal panel's footnote affirmance of Judge Hartman's dismissal of section E is not only a fraud as to section E, but undergirds the fraud of this paragraph in affirming her dismissal of section D with respect to the Article VII, §3 violation based on supposed "effective consent".[9]

As for the affirmance of Judge Hartman's dismissal of the Article VII, §6 violation presented by section D, it is also a fraud – and evidencing this is this paragraph's failure to identify and confront

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> "fn6 McKinney's Consolidated Laws of New York Annotated, Book 1: Statutes – Chapter 2, §11: 'Legislative procedure generally': '…the Constitution not only permits, but it requires an examination into the procedure followed in the consideration of a bill.', citing *Franklin Nat. Bank of Long Island v Clark*, 1961, 26 Misc.2d 724, 212 N.YS.2d 942, motion denied 217 N.Y.S.2d 615."

8 With respect to section E, see appellants' brief (at pp. 50-53); respondents' brief (at pp. 42-44); and appellants' reply brief (at pp. 35-37).

9 With respect to the Article VII, §3 violation, presented by section D, see appellants' brief (at pp. 59-63), respondents' brief (at pp. 41-42), and appellants' reply brief (at pp. 34-35).

what appellants' brief recited as to that dismissal (at pp. 63-64). It was, as follows:

> "...Judge Hartman disposes of [the Article VII, §6 violation] in two conclusory sentences [R.39]: the first simply declaring no violation, with the second purporting, without specificity, that 'The creation of the Commission relates specifically to items of appropriation in the 2015 budget for judicial and legislative pay'. This is false – and Judge Hartman conspicuously does not identify where in the budget the purported 'items of appropriation' might be found. There are no such 'items of appropriation', none were alleged by defendants, and sub-cause D, by its ¶407 [R-194], contains the admission of the six legislative defendants who sponsored A.7997 that there was 'no appropriation in the budget bill relating to the salary commission' – quoting their introducers' memorandum to A.7997, as follows:
>
> > 'Article VII, Section 6 of the New York State Constitution states in relevant part that '(n)o provision shall be embraced in any appropriation bill unless it relates specifically to some particular appropriation in the bill,' yet there was no appropriation in the budget bill relating to the salary commission. Thus, this legislation was improperly submitted and considered by the legislature as an unconstitutional rider to a budget bill.'
>
> Judge Hartman's citations to *Pataki*, 4 NY3d at 98-99, and *Schuyler v S. Mall Constructors*, 32 AD2d 454 [3d Dept 1969], reinforce the violation of Article VII, §6, which the six legislative sponsors of A.7997 themselves revealed." (underlining and italics in the original).

Tellingly, the appeal panel does not identify the unspecific "items of appropriation in the budget" that it is purporting make Part E not violative of Article VII, §6 – and, as highlighted by appellants' reply brief (at p. 35), in rebutting respondents' brief (at p. 42), "The Commission's earliest salary increases would NOT take effect until April 1, 2016 and, therefore, would be part of the budget for fiscal year 2016-2017, not fiscal year 2015-2016". In other words, the appeal panel's affirmance that there was no Article VII, §6 violation is a LIE.

The Memorandum's "Affirmance" of Judge Hartman's December 21, 2016 Decision Dismissing Appellants' Nine Causes of Action (at pp. 7-9)

Having affirmed, in the face of a contrary record, Judge Hartman's dismissal of section E of appellants' sixth cause of action and grant of summary judgment to defendants on Sections A-D (at pp. 5-7), the Memorandum states (at p. 7):

> "Supreme Court's dismissal of Sassower's remaining claims do not require extended discussion."

By "remaining claims", the appeal panel means the nine causes of action dismissed by Judge Hartman's December 21, 2016 decision [R.527-535] granting Assistant Attorney General Kerwin's September 15, 2016 cross-motion to dismiss appellants' verified complaint, made pursuant to CPLR §3211(a)(7) ("the pleading fails to state a cause of action") and CPLR §3211(a)(8) ("the court has not jurisdiction of the person of the defendant") [R.403-428].

The Memorandum does not identify that respondents' cross-motion had been made pursuant to CPLR §3211(a)(7) and (8) – or recite the adjudicative standard governing CPLR §3211(a)(7), relevant to the dismissal it is "affirming". This, notwithstanding the standard is quoted – from Judge Hartman' December 21, 2016 decision – in appellants' "legal autopsy"/analysis thereof, reprinted by their brief (at p. 7) in the context of contesting the lawfulness of her dismissal of their first four causes of action. The appeal panel's violation of that standard is just as brazen as Judge Hartman's.

As hereinbelow shown, the appeal panel's "discussion" of the nine causes of action is a LIE as to each.

As to appellants' first, second, third, and fourth causes of action [R.99-107 (R.159-187)],[10] the Memorandum purports (at pp. 7-8):

> "The first through fourth causes of action assert claims that had been dismissed as meritless in a prior action. Sassower had commenced an action in 2014 against defendants challenging aspects of the 2014-2015 budget. Supreme Court denied Sassower's motion for leave to amend her complaint in the prior action to, as relevant here, add four causes of action for the 2016-2017 budget year on the ground that they were 'patently devoid of merit.' Sassower did not appeal from the order that dismissed these claims. Supreme Court properly dismissed the first through fourth causes of action in this case because they were identical to the four proposed causes of action that were dismissed as meritless (see Biggs v. O'Neill, 41 AD3d 1067, 1068 [2007])."

The assertion that Judge Hartman "properly dismissed" the first through fourth causes of action because they were "identical" to those asserted in the first citizen-taxpayer action is a LIE. As stated by appellants' brief (at pp. 5-7) – without contest by Mr. Brodie:

> "…Justice Hartman's [December 21, 2016 decision]…proclaims the first four causes of action herein as 'identical' to 9-12 [dismissed by Judge McDonough in the prior citizen-taxpayer action].
>
> This is false. A total of 16 paragraphs – four paragraphs at the outset of each of the first four causes of action of the September 2, 2016 verified complaint (¶¶24-27

[10] Discussed in the briefs, as follows: appellants' brief (at pp. 5-7, 43); respondents' brief (at pp. 24-31), appellants' reply brief (at pp. 19, 20-28).

[R.100], ¶¶35-38 [R.103], ¶¶41-44 [R.104], ¶¶49-52 [R.106]) identify that each is not barred by Justice McDonough's August 1, 2016 decision [R.315-325] – and furnish the reason and substantiating proof, *to wit*, plaintiffs' Exhibit G analysis [R.338-373] showing the August 1, 2016 decision to be a 'judicial fraud' by a judge duty-bound to have disqualified himself for actual bias born of financial interest, who dismissed plaintiffs' causes of action:

> 'by completely disregarding the fundamental standards for dismissal motions, distorting the few allegations he cherry-picked, baldly citing inapplicable law, and resting on 'documentary evidence' that he did not identify – and which does not exist." (¶¶26, 37, 43, 51 of plaintiffs' September 2, 2016 verified complaint, underlining in original).

Justice Hartman's concealment of these prominent, material, and fully-documented allegations of the September 2, 2016 verified complaint (¶¶24-27 [R.100], ¶¶35-38 [R.103], ¶¶41-44 [R.104-5], ¶¶49-52 [R.106-7]) reflects her knowledge that they preclude dismissal of the first four causes of action as failing to state a cause of action based on the August 1, 2016 decision [R.315-325]. Indeed, her single cited case, the Appellate Division, Third Department decision in *Maki v. Bassett Healthcare*, 141 AD3d 979, 981 [3d Dept 2016], is not to the contrary. Rather, it recites the governing principal she has ignored:

> ''we proceed to determine the motion 'in accordance with the requirements of CPLR 3211' (*Lockheed Martin Corp. v Atlas Commerce, Inc.*, 283 AD2d at 803), and, in so doing, we ''afford the pleadings a liberal construction, take the allegations of the complaint as true and provide plaintiff the benefit of every possible inference'' (*Stainless Broadcasting Co. v Clear Channel Broadcasting Licenses, L.P.*, 58 A.D.3d 1010, 1012 [2009], quoting *EBC I, Inc. v Goldman, Sachs & Co.*, 5 N.Y.3d 11, 19 [2005]).' (at 980-981).

Justice Hartman's concealment of the allegations of the first four causes of action replicates AAG Kerwin's identical concealment by her dismissal cross-motion, objected to by plaintiffs. And, tellingly, Justice Hartman does not reveal either the grounds upon which AAG Kerwin had cross-moved to dismiss the first four causes of action [R.415] – nor plaintiffs' response by their September 30, 2016 memorandum of law (at pp. 15-16) [R.488-489]." (underlining and italics in the original).

The accuracy of this recitation was uncontested – and so-highlighted by appellants' reply brief pertaining to the first four causes of action (at pp. 1, 12-13). Nevertheless, the appeal panel conceals and does not address it, while replicating the grounds of Judge Hartman's appealed-from dismissal –

with an addition it does not identify as such, "Sassower did not appeal from the order that dismissed these claims.", whose legal significance, if any, to its "affirmance", it does not identify, nor the significance of the sole case it cites in parenthesis, with an inferential "see",[11] immediately upon asserting that Judge Hartman "properly dismissed" the first four causes of action, "Biggs v. O'Neill, 41 AD3d 1067, 1068 [2007])." These two *sub silentio*, misleading add-ons would appear prompted by frivolous argument pertaining to collateral estoppel/*res judicata* in Assistant Solicitor General Brodie's respondents' brief (at pp. 14-16), rebutted by appellants' reply brief (at pp. 15-17).

As to appellants' fifth cause of action [R.108-109 (R.177-186, R.214-219)],[12] the Memorandum purports (at p. 8):

> "The fifth cause of action, which alleges violations of NY Constitution, article VII, §§4, 5 and 6, was also properly dismissed. Article VII, §4 does not apply to appropriations for the Judiciary. The Governor issued a message of necessity that permitted the Legislature to take immediate action on the budget bill that contained the enabling legislation (see NY Const, art VII, §5; Maybee v. State of New York, 4 NY3d 415, 418-420 [2005] [construing a similar message of necessity provision in NY Const, art III, §14]), and we have already determined that there was no violation of article VII, §6."

The inference that Judge Hartman "also properly dismissed" the fifth cause of action for these recited reasons is a LIE. Judge Hartman's dismissal of the fifth cause of action was by a single sentence [R.531] – and appellants' brief (at p. 7) quotes it:

> "…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 [Justice McDonough] in [his] prior decisions."

Thus, *sub silentio*, the appeal panel substitutes different grounds for dismissing the fifth cause of action, falsely attributing it to Judge Hartman.

As to these superseding grounds, they are no less a LIE than Judge Hartman's – resting, as they do, on falsifying and concealing, *in toto*, the presumed-true allegations of the fifth cause of action:

> First, the inference that the fifth cause of action was confined to "appropriations for the Judiciary", at least with respect to violations of Article VII, §4, is false. The fifth cause of

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11 As identified in footnote 4 of appellants' brief (at p. 49), "see" is used "to introduce an authority that clearly supports, but does not directly state, the proposition", The Bluebook: A Uniform System of Citation (at p. 4) (18th ed. 2004).

12 Discussed in the briefs, as follows: appellants' brief (at pp. 7-9, 43-44); respondents' brief (at pp. 31-32), appellants' reply brief (at pp. 19, 28-29).

action [R.108-109 (R.177-186, R.214-219)] alleged Article VII, §§4, 5, and 6 violations with respect to all the Governor's budget bills introduced in January 13, 2016 (#S.6400/A.9000 - #S.6409/A.9009).

Second, it is also false that that "Article VII, §4 does not apply to appropriations for the Judiciary". It simply applies in a different way – and the fifth cause of action not only identified this, but identified that the Senate and Assembly one-house budget resolutions had concealed the difference [R.181-182 (¶¶370-371, 373-374)].

Third, the unspecified "budget bill that contained the enabling legislation" is presumably the Governor's Budget Bill #S.4610/A.6721, whose Part E established the Commission on Legislative, Judicial and Executive Compensation. Such bill, introduced on March 30, 2015, is not embraced by the fifth cause of action [R.108-109 (R.177-186, R.214-219)], but by the sixth cause of action and, specifically, by its sections D and E [R.111-112 (R.194-196, 197-201).

Fourth, the Article VII, §5 violations alleged in the fifth cause of action pertain to the Governor's five "appropriation bills" (#S.6400/A.9000 - #S.6404/A.9004), introduced on January 13, 2016 – and "message of necessity" have NO relevance to the Legislature's failure to amend and pass them, pursuant to §4, so that each bill, other than the Legislative/Judiciary budget bill (#S.6401/A.9001), would become "law immediately without further action by the governor".

Fifth, the purported "no violation of Article VII, §6" that the appeal panel had "already determined" pertained to the Governor's Budget Bill #S.4610/A.6721 – the subject of the sixth cause of action. It had nothing to do with the violations of Article VII, §6 alleged in the fifth cause of action pertaining to the Governor's budget bills introduced on January 13, 2016, *to wit*, his "appropriation bills" (#S.6400/A.9000 - #S.6404/A.9004) and his "non-appropriation bills" (#S.6405/A.9005 - #S.6409/A.9009) [R.175, ¶354].

As to appellants' seventh cause of action [R.112-114 (R.201-212)],[13] the Memorandum purports (at p. 8):

> "The seventh cause of action, asserting that the statute was unconstitutional as applied, also was properly dismissed as the Legislature had no duty to exercise any oversight of the Commission and, further, the complaint failed to plead facts legally sufficient to demonstrate that any Commission members were actually biased."

This is a LIE. Judge Hartman did not "also…properly dismiss[]" the seventh cause of action on

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[13] Discussed in the briefs as follows: appellants' brief (at pp. 9-10, 44); respondents' brief (at pp. 44-47); appellants' reply brief (at pp. 19, 37-39).

these grounds. Rather, she dismissed it, together with the eighth cause of action, by a two-sentence collective dismissal quoted by appellants' brief (at p. 9):

> "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."

Appellants' brief having highlighted (at pp. 9-10, 44) that this was a LIE, the appeal panel here, *sub silentio*, swaps it out for two substituted grounds that are also LIES. Its bald assertion "the Legislature had no duty to exercise any oversight of the Commission" both conceals and rejects the presumed-true threshold allegation of the seventh cause of action as to the unconstitutionality, *as applied*, of the Commission statute, which was as follows:

> "71…. "Defendants' refusal to discharge ANY oversight duties with respect to the constitutionality and operations of a statute they enacted without legislative due process renders the statute unconstitutional, *as applied*. Especially is this so, where their refusal to discharge oversight is in face of DISPOSITIVE evidentiary proof of the statute's unconstitutionality, *as written and as applied* – such as plaintiffs furnished them (Exhibits 38, 37, 39, 40, 41, 42, 43, 44, 46, 47, 48)." [R.112 (R.201) (underlining, capitalization, italics in the original)].

As for the appeal panel's further bald assertion "the complaint failed to plead facts legally sufficient to demonstrate that any Commission members were actually biased", such is an even more brazen LIE. And establishing this are the "plead[ed] facts" concealed, *in toto*, from appellants' seventh cause of action under its first section heading entitled:

> "A. *As Applied*, a Commission Comprised of Members who are Actually Biased and Interested and that Conceals and Does Not Determine the Disqualification/Disclosure Issues Before it is Unconstitutional" [R.113 (R.202-203)].

On top of this, the appeal panel's *sub silentio* two substituted grounds of "affirmance" cannot and do not support dismissal of the seventh cause of action as it contains three additional sections that not only each set forth a cause of action, but entitle appellants to summary judgment on each. These sections, which the appeal panel conceals, *in toto*, with all their presumed-true pleaded-facts, are entitled:

> "B. *As Applied*, a Commission that Conceals and Does Not Determine Whether Systemic Judicial Corruption is an 'Appropriate Factor' is Unconstitutional" [R.113 (R.203-204)];
>
> "C. *As Applied*, a Commission that Conceals and Does Not Determine the Fraud before It – Including the Complete Absence of ANY Evidence that Judicial

> Compensation and Non-Salary Benefits are Inadequate – is Unconstitutional" [R.113 (R.204-209)];
>
> "D. *As Applied*, a Commission that Suppresses and Disregards Citizen Input and Opposition is Unconstitutional" [R.114 (R.209-212)].

As to appellants' eighth cause of action [R.114 (R.212-213)],[14] the Memorandum purports (at p. 8):

> "Dismissal of the eighth cause of action was also proper because the record shows that the Commission considered the requisite statutory factors in making its recommendation regarding judicial compensation."

Again, this is a LIE. Judge Hartman did not "also" dismiss the eighth cause of action for this reason, but dismissed it, together with the seventh cause of action, by the two-sentence collective dismissal quoted by appellants' brief (at p. 9):

> "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."

Just as appellants' brief (at pp. 9-10, 44) demonstrated that this was a LIE, so, here, the appeal panel's *sub silentio* substituted ground is an even more flagrant LIE:

> First, its bald assertion that "the record shows that the Commission considered the requisite statutory factors in making its recommendation regarding judicial compensation" is NOT an "affirmance" for failure to state a cause of action, but a *sua sponte* granting of summary judgment to respondents who had not even moved to dismiss pursuant to CPLR §3211(a)(1) "a defense is founded upon documentary evidence".
>
> Second, there is NO EVIDENCE in "the record…that the Commission considered the requisite statutory factors in making its recommendation regarding judicial compensation" – and, tellingly, the appeal panel furnishes not a single example of the "requisite statutory factors" specified by the eighth cause of action as having been ignored by the Commission, which it, in fact, "considered".
>
> Third, the full EVIDENCE in the record was NOT before the appeal panel, as it had refused to subpoena the record, sought by the fifth branch of appellants' July 25, 2018 order to show cause, as follows:

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[14] Discussed in the briefs, as follows: appellants' brief (at pp. 9-10, 44); respondents' brief (at pp. 47-49); appellants' reply brief (at pp. 19, 39-41).

> "issuing a subpoena *duces tecum* to the Albany County Clerk directing delivery to this Court of the record of this citizen-taxpayer action and of its incorporated record of the predecessor citizen-taxpayer action for purposes of confirming plaintiffs-appellants' evidentiary entitlement to summary judgment on each of their causes of action, as well as to the granting, in its entirety, of their March 29, 2017 order to show cause with preliminary injunction and TRO";

Fourth, even without the benefit of the full EVIDENCE of the record, appellants had furnished the Appellate Division with their "12-page 'Statement of Particulars in Further Support of Legislative Override of the 'Force of Law' Judicial Salary Increase Recommendations, Repeal of the Commission Statute, Etc.' (Exhibit 40)" – the same as is referred to by the eighth cause of action [R.212-213 (at ¶455)] as "Individually and collectively, sufficient to void the judicial salary increase recommendations of [the] December 24, 2015 Report [of the Commission on Legislative, Judicial and Executive Compensation], *as a matter of law*." It was annexed as Exhibit EE to appellant Sassower's August 6, 2018 reply affidavit in further support of appellants' July 25, 2018 order to show cause for a preliminary injunction, with TRO – and a copy of that copy, the same as appellant Sassower had brought to the August 2, 2018 oral argument of the TRO, is annexed hereto as Exhibit C;

Fifth, the eighth cause of action extends beyond the Commission's failure to consider "requisite statutory factors" [R.114, R.212-213], yet the appeal panel neither refers to, nor contests, the presumed-true additional violations the eighth cause of action identifies.

As to appellants' ninth cause of action [R.115 (R.214-219)],[15] the Memorandum purports (at p. 8):

> "Supreme Court properly dismissed the ninth cause of action, which challenged the constitutionality of 'three-men-in-a-room' budget negotiations between the Governor and the Legislature, because budget negotiations between the Governor and the leaders of the Senate and Assembly are not prohibited. Indeed, the Court of Appeals has observed that state budgets are often a 'product of such negotiations, often extremely protracted ones' (Pataki v. New York State Assembly, 4 NY3d 75, 85 [2004])."

This is another LIE – affirming what appellants' brief (at pp. 10-13) already exposed as deceit. As

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[15] Discussed in the briefs, as follows: appellants' brief (at pp. 10-13; 44-45); respondents' brief (at pp. 50-53); appellants' reply brief (at pp. 19, 41-42).

there stated with regard to Judge Hartman's dismissal [R.531-532] – uncontested by respondents' brief:

> "...plaintiffs' ninth cause of action (¶¶81-84) [R.115, R.214-219] does not challenge budget 'negotiation' by the Governor, Temporary Senate President, and Assembly Speaker. It challenges their budget dealmaking that includes the amending of budget bills – the unconstitutionality of which is compounded by the fact that they do it behind-closed-doors. Both are alleged by plaintiffs' ninth cause of action to unbalance the constitutional design – and, as set forth by the ninth cause of action, citing and quoting from the Court of Appeals' decision in *King v. Cuomo*, 81 N.Y.2d 247 (1993) – on which plaintiffs' ninth cause of action principally relies – and *Campaign for Fiscal Equity, Inc. v. Marino*, 87 N.Y.2d 235 (1995), also cited and quoted by plaintiffs' ninth cause of action – the standard for determining constitutionality of a practice is whether it unbalances the constitutional design. These two cases make plain that because the Constitution does not prohibit a practice does not make it constitutional – contrary to AAG Kerwin's deceit on her cross-motion – adopted by Justice Hartman.
>
> As with AAG Kerwin, Justice Hartman's decision does not address, makes no showing, and does not even baldly claim, that three-men-in-a-room 'budget negotiations and amending of budget bills' – all taking place out of public view – is consistent with the text of Article VII, §§3 and 4 – or Article III, §10 of the New York State Constitution, 'The doors of each house shall be kept open', and Senate and Assembly rules consistent therewith: Senate Rule XI, §1; Assembly Rule II, §1; and Public Officers Law, Article VI. Similarly, the decision does not address, makes no showing, and does not even baldly claim, that three-men-in-a-room governance accords with the constitutional design, including as to size, reflected by Zephyr Teachout's law review article '*The Anti-Corruption Principle*', Cornell Law Review, Vol 94: 341-413 – legal authority to which plaintiffs' ninth cause of action also cites [R.218]. As such, Justice Hartman's dismissal of the ninth cause of action is fraudulent." (underlining in the original).

Thus, repeated, identically, by the appeal panel's "affirmance" is Judge Hartman's already-demonstrated fraud.

As to appellants' tenth cause of action [R.115-123],[16] the Memorandum purports (at p. 9):

> "Supreme Court also properly dismissed the tenth cause of action. The appropriation for state reimbursement for District Attorney salaries specifically supersedes County Law §700 and any other contrary law. Moreover, the mistaken

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16 Discussed in the briefs, as follows: appellants' brief (at pp. 13-14; 45); respondents' brief (at pp. 53-55); appellants' reply brief (at pp. 19, 43).

> appropriation for budget year 2014-2015, rather than 2016-2017, was an obvious typographical error that is insufficient to invalidate legislation (see Matter of Morris Bldrs., LP v Empire Zone Designation Bd., 95 AD3d 1381, 1383 [2012], affd sub nom. James Sq. Assoc. LP v Mullen, 21 NY3d 233 [2013])."

Here is yet another LIE, revealed as such by appellants' brief (at pp. 13-14), which had stated:

> "...As for Justice Hartman's claim that 'the district attorney salary appropriation plaintiff challenges specifically supersedes any law to the contrary', her decision furnishes no law for the proposition that an appropriation can lawfully or constitutionally do so – and such contradicts plaintiffs' tenth cause of action that it cannot (¶¶92, 96-104) [R.117-120]. As for Justice Hartman's claim that 'reference to fiscal year 2014-2015 rather than 2016-2017 is a typographical error that does not invalidate the challenged legislation', such disposes of the least of the several grounds of the cause of action, indeed, only ¶¶90-91 [R.117], leaving the balance, all concealed, not only stating a cause of action, but establishing an entitlement to summary judgment by its three recited FOIL requests – and so identified by plaintiffs' September 30, 2016 memorandum of law (at pp. 32-35) [R.505-508]."

Likewise, a LIE is the final sentence sentence of this paragraph:

> "Sassower's remaining contentions are either moot or have been considered and found to lack merit."

The appeal panel furnishes no specificity as to what "remaining contentions" are "moot" or "found to lack merit" – and there are no contentions in either category in the tenth cause of action. To the extent this last sentence is not confined to the tenth cause of action,[17] there are, likewise, no contentions in either category in any of the other nine causes of action, or elsewhere in the appeal. Indeed, all the recognized exceptions to mootness are here present – and Judge Hartman did not find to the contrary, even with respect to the only cause of action to which she made any reference to mootness [R.531-532], the ninth cause of action challenging the constitutionality of "three men in a room" budget deal-making, *as unwritten* and *as applied* [R.115 (R.214-219)].

"[T]he Judgement is affirmed" (at p. 9)

The Memorandum concludes with a line reading "McCarthy, J.P., Clark and Mulvey, JJ., concur" – ostensibly concurring in what Justice Rumsey purports to have written.

Then follows what is presumably the Order part of the appeal panel's "Memorandum and Order":

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[17] As reflected by the preceding paragraph (at p. 8), "affirming" Judge Hartman's dismissals of appellants' seventh, eighth, and ninth causes of action, a given paragraph is not necessarily confined to a single cause of action.

"ORDERED that the judgment is affirmed, without costs."

Yet, the Memorandum itself nowhere states "the judgment is affirmed" and the Order purporting the affirmance does not comply with the requirements of CPLR §5712, entitled "Content of order determining appeal":

> "(b) Order of affirmance. Whenever the appellate division, *although affirming a final or interlocutory judgment or order*, reverses or modifies any findings of fact, or makes new findings of fact, its order shall comply with the requirements of subdivision (c)." (italics added).

As hereinabove detailed, the Memorandum modified "findings of fact" and made "new findings of fact", with respect to appellants' causes of action (first through fourth, fifth, seventh, eighth, tenth), as well as with respect to the threshold integrity issues pertaining to Judge Hartman and the Attorney General. Yet, its deviation from Judge Hartman's November 28, 2017 judgment is *sub silentio* as to both facts and law, thereby also concealing its wholesale violations of the "requirements of subdivision (c)" of CPLR §5712. Such mandated that the order of affirmance:

> "1. ….state whether or not the findings of fact below have been affirmed", when its "determination is stated to be upon the law alone"; and:
>
> "2. if the determination is stated to be upon the facts, or upon the law and the facts, the order shall also specify the findings of fact which are reversed or modified, and set forth any new findings of fact made by the appellate division with such particularity as was employed for the statement of the findings of fact in the court of original instance; except that the order need not specify the findings of fact which are reversed or modified nor set forth any new findings of fact if the appeal is either from a determination by the court without any statement of the findings of fact or from a judgment entered upon a general verdict without answers to interrogatories."

Nowhere does either the appeal panel state whether its determination is "upon the law alone"; "upon the facts", or "upon the law and the facts", or "whether or not the findings of fact below have been affirmed"; or whether there are "new findings of fact".

The appeal panel may be presumed to know the adverse consequence to appellants of its violations of CPLR §5712, vis-à-vis the Court of Appeals' subject matter jurisdiction – as commentary pertaining to that provision makes it explicit, as, for instance, McKinney's Consolidated Laws of New York Annotated, 7B, pp. 583-4 (1995):[18]

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18 See, similarly, 2014 edition, at pp. 459-60:

> "CPLR 5712 is largely designed to ensure that an order contains certain information that can affect appealability; and scope of review on appeal.
>
> …

> One of the rare instances in which the Court of Appeals can review issues of fact is where the appellate division has expressly or impliedly found new facts and has, based on those new findings, made a final disposition of the case. Subdivision (b) and (c) of CPLR 5712 are both designed to require the appellate division to reveal what new findings they had made, if any, to enable the Court of Appeals to determine, among other things, whether the Court of Appeals can now review the facts. Typically, it will be subdivision (c) that's relevant, because ordinarily a finding of new facts by the appellate division will result in reversing or modifying the lower court determination. But sometimes the appellate division, although modifying a fact finding or finding a new fact, will merely affirm the determination as so modified. The latter is the situation covered by subdivision (b). Both (b) and (c) would appear to have reference to the review-of-facts powers contained in CPLR 5501(b). The latter refers to a case in which the appellate division sees an order 'affirming' the judgement as modified, within the intendment of CPLR 5712(b). It may be only a nice case of semantics, but factual activity by the appellate division can be important for the Court of Appeals to know about regardless of the label the appellate division has given to its disposition.
>
> Hence, where there is an affirmance, a reversal, or a modification, underlying findings in respect of the facts, and especially any alterations made by the appellate division in the facts as found at the trial level, should be revealed by the appellate division order." (underlining added).

See, also, *People v. Bleakley*, 69 NY2d 490, 494 (1989), citing to "Cohen and Karger, Powers of the New York Court of Appeals §109, p. 465 [rev ed])" and quoting it, as follows:

> "the linchpin of our constitutional and statutory design [is] intended to afford each litigant at least one appellate review of the facts".

Thus, the appeal panel's violations of its statutory duty to properly identify what it has done – and the respects in which its "affirmance" is actually a modification, are intended to mislead the Court of Appeals as to its jurisdiction with respect to Article VI, §3 of the New York Constitution:

> "The jurisdiction of the court of appeals shall be limited to the review of questions of law except…where the appellate division, on reversing or modifying a final or interlocutory judgment in an action or a final or interlocutory order in a special proceeding, finds new facts and a final judgment or a final order pursuant thereto is entered…."

> Subdivisions (b) and (c) of CPLR 5712 are both designed to require the appellate division to reveal what new findings they have made, if any, to enable the Court of Appeals to determine, among other things, whether the Court of Appeals can now review the facts.
>
> Both (b) and (c) would appear to have reference to the review-of-facts powers contained in CPLR 5501(b). …"

Moreover, to the extent that the "judgment" being "affirmed" is the single decretal paragraph at the end of Judge Hartman's November 28, 2017 decision and judgment, it does not conform to anything there adjudicated or at issue in this case. It reads:

> "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." [R.40].

This is utterly nonsensical. "Part E §3[5]" was not challenged by appellant as "facially unconstitutional", nor would it be, as such provision states:

> "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." [R.1081].

Consequently, the "affirmed" judgment – if "affirming" the single decretal paragraph of the November 28, 2017 decision and judgment – has NOTHING to do with appellants' sixth cause of action, as to which Judge Hartman purports to have granted summary judgment "in favor of defendants" – a grant which ostensibly includes sub-cause E.

The Memorandum and Order is Not Signed by Any of the Four Panel Justices (at p. 9)

The Memorandum and Order is not signed by any of the four panel justices. Rather, it ends with an autopen signature of the clerk, as follows:

> "ENTER:
> s/
> Robert D. Mayberger,
> Clerk of the Court

CPLR §2219(b), entitled "Signature on appellate court order" reads:

> "An order of an appellate court shall be signed by a judge thereof except that, upon written authorization by the presiding judge, it may be signed by the clerk of the court or, in his absence or disability, by a deputy clerk."

Yet, upon appellant Sassower's written FOIL/public access request to Clerk Mayberger for "a copy of such written authorization", the response revealed, without so-stating, no "written authorization" (Exhibits A-1, A-2). Upon further written request to Clerk Mayberger, asking:

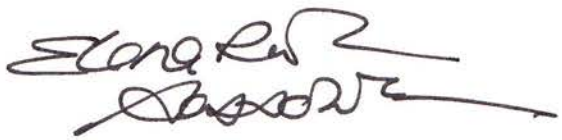
> "whether your signature is pursuant to CPLR §2219(b). If it is, I request, pursuant to FOIL (Public Officers Law, Article VI) and §124 of the Rules of the Chief Administrative Judge ('Public Access to Records'), a copy of the 'written authorization by the presiding judge' that CPLR §2219(b) expressly requires for you to sign 'An order of the appellate court'." (Exhibit A-4).

The response, this time signed by Clerk Mayberger, again revealed, without so-stating, no such "written authorization".

Even more serious, however, was Clerk Mayberger's failure to address whether his role with respect to the "Memorandum and Order" had been confined to signing it, by autopen. The written inquiry was as follows:

> "Reference is made to the December 27, 2018 'Memorandum and Order' disposing of the citizen-taxpayer action appeal *Center for Judicial Accountability, Inc., et al. v. Cuomo, et al.* (#527081), whose final sentence reads: 'ORDERED that the judgment is affirmed, without costs.'
>
> Why does this ORDERING sentence follow – and not precede – the line reading 'McCarthy, J.P., Clark and Mulvey, JJ., concur'? Is it because their concurrence is with the Memorandum portion that purports to be written by Justice Rumsey?
>
> Who has written the ORDERING sentence, whose assertion 'the judgment is affirmed' is implied, but not stated in the Memorandum itself. Is it you – or personnel in the Clerk's Office – and is that why your autopen signature is beneath it, rather than the signature of any of the justices?"

He furnished no answer (Exhibit A-5).



Plaintiff-Appellants' "Legal Autopsy"
of Appellate Division, Third Department's December 27, 2018 Memorandum and Order

TABLE OF EXHIBITS

Exhibit A-1: Plaintiff-Appellants' March 4, 2019 e-mail to Appellate Div/3rd Dept. Clerk Robert Mayberger – "FOIL/public accss records request – CPLR 2219(b)"

Exhibit A-2: Deputy Clerk Sean Morton's March 5, 2019 letter

Exhibit A-3: Plaintiff-Appellants' March 15, 2019 e-mail to Clerk Mayberger – "Informational Inquiry-FOIL/public access records request: The designation 'Memorandum and Order' in the Appellate Division, 3rd Dept's disposition of appeals"

Exhibit A-4: Plaintiff-Appellants' March 19, 2019 e-mail to Clerk Mayberger – "Informational Inquiry-FOIL/records request: Who has written the ORDERING sentence that follows, rather than precedes, the names of the justices in the 'Memorandum and Order' in CJA v Cuomo (#527081)? And where is your 'written authorization' to sign?"

Exhibit A-5: Clerk Mayberger's March 22, 2019 letter

Exhibit B: Plaintiff-Appellants' November 27, 2018 "ORDER TO SHOW CAUSE (#4) to Disqualify the Appeal Panel for Demonstrated Actual Bias, including its Wilful Violation of Judiciary Law §14, for Certification of Questions to the Court of Appeals, & Other Relief", signed December 3, 2018

Exhibit C: Plaintiff-Appellants' January 15, 2016 "Statement of Particulars in Further Support of Legislative Override of the 'Force of Law' Judicial Salary Increase Recommendations, Repeal of the Commission Statute, Etc."

At the Appellate Division, Third Department of the State of New York, located at the Robert Abrams Building for Law and Justice on State Street, Albany, New York 12223, on the 3rd day of November, 2018. December

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

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-Appellants,

-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,

Defendants-Respondents.

ORDER TO SHOW CAUSE (#4) to Disqualify the Appeal Panel for Demonstrated Actual Bias, including its Willful Violation of Judiciary Law §14, for Certification of Questions to the Court of Appeals, & Other Relief

App. Div. 3rd Dept. Docket #527081
Albany Co. Index #5122-16

Upon the annexed affidavit of the unrepresented individual plaintiff-appellant ELENA RUTH SASSOWER, sworn to on November 27, 2018, the exhibits annexed thereto, plaintiffs-appellants' perfected appeal, and upon all the papers and proceedings heretofore had,

1

LET defendants-respondents show cause before this Court at the Robert Abrams Building for Law and Justice on State Street, Albany, New York 12223, on the 17th day of December 2018 at 10:00 a.m. or as soon thereafter as the parties or their counsel may be heard, why an order should not issue:

1. disqualifying the appeal panel for demonstrated actual bias, as manifested by its November 13, 2018 decision and order on motion and conduct at the November 13, 2018 oral argument of the appeal, including its willful violation of Judiciary Law §14 and §§100.3E and F of the Chief Administrator's Rules Governing Judicial Conduct;

2. enjoining the appeal panel from rendering any decision on the appeal until its justices have ruled on the threshold issue that Judiciary Law §14 bars them from sitting and rendering any decision herein because they are "interested";

3. pursuant to Article VI, §3b(4) of the New York State Constitution, certifying to the New York Court of Appeals the following or comparable questions:

   (a) Inasmuch as Judiciary Law §14 bars judges from adjudicating matters in which they are "interested", are there any state judges who, pursuant to Judiciary Law §14, would not be barred by HUGE financial interest from adjudicating this citizen-taxpayer action, challenging the constitutionality and lawfulness of commission-based judicial salary increases, the judiciary budget, and the state budget "process"?

   (b) Can retired judges, not benefiting from the commission-based judicial salary increases, be vouched in? Or can the case be transferred/removed to the federal courts, including pursuant to Article IV, §4 of the United States Constitution: "The United States shall guarantee to every State in this Union a Republican Form of Government..."?

   (c) Can "interested" judges who Judiciary Law §14 divests of jurisdiction nonetheless invoke the judge-made "rule of necessity" to give themselves the jurisdiction the statute removes from them?

   (d) What are the safeguarding prerequisites to ensure that a judge invoking the "rule of necessity" will not use it for purposes of acting on bias born of interest? Would the "remittal of disqualification" procedures specified by §100.3F of the Chief Administrator's Rules Governing Judicial Conduct be applicable – starting with a statement by the judge that he believes he can be fair and impartial notwithstanding the existence of grounds for his disqualification pursuant to §100.3E.

(e) As Executive Law §63.1 predicates the attorney general's litigation posture on "the interest of the state", does his representation of defendants-respondents by litigation fraud, because he has no legitimate defense, establish that his representation of them is unlawful and that his duty is to be representing plaintiffs-appellants, or intervening on their behalf, in upholding public rights?

4. transferring this appeal to an Appellate Division that has not yet manifested any bias with respect to this case – preferably the Appellate Division, Fourth Department;

5. granting such other and further relief as may be just and proper, including, if the foregoing is denied:

(a) disclosure, pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct – and in keeping with *Oakley v. Aspinwall*, 3 N.Y. 547, 548, 551 (1850) – of the financial and other interests of the justices, as well as their personal, professional, and political relationships, impacting on their fair and impartial judgment;

(b) vacating the November 13, 2018 decision and order on motion upon the granting of reargument and renewal, pursuant to CPLR §2221;

(c) "appropriate action", pursuant to §100.3D(2) of the Chief Administrator's Rules Governing Judicial Conduct, for the frivolous and fraudulent November 13, 2018 oral argument of Assistant Solicitor General Frederick Brodie, including a show cause order as to why he and supervising and managerial attorneys in the attorney general's office should not be disciplined (*Cf. Matter of Greenberg*, 15 N.J. 132 (1954));

(d) $100 motion costs pursuant to CPLR §8202.

LET SERVICE of this order to show cause, together with the papers on which it is based, be made on or before the 4th day of December 2018 upon counsel for the defendants-respondents herein, by e-mail and first-class mail, be deemed good and sufficient service.

ANSWERING PAPERS, if any, ~~are to be served by defendants-respondents, via~~ e-mail and ~~first-class mail, at least _____ days prior to the return date of this order to show cause, *to wit*,~~ December 4, 2018.

AND IT IS FURTHER ORDERED that this motion brought on by order to show cause shall not be orally argued unless counsel and the unrepresented plaintiffs-appellants are notified to the contrary by the Clerk of the Court.

Christine M. Clark
Associate Justice
Appellate Division, Third Department

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

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-Appellants,

-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,

Defendants-Respondents.

November 27, 2018

Moving Affidavit in Support of Appellants' Order to Show Cause (#4)

App. Div. 3rd Dept. Docket #527081
Albany Co. Index # 5122-16

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.:

ELENA RUTH SASSOWER, being duly sworn deposes and says:

1. I am the unrepresented individual plaintiff-appellant in this citizen-taxpayer action brought pursuant to Article 7-A of the State Finance Law (§123 *et seq.*) for declarations of unconstitutionality and unlawfulness with respect to the state budget – including with respect to the Judiciary budget and the commission-based judicial salary increases it embeds.

2. I am fully-familiar with all the facts, papers, and proceedings heretofore had and submit this affidavit in support of the relief sought by appellants' accompanying order to show cause

to disqualify the appeal panel consisting of Associate Justice William McCarthy, as presiding justice, and Associate Justices Robert Mulvey, Christine Clark, and Phillip Rumsey for the actual bias demonstrated by their November 13, 2018 decision and order on motion (Exhibit A-1), rendered before noon, and at the November 13, 2018 oral argument, held at 1 p.m. (Exhibit D).[1] Such actual bias includes their willful violation of the express proscription of Judiciary Law §14 by their sitting and taking part in this appeal in which they are "interested",[2] as well as of their mandatory disqualification/disclosure obligations under §§100.3E and F of the Chief Administrator's Rules Governing Judicial Conduct.

3. As this is a citizen-taxpayer action, plaintiffs-appellants proceed by order to show cause, consistent with the command of State Finance Law §123-c(4):

> "An action under the provisions of this article shall be heard upon such notice to such officer or employee as the court, justice or judge shall direct, and shall be promptly determined. The action shall have preference over all other causes in all courts" (underlining added).[3]

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[1] With the Court's consent, I retained a videographer to record the November 13, 2018 oral argument (Exhibits B-1, B-2) – and it is from his VIDEO, now posted on CJA's website, here: http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/appeal/11-13-18-oral-argument.htm, that I made a transcription, annexed hereto as Exhibit D.

[2] In pertinent part, Judiciary Law §14, entitled "Disqualification of judge by reason of interest or consanguinity", states:

> "A judge shall not sit as such in, or take any part in the decision of, an action, claim, matter, motion or proceeding to which he is a party, or in which he has been attorney or counsel, or in which he is interested, or if he is related by consanguinity or affinity to any party to the controversy within the sixth degree. …" (underlining added)

[3] As I previously identified, including by my October 18, 2018 affidavit in support of appellants' order to show cause to strike the attorney general's brief, etc.—which Associate Justice Sharon Aarons nonetheless declined to sign, without reasons, on October 22, 2018, thereby requiring appellants to proceed by ordinary motion:

> "Whenever a statute or rule requires that a given motion be made "on such notice as the court may direct,' or uses words to that effect, that is another legislative way of requiring that the motion be brought on by order to show cause…" McKinney's Consolidated Laws of New York Annotated, Book

4. Only a biased tribunal, motivated by undisclosed interests and relationships, could render the November 13, 2018 decision (Exhibit A-1). Closing with the line "McCarthy, J.P., Clark, Mulvey and Rumsey, JJ., concur", and bearing an auto-pen signature of Robert D. Mayberger, as Clerk of the Court, the two-sentence decision reads, in full:

> "Motion to strike respondents' brief, to declare Attorney General's appellate representation of respondents unlawful and for other relief.
>
> Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is
>
> ORDERED that the motion is denied, without costs."

5. Such decision 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 is, *on its face*, improper. It cites NO facts and NO law in support of its bald denial of appellants' October 23, 2018 motion.[4] Nor are there ANY facts or law that could remotely justify it. Indeed, that the decision purports, by standard boilerplate, that the denial is "Upon the papers filed in support of the motion and the papers filed in opposition thereto" is an OUTRIGHT LIE. The ONLY determination possible based on those "papers" was the granting of ALL the relief sought by the

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> 7B, Practice Commentaries by Patrick Connors: C2214:25 – "What is a Proper Case?"

4 *Cf.*, this Court's decision in *Dworetsky v. Dworetsky*,152 A.D.2d 895, 896 (1989):

> "We take this opportunity to indicate again our concern over the increasingly common practice in this department of matters being decided without any written rationale (*see*, *Flax v Standard Sec. Life Ins. Co.*, 150 A.D.2d 894). Written memoranda assure the parties that the case was fully considered and resolved logically in accordance with the facts and law.... We encourage and expect greater use of written memoranda by the Bench to accomplish these goals."

motion, *as a matter of law*, because, as demonstrated by appellants' October 4, 2018 reply brief on which the motion rests, Assistant Solicitor General Frederick Brodie's September 21, 2018 respondents' brief is "from beginning to end, 'a fraud on the court'" – underscoring that the attorney general has NO legitimate defense to the appeal and that his appellate representation of respondents is unlawful pursuant to Executive Law §63.1 – and belongs to appellants.

6. Further concealed by the November 13, 2018 decision is the threshold jurisdictional issue, identified at ¶2 of my November 13, 2018 reply affidavit in further support of the motion.[5] There stated is the fact that because of the appeal panel's "HUGE financial and other interests in the appeal", proscribed by Judiciary Law §14, it was:

> "without jurisdiction to sit – possibly even upon invocation of 'the rule of necessity'[fn2] – and that its threshold duty [was] to determine that issue, preceded by 'remittal of disqualification' pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct." (underlining in the original).

The annotating footnote 2 read:

> "New York cases invoking the rule of necessity invariably cite, either directly or through other cases, *United States v. Will*, 449 U.S. 200 (1980). Yet, it is unclear to me whether, in the federal system, there

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[5] My November 13, 2018 reply affidavit was initially transmitted to the Court, by e-mail sent at 7:26 am, addressed to Chief Motion Attorney Ed Carey and Court Attorney Jane Landes (Exhibit A-2). The transmitting e-mail stated, in pertinent part:

> "As discussed, please promptly forward this e-mail/ or print out & deliver it to the appellate panel so that, optimally, the judges can decide the motion, returnable at 10 am today, before today's oral argument of the appeal at 1 pm – as the attorney general is NOT properly before the Court, representing the respondents and the respondents' brief, from which Mr. Brodie intends to argue (per para. 20 of his Nov. 2 opposing affirmation & his opposing memo, pp. 3-4), is fraudulent. I will endeavor to deliver the original reply affidavit to the Court by 10 am. I will be leaving White Plains shortly." (underlining and capitalization in the original).

Upon arriving at the Clerk's Office shortly before 11 am, Court Attorney Jane Landes took from me the signed and notarized original reply affidavit and confirmed, in response to my question, that the appeal panel had already been furnished with the e-mailed reply affidavit, as I had requested.

> is any analogue to Judiciary Law §14 – a statute which, as New York caselaw makes clear, removes jurisdiction from a judge under given circumstances such as interest, as opposed to mandating disqualification under such circumstances."

In substantiation, my November 13, 2018 reply affidavit annexed exhibits that had been previously furnished to the Court. These were Exhibit H-2, particularizing, *inter alia*, each justice's $75,000 yearly salary interest in the appeal and $300,000 "claw-back" liability for the commission-based judicial salary increases already paid; and Exhibits J and L, furnishing relevant treatise authority and caselaw establishing how unequivocally Judiciary Law §14 divests of jurisdiction "interested" judges, as, for instance, 32 New York Jurisprudence §43 (1963): 'Effect when judge disqualified under statute', stating:

> "A judge disqualified for any of the reasons set forth in the statute,[fn], or a court of which such judge is a member, is without jurisdiction, and all proceeding[s] had before such a judge or court are void.[fn] In that situation, jurisdiction cannot be conferred by consent.[fn] Such a judge is even incompetent to make an order in the case setting aside his own void proceedings.[fn]…" (underlining in Exhibit J).

and the current treatise, 28 New York Jurisprudence 2nd §403 (2018) "Disqualification as causing a loss of jurisdiction", comparably reading:

> "A judge disqualified for any of the statutory grounds, or a court of which such a judge is a member, is without jurisdiction, and all proceedings had before such a judge or court are void.[fn] … A disqualified judge is even incompetent to make an order in the case setting aside his or her own void proceedings.[fn]" (underlining in Exhibit J).

I noted that both treatises cited to *Oakley v. Aspinwall*, 3 NY 547 (1850), with the latter treatise including citations to such decisions of this Court consistent therewith as its 2008 decision in *People v. Alteri*, 47 A.D.3d 1070 (2008), wherein it stated:

> "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, 104 N.E. 624 [1914]; *see also Matter*

> *of Harkness Apt. Owners Corp. v. Abdus–Salaam*, 232 A.D.2d 309, 310, 648 N.Y.S.2d 586 [1996]) and void any prior action taken by such judge in that case before the recusal (*see People v. Golston*, 13 A.D.3d 887, 889, 787 N.Y.S.2d 185 [2004], lv. denied 5 N.Y.3d 789, 801 N.Y.S.2d 810, 835 N.E.2d 670 [2005]; *Matter of Harkness Apt. Owners Corp. v. Abdus– Salaam*, 232 A.D.2d at 310, 648 N.Y.S.2d 586). 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, 582 N.Y.S.2d 65, 590 N.E.2d 1193 [1992], quoting *Matter of City of Rochester*, 208 N.Y. 188, 192, 101 N.E. 875 [1913])".

7. The non-responsiveness of the appeal panel, by its November 13, 2018 decision (Exhibit A-1), to the threshold integrity issues pertaining to itself and to the attorney general, presented and substantiated by the October 23, 2018 motion, continued at the November 13, 2018 oral argument (Exhibit D). Without identifying that Associate Justice Michael Lynch was not participating with them, or why (Exhibit C), the four appeal panel justices came to the bench, without asserting their jurisdiction to sit and take part in the appeal, without invoking the "rule of necessity", without making any disclosure of their financial and other interests and relationships,[6]

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[6] The contrast to *Oakley v. Aspinwall*, *supra*, at 548, 551, could not be more stark:

> "It appears that **upon the appeal being moved for argument, Judge Strong informed the counsel for both parties of his relation to the Messrs. Aspinwall, the appellants,** and that because of it he should decline to sit in the case; but that the counsel consented that he should sit, and that he was particularly urged to it by the counsel for the respondent; that he finally consented to hear the cause upon its being suggested, that the appellants Aspinwall were not parties in interest, and would not suffer by the judgment…
>
> …
>
> The statute declares, that 'no judge of any court can sit as such in any cause to which he is a party or in which he is interested, or in which he would be disqualified from being a juror by reason of consanguinity or affinity to either of the parties.' (2 *R.S.* 275 §2; *Revisers' Notes,* 3 *R.S.* 694.)
>
> After so plain a prohibition, can anything more be necessary to prevent a judge from retaining his seat in the cases specified?... The exclusion wrought by it is as complete as is in the nature of the case possible. The judge is removed from the cause and from the bench; or if he will

without stating their belief they could be fair and impartial, and without asking me any questions – either about the foregoing, or about the course of the proceedings below, or about the course of appellants' three orders to show cause before the Court's other justices. And they allowed Mr. Brodie to freely repeat the frauds of his respondents' brief, exposed by appellants' reply brief – whose repetition, at the oral argument, the October 23, 2018 motion had sought to prevent.

8. Establishing precisely what occurred – and my protests to the four appeal panel justices about their willful violation of Judiciary Law §14 and their disclosure/disqualification obligations, replicating what their fellow justices had done on appellants' two earlier motions – and what Judge Hartman had done below – to which they sat mute – is the VIDEO of the November 13, 2018 oral argument – a transcription of which is annexed (Exhibit D). Additionally, annexed is my "legal autopsy"/analysis of Mr. Brodie's just under seven-minute oral argument (Exhibit E), establishing the truth of what I stated, in rebuttal:

> "…I made a motion, which you denied an hour ago, giving no reasons and allowing this proceeding, this appellate argument, in which Mr. Brodie repeated the outright lies and frauds already demonstrated in my papers to you, in the reply brief, in the motions.
>
> …you have allowed the most flagrant fraud, fraud, with respect to everything.
>
> …no bench conversant with the briefs could allow the drivel of Mr. Brodie here, repeating what has already been exposed as deceits." (Exhibit D).

9. Based on the November 13, 2018 decision (Exhibit A-1) and oral argument (Exhibit D), it appears that the appeal panel is intending to render a decision on the appeal, without ruling on

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occupy the latter, it must be only as an idle spectator and not as a judge. He can not sit as such. The spirit and language of the law are against it. Having disqualified him from sitting as a judge, the statute further declares that he can neither decide nor take part in the decision of the cause, as to which he is divested of the judicial function. **Nor ought he to wait to be put in mind of his disability, but should himself suggest it and withdraw, as the judge with great propriety attempted to do in the present case.** He can

its jurisdiction to do so, because – as is clear from Judiciary Law §14, caselaw, and treatise authority – it has NO jurisdiction by reason of the HUGE financial interest of each of its four justices – a state of affairs whose acknowledgment would prevent it from "throwing" the appeal by a fraudulent judicial decision, which is the ONLY way it can uphold the unconstitutional, statutorily-violative, and fraudulent judicial salary increases that are the subject of appellants' sixth, seventh, and eighth causes of action, to which, as appellants' brief and reply brief establish, respondents have NO defense, as, likewise, NO defense to appellants' seven other causes of action.

10. Appellants make this motion to secure a responsive ruling to the dispositive threshold issue that Judiciary Law §14 divests the appeal panel of jurisdiction, voiding any decision it may render – just as it voids the decisions below that are the subject of the appeal. The alternative would be an Article 78 proceeding[7], which, upon commencement in this Court, would require transfer to another judicial department, consistent with *Capoccia v. Appellate Division, Third Department*, 104 A.D.2d 536, 537 (3rd Dept 1984):

> "Inasmuch as the Justices of this court are named as respondents in this proceeding, the matter may not be adjudicated here (Judiciary Law, §14) and must be transferred to another court for determination.
>
> Proceeding transferred to the Appellate Division, Fourth Department, for determination."

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not sit, says the statute. It is a legal impossibility, and so the courts have held it. *Edwards* v. *Russell*,21 *Wend.* 63; *Foot* v. *Morgan,* 1 *Hill,* 654.)"

7 *Matter of Sterling Johnson, Jr. v. Hornblass*, 93 AD2d 732, 733 (1st Dept. 1983):

> "We are again confronted with the question of whether or not a determination by a Justice at *nisi prius* not to disqualify himself is subject to review by this court pursuant to CPLR article 78. Section 14 of the Judiciary Law... is the sole statutory authority in New York for disqualification of a Judge. If disqualification under the statute were found, prohibition would lie, since there would be a lack of jurisdiction. There is an express statutory disqualification. *(See Matter of Merola v. Walsh*, 75 AD2d 163; *Matter of Katz v. Denzer*, 70 AD2d 548; *People ex rel., Devery v. Jerome*, 36 Misc 2d 256.)"

11. With regard to such responsive ruling, I take this opportunity to reinforce the observation made by my above-quoted ¶2 of my November 13, 2018 reply affidavit, with its footnote 2, questioning the applicability of "rule of necessity" to Judiciary Law §14 – which I reiterated at the oral argument. 32 New York Jurisprudence §45, "Disqualification as yielding to necessity" (1963), is that reinforcement, stating, by its concluding sentence that I had not previously read:

> "Moreover, 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]"

12. 55 years later, there appears to be NO subsequent caselaw or treatise authority dispelling the "serious doubt…as to the applicability of the necessity rule where the judge is disqualified under the statute". This not only includes the 1980 United States Supreme Court decision in *United States v Will*, *supra*, but the 2010 New York Court of Appeals decision in *Maron v. Silver*, 14 N.Y.3d 230 (2010) which, notwithstanding its subject was judicial salary increases, conspicuously made no reference to statutory disqualification for interest under Judiciary Law §14 in its brief discussion under the title heading "Rule of Necessity", citing to *Maresca v. Cuomo*, 64 N.Y.2d 242, 247 (fn. 1) (1984), appeal dismissed 474 US 802 (1985), and its citation to *Morgenthau v. Cooke*, 56 NY2d 24 (fn. 3) (1981), relying on *United States v. Will*, with neither its *Maresca* decision, nor its Morgenthau decision identifying Judiciary Law §14.[8]

13. Consequently, what is before appeal panel, by this motion, is seemingly unchartered territory: at bar, by reason of HUGE financial interest, every New York Supreme Court and Appellate Division justice and every Court of Appeals judge is without jurisdiction to sit and decide

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[8] So, too, this Court's 2008 decision in *Maron v. Silver*, 58 AD3d 102, 106-107, whose invocation of rule of necessity cites to *United States v. Will* and *Maresca v. Cuomo*, but NOT Judiciary Law §14.

this case, pursuant to Judiciary Law §14 – and "rule of necessity" cannot be invoked. Or can it? And if not, are there constitutional and statutory provisions to vouch in judges to sit and decide the appeal who, at very least, would not have salary interests[9] – or can the appeal be transferred/removed to the federal courts based, perhaps, on Article IV, §4 of the United States Constitution: "The United States shall guarantee to every State in this Union a Republican Form of Government".

14. There are other questions pertaining to "rule of necessity" – also seemingly of first impression. As I stated before Associate Justice Eugene Devine at the August 2, 2018 oral argument of appellants' TRO to enjoin further disbursement of monies for the judicial salary increases:

> "rule of necessity does not permit an actually biased judge to sit. It permits a judge who is interested, but who is able to rise above his interests, because every other judge is also interested. But that special judge who can say, yes, I have a vested interest, but, nonetheless, I do my duty because that is my job." [10]

In other words, and as identified, as well, in appellants' motion papers,[11] "rule of necessity" is not a license for actually biased judges to sit in cases for the purpose of acting upon their biases. Indeed, this would be unconstitutional. As recognized by the New York Court of Appeals in

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9 New York State Constitution, Article VI, §4(d) pertaining to the appellate division: "…The governor may also, on request of any appellate division, make temporary designations in case of the absence or inability to act of any justice in such appellate division, for service only during such absence or inability to act.";
New York State Constitution, Article VI, §2, pertaining to the Court of Appeals: "…In case of the temporary absence or inability to act of any judge of the court of appeals, the court may designate any justice of the supreme court to serve as associate judge of the court during such absence or inability to act….".

10 The VIDEO of the August 2, 2018 oral argument is posted on CJA's website, here: http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/appeal/8-2-18-oral-argument.htm. My transcription, made from the VIDEO, is Exhibit B to my October 9, 2018 reply affidavit in further support of appellants' September 12, 2018 order to show cause to disqualify the Court for demonstrated actual bias, etc.

11 *See*, my July 24, 2018 moving affidavit (at ¶6) in support of appellants' order to show cause for disclosure/disqualification by the Court's justices, signed by Justice Devine on August 2, 2018, and, additionally, my October 9, 2018 reply affidavit (at p. 8) in further support of appellants' order to show cause to disqualify the Court for demonstrated actual bias, etc., signed by Presiding Justice Elizabeth Garry on September 12, 2018.

General Motors Corp. v. Rosa, 82 N.Y.2d 183, 188 (1993), in its first sentence under the heading "The Rule of Necessity":

> "The participation of an independent, unbiased adjudicator in the resolution of disputes is an essential element of due process of law, guaranteed by the Federal and State Constitutions (*see*, US Const, 14th Amend, §1; NY Const, art I, §6…)" (underlining added).[12]

15. Consequently, a judge invoking "rule of necessity" must believe himself capable of fair and impartial judgement – and so-state. Yet, the judge-created doctrine of "rule of necessity" does not appear to have engendered any safeguarding rules for its invocation – including for affording the parties and their attorneys the right to be heard. Thus, a further question is as to the safeguarding prerequisites for invocation of "rule of necessity", reasonably encompassing §100.3F of the Chief Administrator's Rules Governing Judicial Conduct, "remittal of disqualification", stating, in pertinent part:

> "A judge disqualified by the terms of subdivision (E) [of §100.3 of the Chief Administrator's Rules Governing Judicial Conduct] …may disclose on the record the basis of the judge's disqualification. If, following such disclosure of any basis for disqualification, the parties who have appeared and not defaulted and their lawyers, without participation by the judge, all agree that the judge should not be disqualified, and the judge believes that he or she will be impartial and is willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding."

16. The above constitutionally-weighted threshold issues pertaining to Judiciary Law §14 and "rule of necessity" are best addressed by a tribunal that, albeit afflicted by a Judiciary Law §14 jurisdictional bar, has not engaged in any act of actual bias in connection with this case – and which,

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12 United States Constitution, 14th Amendment, §1: "… No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

New York State Constitution, Article I, §6: "No person shall be deprived of life, liberty or property without due process of law."

therefore, can invoke "rule of necessity" accompanied by a statement that it believes it can be fair and impartial.

17. Pursuant to Article VI, §3b(4) of the New York State Constitution, the panel may "certif[y] that one or more questions of law have arisen which, in its opinion, ought to be reviewed by the court of appeals". This then brings before the Court of Appeals "only the question or questions so certified", following which the Court of Appeals "certif[ies] to the appellate division its determination upon such question or questions".

18. In view of the magnitude of this citizen-taxpayer action and its consequences for "the People of the State of New York & the Public Interest", on whose behalf appellants are expressly acting – and the course of the proceedings below and before this Court – certification pursuant to Article VI, §3b(4) is warranted. And so is certification of an additional threshold issue: the lawfulness, if not constitutionality, of the attorney general's representation of respondents pursuant to Executive Law §63.1 – where, as demonstrated, the office brazenly corrupts the judicial process with litigation fraud, falsifying and subverting the most black-letter law because it has NO legitimate defense – reflective of the fact that the attorney general's statutory and constitutional duty is to be prosecuting the case, on behalf of appellants, who have summary judgment on each of their ten causes of action.

19. As the constitutional function of New York's attorney general is to ensure that the state and its public officers comply with the United States and New York Constitutions and that laws promulgated are consistent therewith and, where consistent, complied with – including by state judges and the attorney general's own office – Mr. Brodie must be expected to furnish the Court with guidance, by an appropriate memorandum of law on the suggested certified questions.

20. Alternatively, the panel could transfer this appeal to another judicial department[13], thereby allowing a tribunal that has not already demonstrated actual bias, born of interests and relationships, to have an opportunity to show how judges can, in fact, rise above their interests and relationships to do their duty because that is their job.[14] Certainly, at bar, the appeal panel cannot confront the indefensibility and unconstitutionality of Judge Hartman's November 28, 2017 decision and judgment, beginning with the threshold integrity issues of her concealment of, and failure to disclose, her financial interests and relationships, and her concealment of, and failure to adjudicate, the lawfulness of the attorney general's defense representation, without exposing the indefensibility and unconstitutionality of its November 13, 2018 decision (Exhibit A-1).

21. Because Judiciary Law §14 and interpretive caselaw and treatises are so clear and unequivocal that the appeal panel is without jurisdiction to sit and render any decision herein, appellants are constrained from offering up "such other and further relief as may be just and proper". That being said, appellants' notice of motion does include the bare minimum of what would be "just and proper" in other circumstances.[15] The starting point, of course, is disclosure pursuant to

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13 Article VI, §4(i) of the New York State Constitution provides:

> "In the event that the disqualification, absence or inability to act of justices in any appellate division prevents there being a quorum of justices qualified to hear an appeal, the justices qualified to hear the appeal may transfer it to the appellate division in another department for hearing and determination. In the event that the justices in any appellate division qualified to hear an appeal are equally divided, said justices may transfer the appeal to the appellate division in another department for hearing and determination…"

14 In such case, appellants' request transfer to the Fourth Judicial Department in the belief that its location makes its financial interests and relationships less overwhelming.

15 Inasmuch as the appeal panel "overlooked" all the facts, law, and legal argument presented by appellants' "papers filed in support of the motion" – none identified or addressed by its November 13, 2018 decision – such constitutes grounds for reargument, pursuant to CPLR §2221(d). As for "new facts not offered on the prior motion", constituting a basis for renewal, pursuant to CPLR §2221(e), it is the actual bias of the appeal panel justices demonstrated by the November 13, 2018 decision. The "reasonable justification" for appellants not having presented this actual bias "on the prior motion" is that it is a supervening occurrence.

§100.3F of the Chief Administrator's Rules Governing Judicial Conduct[16] – and in keeping with *Oakley v. Aspinwall* (*see* fn. 6, *supra*).

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16 On the subject of disclosure, the bio of panel presiding justice McCarthy, posted on the Court's website, http://www.nycourts.gov/ad3/Bios/McCarthyBios.html, indicates that he "Served as Senior Assistant Counsel to Governor George Pataki (1998-2004)".

Can he be fair and impartial given my extensive communications with Governor Pataki's office during that period and in years preceding, chronicling the Governor's collusion with the legislature in politicizing the courts with unworthy and corrupt judicial appointees and in perpetuating the corruption of the Commission on Judicial Conduct, in collusion with the attorney general and the New York State Ethics Commission – the sole state agency having ethics jurisdiction over the Governor, which he had disabled. Is Justice McCarthy unaware of these communications, including opposition to Governor Pataki's appointments to the New York Court of Appeals, beginning with his appointment of Appellate Division, Second Department Justice Albert Rosenblatt in December 1998.

Is he unaware of the complaints I filed against Governor Pataki with the Ethics Commission, beginning on March 26, 1999, and with the U.S. Attorney for the Eastern District of New York, beginning on September 7, 1999, embracing CJA's Article 78 proceeding against the Commission on Judicial Conduct, arising from Governor Pataki's role, with the legislature and the Commission on Judicial Conduct, in the corrupting of "merit selection" to the Court of Appeals in connection with the Rosenblatt appointment – a lawsuit spanning from April 1999 to December 2002 which, at every court level, up to and including the Court of Appeals, was "thrown" by fraudulent judicial decisions – and whose record, encompassing two other Article 78 proceedings against the Commission on Judicial Conduct, also "thrown" by fraudulent judicial decisions, aided and abetted by then Chief Judge Judith Kaye, then Chief Administrative Judge Jonathan Lippman, and the Office of Court Administration, would be the initial impetus for CJA's 2011 opposition to the judicial pay raises – an opposition that would thereafter lead to my exploration of the budget from which the pay raises are disbursed.

CJA's webpage for this November 27, 2018 order to show cause: http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/appeal/11-27-18-osc.htm posts a link to our webpage for Governor Pataki, from which my mountain of written communications to his office are accessible. This includes my February 23, 2000 letter to Governor Pataki, furnishing him with a copy of the Supreme Court record in CJA's then-ongoing Article 78 proceeding against the Commission on Judicial Conduct, including its incorporated Supreme Court record of the 1999 Article 78 proceeding *Michael Mantell v. Commission on Judicial Conduct* – the Supreme Court record of the 1995 Article 78 proceeding *Doris L. Sassower v. Commission on Judicial Conduct*, having already been furnished to the Governor years earlier, by a May 6, 1996 hand-delivered letter to his then First Assistant Counsel, and later Appellate Division, First Department Justice, James McGuire.

Finally, inasmuch as Justice McCarthy's 1998-2004 tenure with Governor Pataki coincided with the Governor's budget litigation against the Legislature and the Legislature's budget litigation against the Governor, to which Mr. McGuire, as the Governor's Chief Counsel, from October 1997 to March 2003, was instrumental, it is germane to ask whether Senior Assistant Counsel McCarthy worked on those litigations and participated in what appears to have been the concealment by all parties – and thereafter by the Court of Appeals, *Silver v. Pataki/Pataki v. Assembly & Senate*, 4 N.Y.3d 75 (2004) – with what Article VII, §4 of the New York State Constitution makes obvious – that the state budget is flagrantly "OFF the constitutional rails", *inter alia*, because – as highlighted by appellants' fourth, fifth, and ninth causes of action and the record thereon [R.644-645, R.803, R.829] – Article VII, §4 ordains a "rolling budget", whose budget bills, except for the legislative and judiciary budget bills, never go back to the governor, but are enacted, bill by bill, by the legislature, upon their reconciling differences between the Senate and Assembly amendings of each bill in conformity with Article VII, §4.

22. As neither this Court nor the attorney general has addressed the law and argument relating to Judiciary Law §14 and "rule of necessity", annexed to my November 13, 2018 reply affidavit as Exhibits J and L, or relating to Executive Law §63.1, annexed to my October 18, 2018 moving affidavit as Exhibits E, F, and G, appellants' rest on those presentations and the above additional exposition, in the interest of economy, in support of all the relief this motion seeks.

23. Appellants have made no prior application for the same relief based on the actual bias, demonstrated by the appeal panel's November 13, 2018 decision and oral argument. Similar and related relief, however, was sought by appellants' first three orders to show cause, as follows:

- **Appellants' first order to show cause,**[17] filed on July 25, 2018, simultaneously with the filing of their brief and record on appeal, sought, as its first two branches of relief:

  (1) pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct, disclosing, on the record, the financial interests of this Court's justices in this appeal and in the TRO and preliminary injunction herein sought, as well as their personal, professional, and political relationships impacting upon their fairness and impartiality; and, pursuant to §100.3E of the Chief Administrator's Rules, disqualifying Associate Justice Michael Lynch for demonstrated actual bias;

  (2) directing that Attorney General Barbara D. Underwood identify who has determined "the interest of the state" on this appeal – and plaintiffs-appellants' entitlement to the Attorney General's representation/intervention pursuant to Executive Law §63.1 and State Finance Law, §123 *et seq.*, including *via* independent counsel, and how, if at all, she has addressed her own conflicts of interest with respect thereto;

  The Court's August 7, 2018 decision by a motion panel consisting of this Court's Presiding Justice Elizabeth Garry and Associate Justices Eugene Devine, John Egan, Jr., and Stanley Pritzker denied the order to show cause, without reasons, in four sentences that concealed the denial.

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17 The three-page order to show cause, as signed on August 2, 2018 by Justice Devine, is annexed to my November 13, 2018 reply affidavit as Exhibit H-1 – with the motion panel's August 7, 2018 decision thereon as Exhibit H-3.

- **Appellants' second order to show cause,**[18] e-mailed and express mailed to the Court on September 10, 2018, sought the Court's disqualification for demonstrated actual bias, based on the motion panel's August 7, 2018 decision, additionally seeking vacatur of the decision, including "pursuant CPLR §5015(a)(4) for 'lack of jurisdiction' by reason of the financial interest of its justices", with a third branch:

> (3) transferring plaintiffs-appellants' perfected appeal to another judicial department or, alternatively, transferring it to the New York Court of Appeals for purposes of determining the constitutional issues directly involved, beginning with the constitutionality of adjudication by an actually-biased tribunal whose judges have *sub silentio* repudiated their mandatory disqualification/disclosure obligations pursuant to §§100.3E and F of the Chief Administrator's Rules Governing Judicial Conduct;

The motion panel denied this second order to show cause, without reasons, by a two-sentence October 23, 2018 decision.

- **Appellants' third order to show cause,**[19] e-mailed and express-mailed to the Court on October 18, 2018, sought, as its first two branches of relief:

> 1. striking the "Brief for Respondents", signed by Assistant Solicitor General Frederick Brodie, on behalf of Attorney General Barbara Underwood, and bearing the name of Assistant Solicitor General Victor Paladino, as "a fraud on the court", including by its pretense that the attorney general could properly represent respondents;
>
> 2. declaring Attorney General Underwood's appellate representation of respondents unlawful for lack of any evidence – or even a claim – that it is based on a determination pursuant to Executive Law §63.1 that such is in "the interest of the state", with a further declaration that such taxpayer-paid representation belongs to appellants;

Without reasons, Associate Justice Aarons, to whom the order to show cause was presented, declined to sign it, on October 22, 2018 – forcing appellants to proceed, by notice of motion, which they did, on October 23, 2018, seeking the identical relief. The motion was returnable on November 13, 2018 and submitted to the appeal panel with my November 13, 2018 reply affidavit, alerting it to the Judiciary Law §14

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[18] The three-page order to show cause, as signed on September 12, 2018 by Presiding Justice Garry, is annexed to my November 13, 2018 reply affidavit as Exhibit I-1 – with the motion panel's decision thereon as Exhibit I-2.

[19] The three-page order to show cause, which Associate Justice Aarons declined to sign, on October 22, 2018 is directly beneath appellants' three-page October 23, 2018 notice of motion, seeking the identical relief. The appeal panel's November 13, 2018 decision thereon is Exhibit A-1 annexed to this order to show cause.

jurisdictional issue, arising from "its HUGE financial and other interests in the appeal". The appeal panel's denial of the motion, without reasons, by its two-sentence November 13, 2018 decision (Exhibit A-1), was handed to me approximately an hour before the 1 p.m. oral argument, prompting my comments about it – and about the two prior motions – at the oral argument (Exhibit D), as follows:

> "Each of the justices here have a huge financial interest. You are each disqualified. You not only are disqualified, but pursuant to Judiciary Law 14, you have no jurisdiction to sit. I have brought that issue to your attention and you have ignored it. And you, as well as your fellow justices of this Court, have rendered three decisions that completely ignored the serious and substantial financial interests that each of you have by reason of the fact that this citizen-taxpayer action challenges your commission-based judicial pay raises that have given you a salary of $75,000 a year beyond what you are entitled. A determination for the plaintiffs, the appellants here, will knock down that salary of yours by $75,000 and subject you to a claw-back of probably about $300,000 per judge. That was also the issue below. And you have failed to make any disclosure on that issue, disqualification with respect to that issue, and it appears that not only are you refusing to address your disqualification, mandatory disqualification, voiding any decision you might render, but you, like the court below, are countenancing litigation fraud by the attorney general.
>
> ...
>
> [Judge Hartman] had an interest that is proscribed by Judiciary Law 14 – just as you have interests, identical interests, financial interests that are proscribed by Judiciary Law 14 that divest you of jurisdiction to sit. And I made a motion, which you denied an hour ago, giving no reasons and allowing this proceeding, this appellate argument, in which Mr. Brodie repeated the outright lies and frauds already demonstrated in my papers to you, in the reply brief, in the motions. You have denied three motions, three fact-specific, record-based, law-supported motions, addressed to your disqualification for interest and for relationships, calling upon you to make disclosure, calling upon you to address whether or not, in fact, under Judiciary Law 14, you may even invoke the rule of necessity so as to sit here. And you have allowed the most flagrant fraud, fraud, with respect to everything."

Elena Ruth Sassower, Unrepresented Plaintiff-Appellant

Sworn to before me this
27th day of November 2018

Notary Public

TABLE OF EXHIBITS

Exhibit A-1: The Court's November 13, 2018 decision and order on motion ("McCarthy, J.P., Clark, Mulvey and Rumsey, JJ., concur")

Exhibit A-2: Appellant Elena Sassower's November 13, 2018 e-mail to Chief Motion Attorney Edward Carey & Court Attorney Jane Landes (7:26 am) – "…appellants' motion to strike respondents brief, disqualify AG, etc. – returnable today: please deliver immediately to appellate panel"

Exhibit B-1: Appellant Sassower's November 2, 2018 e-mail to Managing Attorney Eric Putnam Little – "…November 13, 2018 oral argument"

Exhibit B-2: Managing Attorney Little's November 7, 2018 e-mail

Exhibit C: Session Calendar for Tuesday, November 13, 2018

Exhibit D: Transcription from VIDEO of November 13, 2018 oral argument of the appeal

Exhibit E: "Legal autopsy"/analysis of Assistant Solicitor General Frederick Brodie's November 13, 2018 oral argument

Ex. B-2: Petitioners' March 26, 2019 Letter to Court of Appeals in CJA v. Cuomo...DiFiore [R.456-478]

CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101 *Tel. (914)421-1200* *E-Mail:* mail@judgewatch.org
White Plains, New York 10602 *Website:* www.judgewatch.org

Elena Ruth Sassower, Director

BY EXPRESS MAIL

March 26, 2019

New York Court of Appeals
Clerk's Office
20 Eagle Street
Albany, New York 12207-1095

ATT: Chief Clerk John P. Asiello

RE: In Support of Appeal of Right: NYS Constitution Article VI, §3(b)(1); CPLR §5601(b)(1)
Center for Judicial Accountability, et al. v. Cuomo,...DiFiore – Citizen-Taxpayer Action
APL-2019-00029

Dear Chief Clerk Asiello:

This responds to the March 4, 2019 letter of Deputy Clerk Heather Davis, affording appellants in this citizen-taxpayer action appeal – acting on their own behalf and on behalf of the People of the State of New York and the Public Interest – the opportunity to reinforce:

(1) that the appealed-from December 27, 2018 Memorandum and Order of the Appellate Division, Third Department presents "a substantial constitutional question…directly involved to support an appeal as of right"; and

(2) that the Appellate Division's underlying December 19, 2018, November 13, 2018, October 23, 2018, and August 7, 2018 orders are brought up for review as part thereof because they directly and necessarily affect its December 27, 2018 Memorandum and Order as to the core constitutional question of due process and whether, pursuant to Judiciary Law §14 and this Court's own bedrock decision, *Oakley v. Aspinwall*, 3 N.Y. 547 (1850), the Appellate Division justices even had jurisdiction to sit, where, additionally, they refused to make disclosure of their financial and other interests in the appeal and refused to confront whether they could invoke "rule of necessity", and, in any event, did not invoke it in rendering the December 27, 2018 Memorandum and Order – or any of the four predecessor orders.

Suffice to note that jurisdiction was the due process constitutional question in *Valz v. Sheepshead Bay*, 249 N.Y. 122 (1923), wherein the Court stated:

> "Where the question of whether a judgment is the result of due process is the decisive question upon an appeal, the appeal lies to this court as a matter of right." (at p 131).

Nearly 100 years later, *Valz* remains "good law" to which legal authorities cite.[1] And this is as it must be for cases "wherein is directly involved the construction of the constitution of the state or of the United States" guaranteeing "due process of law" and "equal protection of the laws":

> Article I, §6 of the New York State Constitution:
> "No person shall be deprived of life, liberty or property without due process of law";
>
> Article I, §11 of the New York State Constitution:
> "No person shall be denied the equal protection of the laws of this state or any subdivision thereof";
>
> Fifth Amendment of the United States Constitution:
> "No person shall be…deprived of life, liberty, or property, without due process of law";
>
> Fourteenth Amendment of the United States Constitution, §1:
> "nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws".

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

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[1] Powers of the New York Court of Appeals, 3rd ed (2005, Arthur Karger), §7.9 "It is difficult to appraise the precise scope of the *Valz* case and the case is not readily reconcilable with other decisions of the Court… Probably,…the *Valz* case [is] an exceptional ruling."

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Appellants are Entitled to an Appeal of Right, Based on *Valz v. Sheepshead Bay* & the Due Process Clauses of the New York and United States Constitutions on which *Valz* Rests, Because the Appellate Division had No Jurisdiction & Deprived Them & Each of Their Ten Causes of Action of Due Process of Law, *Totally*

Already furnished to the Court, in response to the March 4, 2019 letter, is a copy of the briefs and record on appeal and of the record of appellants' four appellate motions whose purpose was to safeguard the integrity of the appellate proceedings at the Appellate Division, beginning with disclosure and disqualification and ending with Questions to be answered by the Appellate Division, if not certified to this Court. These fully substantiate appellants' February 26, 2019 Preliminary Appeal Statement, whose #12 furnished, as required, a "nonbinding designation", "in point-heading form, [of] issues proposed to be raised on appeal". The two identified proposed issues were and remain:

1. The obliteration of ALL ethical, adjudicative, and evidentiary standards by judges of the courts below in this citizen-taxpayer action in which they have HUGE financial interests – as four of the ten causes of action seek declarations that the commission-based judicial salary increases, of which they are beneficiaries, and the Judiciary budget, in which those increases are embedded, are unconstitutional, statutorily-violative, and fraudulent;

2. Appellants' *prima facie* summary judgment entitlement to declarations of unconstitutionality and unlawfulness with respect to each of their ten causes of action pertaining to the fiscal year 2016-2017 budget and Chapter 60, Part E, of the Laws of 2015, establishing the Commission on Legislative, Judicial and Executive Compensation – virtually all of whose unconstitutionality and unlawfulness is identically repeated and embodied in the budgets for fiscal years 2017-2018 and 2018-2019, and in the budget for fiscal year 2019-2020, currently being enacted.

   The title headings of these ten causes of action are:

   "AS AND FOR A FIRST CAUSE OF ACTION
   The Legislature's Proposed Budget for Fiscal Year 2016-2017,
   Embodied in Budget Bill #S.6401-a/A.9001-a, is Unconstitutional
   & Unlawful"

   "AS AND FOR A SECOND CAUSE OF ACTION
   The Judiciary's Proposed Budget for 2016-2017,
   Embodied in Budget Bill #S.6401-a/A.9001-a, is Unconstitutional
   & Unlawful"

"AS AND FOR A THIRD CAUSE OF ACTION
Budget Bill #S.6401-a/A.9001-a is Unconstitutional & Unlawful Over & Beyond the Legislative & Judiciary Budgets it Embodies 'Without Revision'"

"AS AND FOR A FOURTH CAUSE OF ACTION
Nothing Lawful or Constitutional Can Emerge From a Legislative Process that Violates its Own Statutory & Rule Safeguards – and the Constitution"

"AS AND FOR A FIFTH CAUSE OF ACTION
The 'Process' by which the State Budget for Fiscal Year 2016-2017 Was Enacted Violated Article VII, §§4, 5, 6 of the New York State Constitution"

"AS AND FOR A SIXTH CAUSE OF ACTION
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

A. Chapter 60, Part E, of the Laws of 2015 Unconstitutionally Delegates Legislative Power by Giving the Commission's Judicial Salary Recommendations 'the Force of Law'

B. Chapter 60, Part E, of the Laws of 2015 Unconstitutionally Delegates Legislative Power Without Safeguarding Provisions

C. Chapter 60, Part E, of the Law of 2015 Violates Article XIII, §7 of the New York State Constitution

D. Chapter 60, Part E, of the Law of 2015 Violates Article VII, §6 of the New York State Constitution – and, Additionally, Article VII, §§2 and 3

E. Chapter 60, Part E, of the Laws of 2015 is Unconstitutional because Budget Bill #4610-A/A.6721-A was Procured Fraudulently and Without Legislative Due Process"

"AS AND FOR A SEVENTH CAUSE OF ACTION
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

A. *As Applied*, a Commission Comprised of Members who are Actually Biased and Interested and that Conceals and Does Not Determine the Disqualification/Disclosure Issues Before it is Unconstitutional

B. *As Applied*, a Commission that Conceals and Does Not Determine Whether Systemic Judicial Corruption is an 'Appropriate Factor' is Unconstitutional

C. *As Applied*, a Commission that Conceals and Does Not Determine the Fraud before It – Including the Complete Absence of ANY Evidence that Judicial Compensation and Non-Salary Benefits are Inadequate – is Unconstitutional

D. *As Applied*, a Commission that Suppresses and Disregards Citizen Input and Opposition is Unconstitutional"

"AS AND FOR AN EIGHTH CAUSE OF ACTION
The Commission's Violations of Express Statutory Requirements of Chapter 60, Part E, of the Laws of 2015 Renders its Judicial Salary Increase Recommendations Null and Void"

"AS AND FOR AN NINTH CAUSE OF ACTION
Three-Men-in-a-Room Budget Dealing-Making is Unconstitutional, *As Unwritten* and *As Applied*

A. Three-Men-in-a-Room Budget Deal-Making is Unconstitutional, *As Unwritten*

B. Three-Men-in-a-Room Budget Deal-Making is Unconstitutional, *As Applied*"

"AS AND FOR A TENTH CAUSE OF ACTION
The Appropriation Item Entitled 'For grants to counties for district attorney salaries', in the Division of Criminal Justice Services' Budget, Contained in Aid for Localities Budget Bill #S.6403-d/A.9003-d, Does Not Authorize Disbursements for Fiscal Year 2016-2017 and is Otherwise Unlawful and Unconstitutional. Reappropriation Items are also Improper, if not Unlawful".

Appellants' brief – chronicling the obliteration of ALL standards *nisi prius* by Acting Supreme Court Justice/Court of Claims Judge Hartman – opens (at p. 1) with an introduction entitled "Whither the Ten Causes of Action?", beneath which reads:

> "'[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."

The Appellate Division gave NO "protections of the Constitution" to ANY of appellants' ten causes of action – and its assault upon ALL ten and upon the *sine qua non* for due process, a fair and impartial tribunal, is particularized by appellants' accompanying 33-page "legal autopsy"[2] of the Appellate Division Memorandum. Such "legal autopsy", incorporated herein by reference, is furnished to assist the Court in speedily verifying what the record establishes, resoundingly, summarized at the first page of the "legal autopsy", *to wit*:

> "the Appellate Division's Memorandum 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'. The Memorandum wipes out any semblance of 'due process of law', falsifying the record, *in toto*, and upending ALL ethical, adjudicative, and evidentiary standards."

In *General Motors Corporation v. Rosa*, 82 N.Y.2d 183, 188 (1993), this Court stated, in a decision by its then Chief Judge, directly under a section heading entitled "The Rule of Necessity":

> "The participation of an independent, unbiased adjudicator in the resolution of disputes is an essential element of due process of law, guaranteed by the Federal and State Constitutions (*see*, US Const, 14th Amend. §1; NY Const, art I, §6; *see also*, *Matter of 1616 Second Ave Rest. v. New York State Liq. Auth*, 75 NY2d 158, 161; Redish and Marshall, *Adjudicatory Independence and the Values of Procedural Due Process*, 95 Yale LJ 455, 475-505 [1986])..." (at p. 188).

The cited-to pages from "*Adjudicatory Independence and the Values of Procedural Due Process*" stress that "None of the core values of due process...can be fulfilled without the participation of an independent adjudicator." (at p. 476); it is "a *sine qua non* of procedural due process" (at p. 477),

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[2] 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)).

"there can never be due process without a sufficiently independent adjudicator" (at p. 479), and, further,

> "Review of historical evidence demonstrates that the right to an independent adjudicator was considered a crucial element of procedural justice by the common law, by those that established the law of the colonies, and, perhaps most important, by the Framers of the United States Constitution. This historically fundamental role adds significant weight to the conclusion that the right of an independent adjudicator constitutes the floor of due process." (at p. 479).

Not surprisingly then, the Court took the case by an appeal of right – stating, in its summary order, 81 N.Y.2d 1004 (1993), "Motion for leave to appeal denied upon the ground that an appeal lies as of right." Clearly, the right of appeal rested on due process, for which it could have cited *Valz*.

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. Likewise, that the Appellate Division made a series of threshold due process rulings involving Judge Hartman – with none made as to its own justices, notwithstanding "the prohibition of Judiciary Law §14 divesting the justices of jurisdiction (*Oakley v. Aspinwall*, 3 N.Y. 547 (1850)", also expressly identified by appellants' notice of appeal.

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 Deputy Clerk Davis' March 4, 2019 letter, 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.[3]

Appellants' Sub-Causes A & B of their Sixth Cause of Action –
are *A Fortiori* to the 2007 Appeals of Right in *McKinney & St. Joseph Hospital*,
to which those Appellants were Entitled

More than 11 years ago, the Court had before it, virtually simultaneously, two separate cases, from two different ends of the state, on the same and similar directly-involved substantial constitutional questions – accompanied by *amicus curiae* support of the New York City Bar Association, each initially on appeals by right and then by motions for leave to appeal:

> *McKinney v. Commissioner of N.Y.S. Department of Health*, 15 Mis.3d 743 (S.Ct./Bronx: March 8, 2007), affm'd 41 A.D.3d 252 (1st Dept: June 19, 2007), appeal dismissed, 9 N.Y.3d 891 (September 6, 2007), appeal denied, 9 N.Y.3d 815 (November 27, 2007); motion granting New York City Bar Association leave to file *amicus curiae* brief (November 27, 2007); and
>
> *St. Joseph Hospital of Cheetowaga v. Novello*, 15 Misc. 3d 333 (S.Ct./Erie County: February 2, 2007), affm'd as modified, dissent by Justice Fahey, 43 A.D.3d 139 (4th Dept: July 18, 2007), appeal dismissed, 9 N.Y.3d 988 (November 27, 2007), appeal denied, 10 N.Y.3d 702 (February 12, 2008).

Both cases challenged, as unconstitutional, Chapter 63, Part E, of the Laws of 2005, establishing the Commission on Health Care Facilities in the 21st Century, with "force of law" powers.

Appellants' sub-causes A and B of their sixth cause of action [R.109-110 (R.187-192)] expressly rely on *McKinney* and *St. Joseph Hospital* as corroborative of the unconstitutionality, *as written*, of

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[3] 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).

Chapter 60, Part E, of the Laws of 2015, establishing the Commission on Legislative, Judicial and Executive Compensation, also with "force of law" powers [R.1080-1082]. The pertinent allegations of those sub-causes are, as follows [R.190-193]:

> "A. **Chapter 60, Part E of the Laws of 2015 Unconstitutionally Delegates Legislative Power by Giving the Commission's Judicial Salary Recommendations 'the Force of Law'**
>
> ...
>
> 390. In *St. Joseph Hospital, et al. v. Novello, et al.*, 43 A.D.3d 139 (2007), a case challenging a statute that gave 'force of law' effect to a special commission's recommendations – Chapter 63, Part E, of the Laws of 2005 – then Appellate Division, Fourth Department Justice Eugene Fahey, writing in dissent, deemed the statute unconstitutional, violating the presentment clause and separation of powers:
>
> > 'It is apparent that the Legislation inverts the usual procedure utilized for the passage of a bill. According to the usual procedure, a bill is presented to the Governor for his or her signature or veto after passage by the Senate and the Assembly. Should the Governor sign the bill, it becomes law; should the bill be vetoed, the veto may be overridden by a two-thirds vote of the Legislature. Here, the Legislation creates a process that allows the recommendations of the Commission to become law without ever being presented to the Governor after the action of the Legislature.' *Id*, 152.
>
> 391. Justice Fahey's dissent was cited by the New York City Bar Association's *amicus curiae* brief to the Court of Appeals in a different case challenging the same statute, *Mary McKinney, et al. v. Commissioner of the New York State Department of Health, et al.*, 15 Misc.3d 743 (S.Ct. Bronx 200[7]), affm'd 41 A.D.3d 252 (1st Dept. 2007), appeal dismissed, 9 N.Y.3d 891 (2007), appeal denied, 9 N.Y.3d 815; motion granted, 9 N.Y.3d 986. It characterized 'the force of law' provision as:
>
> > 'a process of lawmaking never before seen in the State of New York' (at p. 24);
> >
> > a 'novel form of legislation...in direct conflict with representative democracy [that] cannot stand constitutional scrutiny (at p. 24)';
> >
> > a 'gross violation of the State Constitution's separation-of-powers and...the centuries-old constitutional mandate that the Legislature, and no other entity, make New York State's laws' (at p. 25);
> >
> > 'most unusual [in its]...self-executing mechanism by which recommendations formulated by an unelected commission automatically become law...without any legislative action' (at p. 28);
> >
> > unlike 'any other known law' (at p. 29);

'a dangerous precedent' (at p. 11) that

'will set the stage for the arbitrary handling of public resources under the guise of future temporary commissions that are not subject to any public scrutiny or accountability (at p. 36).[fn]'

392. This outsourcing to an appointed seven-member commission of the duties of examination, evaluation, consideration, hearing, recommendation, which Chapter 60, Part E, of the Laws of 2015 confers upon it, are the duties of a properly functioning Legislature, acting through its committees – and there is NO EVIDENCE that any legislative committee has ever been unsuccessful in engaging in such duties and in producing bills based thereon that could not then be enacted by the Legislature and Governor.

393. The unconstitutionality of 'the force of law' provision of Chapter 60, Part E, of the Laws of 2015 – and of the timing for the Commission's recommendation for legislative and executive branch officers – requires the striking of the statute, in its entirety – there being no severability provision in the statute. (*St. Joseph Hospital, et al. v. Novello, et al., id.*).

B. Chapter 60, Part E, of the Laws of 2015 Unconstitutionally Delegates Legislative Power Without Safeguarding Provisions

394. By contrast to *McKinney*, where the Supreme Court upheld the statute because of the safeguarding provisions it contained, such safeguards are here absent.

395. Unlike the statute in *McKinney*, Chapter 60, Part E, of the Laws of 2015 does not provide for a commission of sufficient size and diversity, nor furnish the commission with sufficient guidance as to standards and factors governing its determinations.

396. It establishes a seven-member commission – and of these, only two members are legislative appointees, designated by the majority leaders of each house. This is an insufficient number to reflect the diversity of either the Legislature or the State.

397. Nor does the statute specify neutrality as a criteria for appointment – and having two commissioners appointed by the chief judge assures that at least two of the seven commissioners will have been appointed to achieve the Judiciary's agenda of pay raises.

398. As the Judiciary would otherwise have no deliberative role in determining judicial pay raises legislatively and the Chief Judge is directly interested

in the determination, the Chief Judge's participation as an appointing authority is, at very least, a constitutional infirmity.

399. Additionally, Chapter 60, Part E, of the Laws of 2015 furnishes insufficient guidance to the Commission as to the 'appropriate factors' for it to consider. The statute requires the Commission to 'take into account all appropriate factors, including but not limited to' six enumerated factors (§2, ¶3). These six enumerated factors are all economic and financial – and are completely untethered to any consideration as to whether the judges whose salaries are being evaluated are discharging their constitutional duty to render fair and impartial justice and afford the People their due process and equal protection rights under Article I of the New York State Constitution.

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*." [R.190-193, underlining and italics in the original].

By contrast to *St. Joseph Hospital*, where both the appealed-from Supreme Court and Appellate Division decisions identify allegations of the plaintiffs/appellants therein, and, by contrast to *McKinney*, where the Supreme Court decision likewise identifies allegations of the plaintiffs therein, at bar neither the Appellate Division's Memorandum nor Judge Hartman's decision [R.31-41] reflect a single allegation of sub-causes A and B. Indeed, *McKinney* and *St. Joseph Hospital* are not mentioned, at all, by the Memorandum, while Judge Hartman, without confronting appellants' assertions that *McKinney* and *St. Joseph Hospital* corroborate the unconstitutionality of Chapter 60, Part E, of the Laws of 2015, simply relies on the two appellate decisions to uphold its constitutionality, stating:

> "'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 delegation 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." [R.36, underlining added].

Judge Hartman's assertion that "the Commission delegation is not an unconstitutional delegation of legislative power" – buttressed by nothing but her barebones cites to the *McKinney* and *St. Joseph Hospital* appellate decisions and three even barer cites to decisions of this Court – and the impression by her decision and by the Appellate Division Memorandum that there is nothing unusual about such delegation are rebutted by the submissions long ago made to this Court by the *McKinney* and *St. Joseph Hospital* appellants and by the *amicus curiae* New York City Bar Association. The following excerpt from the *McKinney* appellants' motion for leave to appeal is illustrative, doubtless repeating what they had set forth in support of their appeal of right:

> "The Appellate Division erroneously upheld the constitutionality of the Enabling Legislation on the basis of two related findings: (1) that enabling statutes 'broader' than the Enabling Legislation have been upheld and (2) that the Enabling Legislation articulates a meaningful *policy choice*... The first one,...merits brief discussion at the outset because it echoes the deeply misleading contention, repeated by Defendants-Respondents throughout this litigation, that the Enabling Legislation is an unremarkable, run-of-the-mill administrative delegation, of the type routinely engaged in by the Legislature.
>
> To the contrary, the Enabling Legislation represents a type of legislative action that has never before been attempted in this State and never been endorsed by this Court. ... In creating this novel type of delegation, the Legislature departed radically from the well-established role of temporary commissions in this State – that of presenting genuine recommendations to the Legislature for debate and approval.
>
> Prior to the Enabling Legislation, unelected, temporary commissions in this State had uniformly been empowered only to present their 'recommendations' to the Legislature for a vote. ...
>
> Even subsequent to the Enabling Legislation, temporary commissions in this State have been tasked with making recommendations, not enacting mandatory laws.
> ...
>
> Recognizing that the Enabling Legislation is a type of legislative act never before seen in New York, Defendants-Respondents have relied on a federal commission – created pursuant to a federal statute and found to be constitutional

> under the United States Constitution – as the sole precedent for their assertion that the Enabling statute is a routine delegation. .... However, this misguided comparison is not only irrelevant to a separation of powers analysis under the New York State Constitution[fn4] – it also underscores the complete lack of precedent in this State for the vesting of lawmaking authority in a temporary commission. This Court has never addressed or considered the constitutionality of this type of legislative action.
>
> If the Enabling Legislation is permitted to stand unreviewed by this Court, it will create a new template by which the Legislature can avoid accountability for politically difficult decisions affecting fundamental policy questions in this State. Using this type of legislation, the Legislature will be able to outsource its policymaking responsibilities to a temporary commission, answerable to no one, but with final authority over difficult policy issues, and in so doing, divest itself of responsibility for the commission's 'recommendations.' Article III, Section 1 of the Constitution of the State of New York, however, demands that the Legislature bear the ultimate responsibility for making the policy decisions..." (pp. 14-21, underlining added, italics in the original).

Page after page of scholarly analysis and law fill the *McKinney* motion for leave to appeal and the accompanying *amicus curiae* brief of the New York City Bar Association. Likewise, the appeal papers of *St. Joseph Hospital*, as to which, in support of the appeal of right, the appellants there had succinctly stated:

> "Second, Respondents argue that the question of Appellants' due process and other constitutional claims 'involve[] only the routine application of settled principles of law to a particular statutory scheme.' (Resp. Ltr. P. 4)(emphasis added). This, however, overlooks Justice Fahey's vigorous dissent on these issues, as well as the fact that Respondents required more than 100 pages to address these 'settled principles' in their briefs filed in the trial court and the Fourth Department. We submit that the issues posed on this appeal concerning the constitutionality of the Enabling Legislation are, in fact, those of **first impression**, including whether: (i) its attempted suspension of Appellants' due process rights is impermissible; and (ii) its legislative veto provision violates the Presentment Clause and the Separation of Powers Doctrine.
>
> Third, Respondents argue that the legislative veto provision is not 'directly involved' on this appeal because the Fourth Department determined that the provision was severable from the remainder of the Enabling Legislation. This, however, overlooks that '[a]ll relevant questions of law may be argued' on an appeal, as of right, 'upon a constitutional question.' Adirondack League Club v. Board of the Black River Regulating Dist., 300 N.Y. 624, 624 (1950); Bogart v. County of Westchester, 295 N.Y. 934, 934 (1946)." (bold added).

Any objective examination of what was there before the Court – and the intelligent, forceful dissent of then Justice Fahey (Exhibit A) – permits of only one conclusion: the *McKinney* and *St. Joseph*

Hospital appellants had appeals to which they were entitled, by right.[4] And appellants herein have an entitlement that is not only identical, but, as their sixth cause of action makes clear, *a fortiori* with respect to sub-causes A and B for reasons including that the legislative delegation at issue involves the construction of additional provisions of the New York State Constitution, Article III, §6, Article VI, §25, Article XIII, §7 pertaining to the compensation of constitutional officers. Consequently, and because this Court no longer has the *McKinney* and *St. Joseph Hospital* appeal papers, appellants are furnishing a copy of as much of the record as they thus far have been able to obtain, in support of their appeal of right on their sub-causes A and B.[5]

The Precedent Now Set by the Appellate Division Memorandum & the Misrepresentations that it Fits within "Settled Law" Reinforce the Importance of Appellants' Appeal of Right

Reinforcing the importance of appellants' appeal of right – and of this Court's confronting what precedent, if any, exists for the delegation of legislative power that the Appellate Division has here held constitutional with respect to Chapter 60, Part E, of the Laws of 2015 [R.1080-1082] – is that, pursuant to Chapter 60, Part E, of the Laws of 2015 (§2.1), another Commission on Legislative, Judicial and Executive Compensation is scheduled to be established on June 1, 2019. On top of that, unfolding NOW in Supreme Court/Albany County is a lawsuit challenging Chapter 59, Part HHH, of the Laws of 2018, which established a one-time Compensation Committee to raise legislative and executive salaries. That statute is materially identical to Chapter 60, Part E, of the Laws of 2015, except that among the "appropriate factors" the Compensation Committee was required to "take into account" were "the parties' performance and timely fulfillment of their statutory and Constitutional

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[4] As no fair and impartial tribunal, charged with the duties that this Court is, could have turned its back on the *McKinney* and *St. Joseph Hospital* appellants – and on then Justice Fahey's dissent in *St. Joseph Hospital* (Exhibit A) – it may be reasonably surmised that the Court was influenced by the fact that by 2007, the then Chief Judge and the Unified Court System were already advocating for a commission that would provide for pay raises for judicial, legislative, and executive officers – whose recommendations would have the "force of law". Such a commission, for judicial salary raises, ultimately emerged: the Commission on Judicial Compensation, established by Chapter 567 of the Laws of 2010, with "force of law" powers. Its enactment was propelled by the Court's February 23, 2010 decision in *Maron v. Silver*, 14 N.Y.3d 230, a consolidation of three cases, including the Chief Judge's own, finding a separation-of-powers constitutional violation in the Legislature's failure to raise judicial salaries. Ironically, Judge Smith, writing in dissent, would have thrown out the judges' pay raise claims, on evidentiary grounds. This was a week after having penned his February 16, 2010 dissent in *Kachalsky*.

Chapter 567 of the Laws of 2010 was repealed by §1 of Chapter 60, Part E, of the Laws of 2015, establishing, in its stead, the Commission on Legislative, Judicial, and Executive Compensation [R.1080], herein challenged.

[5] The record of the appeal of right and motion for leave to appeal of the *St. Joseph Hospital* appellants appears complete. As for *McKinney*, the following remain to be recovered: (1) the entire record of the appeal of right; and (2) the Attorney General's opposition to the motion for leave to appeal and to the New York City Bar *amicus* brief, as well as any replies thereto from the *McKinney* appellants and from the *amicus*.

responsibilities".

The lawsuit challenging Chapter 59, Part HHH, of the Laws of 2018 is *Delgado v. State of New York*, (#907537-18)[6] – and, like here, the defendants are represented by the Attorney General, who is a direct beneficiary of the Compensation Committee's "force of law" salary increase recommendations. The Attorney General is there arguing[7] that the Appellate Division's December 27, 2018 Memorandum herein is not only dispositive that Chapter 59, Part HHH, of the Laws of 2018 is constitutional, but is part of "settled law" and a "long line of cases". Illustrative of these arguments, since January 9, 2019 and at the January 11, 2019 hearing on the *Delgado* plaintiffs' order to show cause for a preliminary injunction, is the Attorney General's January 28, 2019 motion to dismiss their December 14, 2018 verified complaint[8]. Her memorandum of law there asserts:

> "Plaintiffs fail to state a claim. First, Part HHH was, pursuant to settled law, a permissible exercise of the Legislature's authority to delegate administrative functions. Indeed, a nearly identical statute –which, in 2015, created the commission on legislative, judicial, and executive compensation–was recently affirmed as constitutional by the Appellate Division, Third Department. *See Ctr. for Judicial Accountability, Inc. v. Cuomo*, No. 527081, 2018 WL6797292, at *3 (N.Y. App. Div. 3d Dep't Dec. 27, 2018). *Center for Judicial Accountability* is part of a long line of cases upholding the constitutionality of the delegation by the Legislature of administrative tasks, and it refutes Plaintiffs' legal theory that the Legislature may not delegate the task of making recommendations regarding compensation for state officials." (at pp. 1-2).
>
> "Plaintiffs' novel legal theory that the Legislature may not delegate administrative tasks related to compensation of State officials fails as a matter of law and was

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6 The record in *Delgado* is available from the Unified Court System's electronic docket. Not there included, however, is the VIDEO of the January 11, 2019 oral argument of the order to show cause brought by the *Delgado* plaintiffs for a preliminary injunction, which CJA applied to have videoed – an application which was granted. CJA's webpage for the *Delgado* case, from which the electronic docket can be accessed, ALSO posts the VIDEO. The direct link to the webpage is here: http://www.judgewatch.org/web-pages/searching-nys/2018-legislature/hhh-compensation-committee/delgado-v-state.htm. The VIDEO reflects significant discussion of the Appellate Division's December 27, 2018 Memorandum, led off by the judge's queries about it.

7 Appearing for the Attorney General in *Delgado* is the same assistant attorney general who had been briefly parachuted into this case in March 2017 – and whose litigation misconduct, including her fraud as to appellants' sixth cause of action, by her opposition to appellants' March 29, 2019 order to show cause for summary judgment on the sixth cause of action [R.636, R.639-640] is chronicled by the record and recounted in appellants' brief (at pp. 25-36, 51-52).

8 The December 14, 2018 verified complaint in *Delgado* is part of the record herein, annexed as Exhibit J to my December 15, 2018 reply affidavit in further support of appellant' order to show cause #4. The record of that 4th order to show cause – and of appellants' three predecessor orders to show cause – was transmitted to the Court, with an inventory, by appellants' March 18, 2019 coverletter.

rejected in *Center for Judicial Accountability*. Plaintiffs acknowledge that agencies may be 'tasked with filling in the details, or interstices, of policies in laws passed by the Legislature.' Compl. ¶ 30. Plaintiffs then inexplicably assert that the Legislature may not delegate administrative tasks related to compensation of state officials, Compl. ¶¶ 27, 28, 31, but they provide no support for their novel assertion that an exception exists for state officials' compensation. In any event, Plaintiffs' proposed theory is easily disposed of by *Center for Judicial Accountability*, the Third Department's recent decision affirming the constitutionality of Part E of Chapter 60 of the Laws of 2015, the statute that created the 2015 Commission.

The 2015 Commission's and the Committee's mandates are nearly identical. *See* Compl. ¶ 48 (emphasizing that the 2015 enabling statute for the 2015 Commission is remarkably similar to Part HHH). The 2015 enabling statute directed the 2015 Commission to examine legislative, judicial, and certain executive salaries and make recommendations regarding the adequacy of compensation based on a list of numerous factors specified by the Legislature. *See* Compl. ¶ 45. The Committee was instructed to consider the identical list, plus an additional factor, namely legislators' and executive officials' compliance with their constitutional and statutory mandates. Compl. Ex. A at 28, §2.3. The 2015 Commission's enabling statute similarly directed that each of its recommendations "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." L. 2015, Ch. 60, Part E at §7. The Third Department affirmed the constitutionality of the 2015 Commission's enabling statute, holding:

> In the 2015 enabling statute at issue here, the Legislature made the determination that judicial salaries must be appropriate and adequate. The Legislature directed the [2015] Commission to examine judicial salaries and make recommendations regarding the adequacy of judicial compensation based on numerous factors specified by the Legislature. . . . The factors established by the Legislature provide adequate standards and guidance for the exercise of discretion by the [2015] Commission. Moreover, the enabling statute contains the safeguard of requiring that the [2105] Commission report its recommendations directly to the Legislature so that it would have sufficient time to exercise its prerogative to reject any [2105] Commission recommendations before they become effective. Thus, we conclude that the statute does not unconstitutionally delegate legislative power to the [2015] Commission.

Ctr. for Judicial Accountability, Inc., 2018 WL 6797292, at *3.

> The Third Department's holding is squarely on point here. The respective policies are identical, i.e., adequate compensation – for the judiciary in *Center for Judicial Accountability* and for legislators and certain executive branch officials in the instant matter.[fn3] The standards and guidelines (the factors that Part HHH directs the Committee to consider) are nearly identical to the standards and guidelines affirmed as constitutionally adequate by the Third Department, with Part HHH containing one additional guideline. Finally, the 2015 Commission's enabling statute and Part HHH have the identical safeguards, i.e., that the recommendations of the respective bodies must be reported directly to the Legislature, and the Legislature decides whether to allow the recommendations to become law. The Third Department's affirmance of the 2015 Commission's enabling statute is fatal to any claim that Part HHH is an unconstitutional delegation of legislative authority.[fn4]
>
> Plaintiffs fail to state a claim that Part HHH is an unconstitutional delegation of legislative authority, and this claim must be dismissed." (at pp. 14-17, underlining added).[9]

So, too, does the Attorney General invoke *McKinney* for the proposition that Chapter 63, Part E, of the Laws of 2005 is "another example of proper delegation" (at p. 15).

Assembly Speaker Heastie, a named defendant herein, is appearing as *amicus curiae* in *Delgado* His attorney echoes the Attorney General. Thus, his March 4, 2019 memorandum of law in support of the Attorney General's dismissal motion gives passing citation to *McKinney* (at p. 7), focusing on the Appellate Division's Memorandum herein, describing it as "controlling" (at p. 6) and having "binding force" (at p. 7), further stating, in comparing this case with *Delgado*:

> "There is no daylight between these cases. If the Legislature can delegate its authority to set judicial salaries, and the enabling statute in *Center for Judicial Accountability* was an acceptable way to do so, then Part HHH—which is almost identical with regard to legislative salary increases—must be an effective delegation of pay-setting authority as well." (at p. 5).

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9 The Attorney General has continued in the same vein in her February 13, 2019 reply memorandum of law, as for instance, at page 1:

> "As Defendants demonstrated in their opening memorandum of law, Part HHH of Chapter 59 of the Laws of 2018 ('Part HHH') is, pursuant to well settled law, a permissible exercise of the Legislature's authority to delegate tasks.... In response, Plaintiffs rely primarily on their novel and unsupported legal theory that the Legislature may not delegate tasks related to legislative and executive compensation." (underlining added).

The Budget is "OFF THE CONSTITUTIONAL RAILS" – & its Capstone, Driving the Unconstitutionality, is its Culminating "Three-Men-in-a-Room", Behind-Closed Doors, Budget Deal-Making, Amending & Generating Budget Bills

There are a multitude of respects in which "There is no daylight" between this case and *Delgado*. And one of the most important respects is that both Chapter 60, Part E, of the Laws of 2015 and Chapter 59, Part HHH, of the Laws of 2018 are products of a corrupted budget "process" that has been willfully and deliberately driven "OFF THE CONSTITUTIONAL RAILS" by the respondents herein, in collusion with each other. Its culminating feature is the behind-closed-doors, "three men in a room" budget deal-making that takes place between the Governor, Temporary Senate President and Assembly Speaker – and this is how Part E and Part HHH were each popped into the budget, each unconstitutional riders, violative of Article VII, §6.

This Court has stated, repeatedly, including in the context of the state budget, that

> "The courts will always be available to resolve disputes concerning the scope of that authority which is granted by the Constitution to the other two branches of the government", *Saxton v. Carey*, 44 NY2d 545, 551 (1978); *New York State Bankers Association v. Wetzler*, 81 N.Y.2d 98, 102 (1993); *Pataki v. NYS Assembly/Silver v. Pataki*, 4 NY3d 75, 96 (2004).

Excepting appellants' seventh and eighth causes of action, relating to the constitutionality of Chapter 60, Part E, of the Laws of 2015, as applied [R.112-114 (R.201-213)], the other eight pertain to the budget and the "authority which the New York Constitution has granted to the other branches of government". The most spectacular of these involve the whole of the state budget: appellants' fourth, fifth, and ninth causes of action.

The ninth cause of action [R.115 (R.214-219)] seeks a declaration that three-men-in-a-room, budget dealing-making is unconstitutional, "*As Unwritten* and *As Applied*". It is based, explicitly, on this Court's decision in *King v. Cuomo*, 81 N.Y.2d 247 (1993), and identifies that "the multitude of reasons" that decision particularizes for striking down the Legislature's practice of recalling, from the Governor, bills it had passed, mandates the striking down of three-men-in-a-room, budget deal-making. Indeed, the ninth cause of action asserts that the text of *King v. Cuomo*, with but minor alterations, is ready-made for the declaration as to the unconstitutionality of three-men-in-a-room budget-making – and supplies the altered text to prove it [R.215-217]. So that the Court can see this, for itself, the ninth cause of action is annexed hereto as Exhibit B.[10]

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10 "Three-men-in-a-room" style governance and the complete collapse of a constitutionally-functioning Legislature, enacting legislation consistent with the most basic legislative due process – committee hearings, discussion, mark-ups, amending of bills, then moving to the full chambers, with debate, further amending, and votes – followed by reconciliation of disparate bills by Senate-Assembly conference committees, then passed to the Governor and, if vetoed, returned to the Legislature for overriding votes – a Legislature that discharges the most basic oversight of legislation it has enacted and governmental operations – ALSO underlies Chapter 63, Part E, of the Laws of 2005, establishing the Commission on Health Care Facilities in the 21st Century, as well as Chapter 567 of the Laws of 2010, establishing the Commission on Judicial Compensation. Indeed, the

This Court granted an appeal of right in *King v. Cuomo*, identifying, at the outset of its decision: "Appellants are before this Court by an appeal taken as of right on a substantial constitutional issue." The Court's recognition in *King v. Cuomo* of "a substantial constitutional issue" compels the same result here – where, additionally, the unconstitutionality of three-men-in-a-room budget deal-making is *a fortiori* to the unconstitutionality of recall. In the words of appellants' ninth cause of action:

> "464. At bar, the unconstitutionality is *a fortiori* to that in *King* because, unlike with bicameral recall, no Senate and Assembly rules 'reflect and even purport to create the [three-men-in-a-room] practice' ([*King*] at p. 250) AND such budget deal-making by them, conducted behind-closed-doors, is UNIFORMLY derided as deleterious to good-government." (R.217, italics and capitalization in the original).

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pertinent facts pertaining to Chapter 63, Part E, of the Laws of 2005 – and the New York City Bar Association's intention to appear as *amicus curiae* in the *McKinney* case – were recited by its May 2007 Report entitled "*Supporting Legislative Rules Reform: The Fundamentals*". In pertinent part, it stated:

> "the legislature never attempted to address the underlying policy issue of health care capacity and resources, prior to the enabling and creating the Berger Commission in 2005.[fn46] Moreover, the Legislature never held any hearings with respect to the enabling legislation itself.[fn47] Note that, health care spending in New York State affects billions of dollars a year." (at p. 10).

The opening paragraphs of the City Bar's Report furnished context, as follows:

> "For many in academia, government, the media and the public, the phrase 'three men in a room' symbolizes all that is wrong with state government and the culture of Albany. It crystallizes the simple truth that the Governor, Assembly Speaker ('Speaker') and Senate Majority Leader ('Majority Leader') 'largely control the state government'[fn7] Consolidating so much power among three individuals seriously undermines the fundamental principles of democracy and the purpose of representative government.
>
> Many of New York State's problems in achieving a truly representative government can be traced to the 'dysfunctional legislature'[fn8] and the rules that allow two individuals to control the entire legislative branch of government. Specifically, the strength of the Speaker and Majority Leader has been characterized as a ''stranglehold' on New York lawmaking, with members having 'little more than cheerleading rights.''[fn9] …
>
> The negative effects of the current system are many and far-reaching, from the failure to craft good public policy to chronic delays in the passage of an annual budget. This system of governance and policymaking has had and continues to have a harmful effect upon legislation and public policy…"

Annexed, as Exhibit C, is the Report's Executive Summary, as well as pages 8-11 specifically pertaining to Chapter 63, Part E, of the Laws of 2005 – and giving case citations for the "no less than seven lawsuits" that had been filed "seeking to enjoin and/or invalidate the commission and/or its recommendations".

Integrally part of the ninth cause of action and expressly embracing it, is appellants' fifth cause of action [R.108-109 (R.177-168)], seeking declarations that the budget "process" violates Article VII, §§4, 5, and 6 of the New York State Constitution. Its starting point is the failure of Senate and Assembly committees to amend the Governor's appropriation bills, consistent with Article VII, §4 and then, upon passage by each house, to reconcile them so that they might "become law immediately without further action by the governor", as Article VII, §4 mandates.

And both the ninth and fifth causes of action sit on the fourth cause of action [R.106-108 (R.170-187)], seeking declarations of unconstitutionality and unlawfulness because neither the Senate nor Assembly, in fact, "amend" the Governor's budget bills. Rather, legislative staff, operating behind-closed-doors and in violation of Article III, §10, "amend" them, without discussion by legislators at any committee meeting, without a single legislator voting to amend, and in ways flagrantly violating Article VII, §§4-7, dramatically increasing appropriations and changing text of the Governor's bills. It is these that are then released, in unison, and, together with the unamended Legislative/Judiciary budget bill, loaded into one-house Senate and Assembly budget resolutions – the product of closed-door, majority-party legislative conferences – that then become the pretext for sham legislative conference committees, fronting for more behind-closed-doors staff machinations, then dissolving to another round of behind-closed-doors "amending" of budget bills, now by the "three-men-in-a-room" – no less unconstitutional this year because one of the "men" is a woman – then sped to passage on "messages of necessity".

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]",[11] further foisted by

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[11] "In 1927, after the dangers of legislative budgeting had been identified and debated, the Governor was for the first time given the power to propose legislation directly—but only in appropriation bills. To be sure, the Governor could *recommend* other legislation in his executive budget, but the power to actually introduce bills obliging action into both houses of the Legislature —a power he has in no other context than the budget—was limited to appropriation bills. Only in 1938 was the predecessor to section 3 amended to give the Governor the additional authority to introduce other 'proposed legislation' recommended in

constitutionally unauthorized "non-appropriation" Article VII budget bills.[12]

Respectfully submitted,

Elena Ruth Sassower, unrepresented plaintiff-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

Enclosures

cc: Solicitor General Barbara Underwood
ATT: Assistant Solicitor General Victor Paladino
Assistant Solicitor General Frederick Brodie

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his executive budget. This amendment was adopted primarily to make the Governor responsible for submitting tax legislation, rather than merely recommending it. 'Believing that the revenue side of the budget is of equal importance with the expenditure side, the committee feels that any bills to carry into effect legislation affecting the revenues of the State which the Governor may propose should have the same dignity and importance as his appropriation bills, and all should be submitted directly by the Governor and treated as budget bills' (Report of Comm on State Finances and Revenues of New York State Constitutional Convention, State of New York Constitutional Convention 1938 Doc No. 3, at 3 [July 8, 1938])." (*Pataki v. Silver*, 4 N.Y.75, 117-118, dissent of then Chief Judge Judith Kaye, to which Associate Justice Carmen Ciparick concurred).

[12] As this Court had recognized in 2001, but did not repeat in 2004, "The term 'non-appropriation' bill is not found in the Constitution.", *Silver v. Pataki*, 96 NY2d 532, 535 (fn 1). This repeated the underlying 1999 NY Co/Supreme Court decision which had stated, "…'non-appropriation bills', a term which both parties agree is not in the Constitution.", *Silver v. Pataki*, 179 Misc. 2d 315, 316, but not the more stunning, constitution-violating admission in the Appellate Division, First Department's 2000 decision:

"According to the Speaker, the present dispute arises from the Legislature's response to New York *State Bankers Assn. v. Wetzler* ([81 N.Y.2d 98 (1993)]), whereby, to preserve the legislators' desire to enact amendments to the Governor's budget bill, an 'appropriations' budget bill and a complementary 'programmatic' budget bill have been enacted in recent years as part of the annual budget process. Although there is no apparent legal warrant for such budget bifurcation, the Speaker asserts that the Governor can only veto the entire 'programmatic' budget bill and, thus, has no line-item veto power with respect to that bill.", *Silver v. Pataki*, 274 A.D.2d 57, 59 (1st Dept 2000) (underlining added).

Plaintiff-Appellants' March 26, 2019 Letter in Support of their Appeal of Right

TABLE OF EXHIBITS

Exhibit A: Dissent of then Appellate Division, Fourth Department Justice Fahey – *St. Joseph Hospital, et al. v. Novello, et al.*, 43 AD3d 139, 148 (2007)

Exhibit B: Plaintiff-Appellants' Ninth Cause of Action – "Three-Men-in-a-Room Budget Dealmaking is Unconstitutional, *As Unwritten and As Applied*"

Exhibit C: New York City Bar Association May 2007 Report: "*Supporting Legislative Rules Reform – The Fundamentals*" – Executive Summary & pages 8-11

Ex. C: Petitioners' "Rebuttal to 'Appendix of Reported Cases'"

AAG Engelhart's "Appendix of Unreported Cases" (NYSCEF #31), containing four judicial decisions from CJA's three prior Albany County Supreme Court cases –

CASE #1
***CJA v. Cuomo, et al* (1st citizen-taxpayer action):**

October 9, 2014 Decision and Order by Acting Albany Supreme Court Justice Roger McDonough – whose "legal autopsy/analysis by petitioners is embodied by their "legal autopsy"/analysis of his August 1, 2016 Amended Decision and Order, annexed as Exhibit G to the September 2, 2016 verified complaint in their 2nd citizen-taxpayer action.

CASE #2
***CJA v. Cuomo…DiFiore* (2nd citizen-taxpayer action):**

December 21, 2016 Decision and Order by Acting Albany Supreme Court Justice Denise Hartman – the subject of a "legal autopsy"/analysis by petitioners, here.

November 28, 2017 Decision and Judgment by Acting Supreme Court Justice Hartman – the subject of a "legal autopsy"/analysis by petitioners, here.

CASE #3
CJA v. JCOPE, et al. **(Albany Co. #904235-22) (AD3 #CV-23-0115)**
(Article 78 proceeding/declaratory judgment action/citizen-taxpayer action)

November 23, 2022 Decision, Order and Judgment by Ulster County Supreme Court Justice David Gandin – the subject of a "legal autopsy"/analysis by petitioners, here.

SUPREME COURT OF STATE OF NEW YORK
COUNTY OF ALBANY

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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

Petitioners/Plaintiffs,

Petitioners' April 3, 2024 Affidavit in Opposition to Attorney General James' March 26, 2024 Cross-Motion to Dismiss the Verified Petition & in Support of Summary Judgment to Petitioners Pursuant to CPLR§3211(c)

-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:

1. I am the unrepresented individual petitioner/plaintiff,[1] fully familiar with all the facts, papers, and proceedings herein.

2. This affidavit is submitted to opposition to Respondent Attorney General Letitia James' March 26, 2024 cross-motion to dismiss petitioners' March 18, 2024 verified petition, signed by Assistant Attorney General Noah Engelhart, who appears "of counsel" (NYSCEF #28, #29, #30, #31, #32).

3. Attorney General James' March 26, 2024 cross-motion memorandum of law (NYSCEF #30) rests on its included opposition to petitioners' March 19, 2024 order to show cause to determine threshold issues – to which I have already submitted a March 29, 2024 reply affidavit (NYSCEF #33), demonstrating that it is not merely "frivolous", but fraudulent and a "fraud on the court". I incorporate it by reference.

4. Petitioners now make a similar demonstration as to the skimpy single paragraph at the end of Attorney General James' March 26, 2024 memorandum of law which is the sum total of the "Cross-Motion to Dismiss". It is presented by petitioners' accompanying April 3, 2024 memorandum of law in opposition to the dismissal cross-motion and in support of summary judgment to petitioners pursuant to CPLR §3211(c) (NYSCEF #48). I wrote it, incorporate it by reference, and attest to its accuracy.

5. AAG Engelhart's paltry March 26, 2024 affirmation in support of the cross-motion (NYSCEF #29) does not attest to the truth of its "Memorandum of Law in Opposition to Petitioners' Application for a Preliminary Injunction and in Support of Respondents' Cross-Motion to Dismiss"

[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.

that he has signed. The sole purpose of his affirmation, apart from its scant procedural history that he could have presented in a background section of opposition/cross-motion memorandum of law, and which omits any information as to why Respondent Commission is the only respondent Attorney General James is not representing, is seemingly his one-sentence ¶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."

6. To further conceal the facts pertaining to Respondent Commission – including as relates to the March 21, 2024 oral argument on the TRO – AAG Engelhart sent me, by mail, a March 26, 2024 letter, to which the Clerk's Office was not *cc*'d, with a "Re" clause identifying "Return Date: March 29, 2024" (Exhibit A), which I did not know of, or receive, until Friday, March 29, 2024, eight hours after I had uploaded my March 29, 2024 reply affidavit in further support of petitioners' order to show cause (NYSCEF #33).

7. In full, his letter reads:

> "As you are aware, this office represents Respondents Hochul, Delgado, Wilson, Zayas, Stewart-Cousins, N.Y. Senate, Heastie, N.Y. Assembly, James, and DiNapoli in the above referenced matter (hereinafter 'Respondents'). As of the time of this letter, the Office of the Attorney General does *not* represent Respondent Commission on Legislative, Judicial, and Executive Compensation (hereinafter 'Commission').
>
> On the record during oral arguments on March 21, 2024, the undersigned clearly indicated to you and the Court that the Office of the Attorney General did not represent Respondent Commission. The undersigned also clearly stated to you that the Office of the Attorney General could not and would not accept service on behalf of an entity which it did not represent, nor would it be waiving any service requirements under the CPLR.
>
> Despite this, and subsequent to the oral arguments, you attempted to effect service on Respondent Commission a second time by delivering papers to the Office of the Attorney General instead, as indicated in your Affidavit of Service and exhibits filed via NYSCEF. *See* NYSCEF Dkts. 22, 23.
>
> The Office of the Attorney General is once again formally refusing to accept service on behalf of Respondent Commission. Again, as of the time of Petitioners'

> second attempt at service on Respondent Commission on March 21, 2024 at 4:48 PM and as of the time of the writing of this letter, the Office of the Attorney General does not represent Respondent Commission and cannot accept service on its behalf." (italics in the original, hyperlinking added).

8. The complained-of "NYSCEF Dkts. 22, 23" – my "Affidavit of Service and exhibits filed via NYSCEF" – I had uploaded to NYSCEF on March 22, 2024 – and any objection that AAG Engelhart had to them should have, likewise, been uploaded to NYSCEF and recited by his March 26, 2024 affirmation. Instead, both his March 26, 2024 affirmation and opposition/cross-motion memorandum of law conceal any service issue pertaining to Respondent Commission and furnish no explanation for why it is the sole respondent the Attorney General is not representing.

9. The true facts as to what AAG Engelhart said, what I said, and what Justice Ryba said at the March 21, 2024 oral argument is the court reporter's transcription thereof – and the final sentence of my March 22, 2024 affidavit of service identified that I had already contacted the court reporter to order it. I did order it – and at an expedited rate of $255 – so that I could annex it to my March 29, 2024 reply affidavit and it is Exhibit A (NYSCEF #34). The relevant pages begin with Justice Ryba's question to AAG Engelhart, at the outset: "You also represent the New York State Commission on Legislative, Judicial and Executive Compensation?", at pp. 4, 7-8, and then continue, at the end, at pp. 26-28. These reveal my affidavit of service to be accurate – and that AAG Engelhart's March 26, 2024 letter (Exhibit A) is a material expurgation and not correct in stating that the AG would "[not] be waiving any service requirements under the CPLR", as he made no mention of the CPLR.

10. Upon his doing so, by his letter, I searched the CPLR. If CPLR §312 entitled "Personal service on a court, board, or commission" is the provision to which his letter refers, it was impossible for me to have effected such service on March 21, 2024, in compliance with the service provision of the order to show cause that Justice Ryba signed on March 19, 2024 (NYSCEF #17), as I would have had to serve Chair Fahey, who lives in Buffalo or thereabouts, at an address I do not

have. Alternatively, CPLR §312-a provides for "Personal service by mail", but, the only conceivable way I could have gotten to a post office, in Albany, to mail the Commission the verified petition and order to show cause papers – in an envelope postmarked March 21, 2024, addressed to the Commission's New York City postbox address – was if AAG Englehart or Justice Ryba had provided me with that simple, straight-forward procedural information, which, as the transcript of the oral argument establishes, neither did.

11. What is clear from my affidavit of service – whose Exhibit B is my March 19, 2024 e-mail to all respondents (NYSCEF #24) – and by my March 20, 2024 e-mail to Justice Ryba and all respondents (NYSCEF #21) – is that Respondent Commission had notice of the commencement of the lawsuit and access to all papers from the link these e-mails provided to the NYSCEF docket, sufficient for it to have communicated with the Attorney General concerning the information I was requesting as to service, and that the Attorney Geneal had knowledge of these e-mail notices.

12. On Monday, April 1, 2024, I e-mailed AAG Engelhart (Exhibit B-1) – *cc*'ing Respondent Commission – about his March 26, 2024 letter, stating that, absent the Commission's waiver of service, I would be making "personal service by mail", pursuant to CPLR §312-a – for which purpose I asked him to return to me the verified petition and order to show papers that his letter had not enclosed, notwithstanding he was rejecting them as service upon Respondent Commission.

13. AAG Engelhart's response, by an April 3, 2024 e-mail (Exhibit B-2), was that he was mailing back to me what I had requested – to which my replying April 3, 2024 e-mail (Exhibit B-3) stated:

> "As you have not *cc*'d the Commission on your e-mail, nor indicated that it had declined to waive service – and the Commission did not e-mail me directly as to same – I am *cc*'ing the Commission on this e-mail, with a request that it confirm that, in fact, it declined to waive service and so-informed you – and that it identify whether the decision not to waive service was made collectively and, if not, by which members." (underlining in the original).

14. Finally, with respect to footnote 3 in Attorney General James' "Cross-Motion to Dismiss" section of her memorandum of law (at p. 22), stating:

> "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.",

the referred-to "basis for dismissal" is that "Petitioners' claims are not ripe for judicial review", which she identifies as "set forth more fully above". The "more fully above" (at pp. 6-7) is predicated on the falsehood that legislation is required to effectuate judicial salary raises based on the Commission's December 4, 2023 Report and that Legislative/Judiciary Budget Bill #S.8301/A.8801, with its $34.6M appropriation for judicial salary raises, is not yet enacted.

15. This is utterly false and deceitful – and petitioners' accompanying April 3, 2024 opposition memorandum of law (NYSCEF #48, pp. 6-8) adds particulars beyond those set forth by my March 29, 2024 affidavit (NYSCEF #33, at ¶¶24-28). This includes that a week before Attorney General James' March 26, 2024 cross-motion, but not disclosed therein, the Unified Court System issued a March 19, 2024 bulletin announcing that based on the Commission's December 4, 2023 Report, checks would be issued on April 10, 2024 to reflect the judicial salary increases that would be effective April 1, 2024 (Exhibit C). So-much for "not ripe for judicial review".

16. As the March 19, 2024 bulletin lists the judicial salary increase that this Court and other Supreme Court justices and acting justices will be receiving – $232,600 up from $210,900 (Exhibit C) – payable two days before the return date of Attorney General James' March 26, 2024 cross-motion – such is further reinforcing of the Judiciary Law §14 jurisdictional bar requiring transfer to federal court.

s/

ELENA RUTH SASSOWER

April 3, 2024*
White Plains, New York

TABLE OF EXHIBITS

Exhibit A: AAG Engelhart's March 26, 2024 letter and envelope

Exhibit B-1: Petitioners' April 1, 2024 e-mail to AAG Engelhart, with *cc* to Commission – "Your mailed March 26th letter 'refusing to accept service on behalf of Respondent Commission' …"

Exhibit B-2: AAG Engelhart's April 3, 2024 e-mail

Exhibit B-3: Petitioners' April 3, 2024 e-mail to AAG Engelhart, with cc to Commission – "Thank you. However, for the record, PLUS request for confirmation from the Commission…"

Exhibit C: March 19, 2024 Unified Court System Bulletin No. UCS-341 – "April 2024 Salary Increase for Judges, Justices, and New York City Court Clerks of the Unified Court System (UCS)"

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* As with the January 18, 2024 Opposition Report (NYSCEF #6), "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", this April 3, 2024 opposing affidavit and petitioners' other papers of today's date, are also dedicated to him, on this 100th anniversary of his first day of life, April 3, 1924.

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

DIVISION OF STATE COUNSEL
LITIGATION BUREAU

March 26, 2024

Elena Sassower
10 Stewart Place, Apt. 2d-e
White Plains, NY 10603

Re: Center for Judicial Accountability, Inc., et al. v. NYS Commission on Legislative, Judicial, and Executive Compensation, et al.
Index # 902654-24
Return Date: March 29, 2024

Dear Ms. Sassower:

As you are aware, this office represents Respondents Hochul, Delgado, Wilson, Zayas, Stewart-Cousins, N.Y. Senate, Heastie, N.Y. Assembly, James, and DiNapoli in the above referenced matter (hereinafter "Respondents"). As of the time of this letter, the Office of the Attorney General does *not* represent Respondent New York State Commission on Legislative, Judicial, and Executive Compensation (hereinafter "Commission").

On the record during oral arguments on March 21, 2024, the undersigned clearly indicated to you and the Court that the Office of the Attorney General did not represent Respondent Commission. The undersigned also clearly stated to you that the Office of the Attorney General could not and would not accept service on behalf of an entity which it did not represent, nor would it be waiving any service requirements under the CPLR.

Despite this, and subsequent to the oral arguments, you attempted to effect service on Respondent Commission a second time by delivering papers to the Office of the Attorney General instead, as indicated in your Affidavit of Service and exhibits filed via NYSCEF. *See* NYSCEF Dkts. 22, 23.

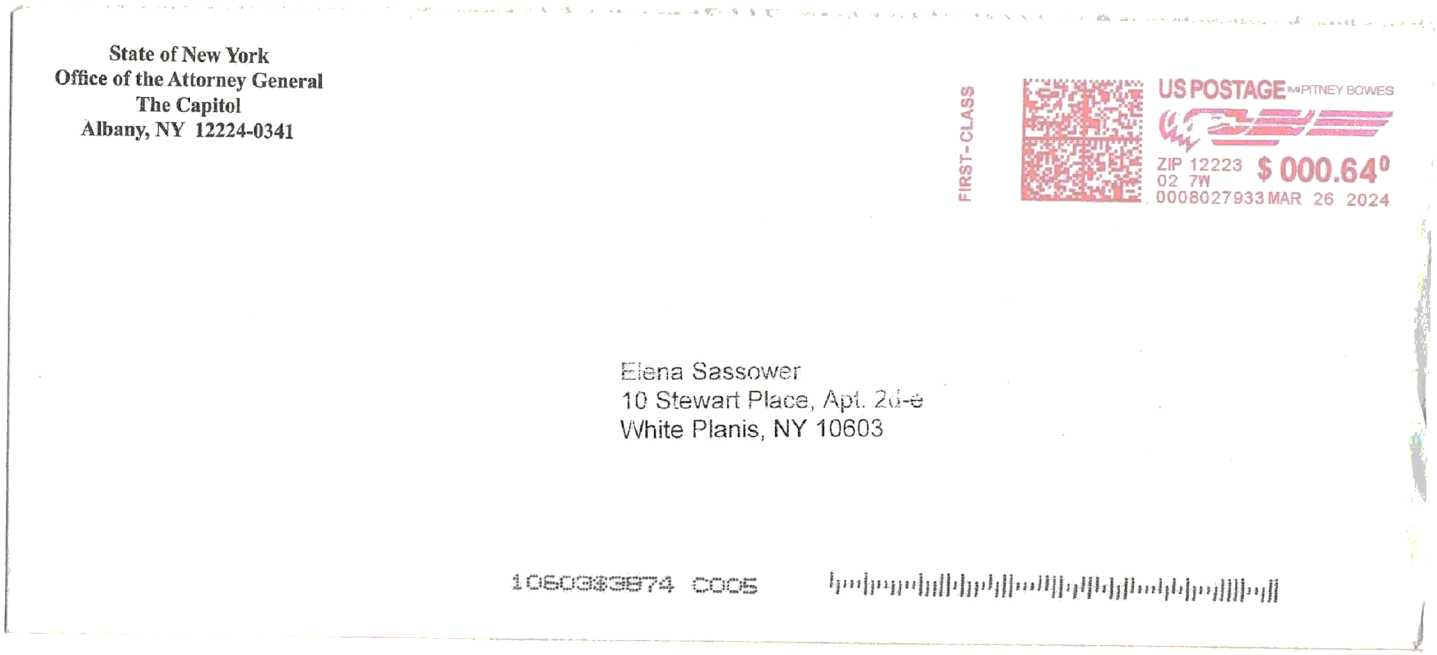
The Office of the Attorney General is once again formally refusing to accept service on behalf of Respondent Commission. Again, as of the time of Petitioners' second attempt at service on Respondent Commission on March 21, 2024 at 4:48 PM and as of the time of the writing of this letter, the Office of the Attorney General does not represent Respondent Commission and cannot accept service on its behalf.

Very truly yours,

s/ Noah C. Engelhart
Noah C. Engelhart
Assistant Attorney General

cc: Elena Ruth Sassower
Petitioner Pro Se
(Via U.S. Mail)

Center for Judicial Accountability, Inc.
Petitioner
(Via U.S. Mail)


State of New York
Office of the Attorney General
The Capitol
Albany, NY 12224-0341
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Elena Sassower
10 Stewart Place, Apt. 2d-e
White Planis, NY 10603
10603$3874 C005

Ex B-1 to Petitioners' April 3, 2024 Affidavit in Opposition to Cross-Motion & for SJ [R.490-491]

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Monday, April 1, 2024 1:11 PM
To: 'noah.engelhart@ag.ny.gov'
Cc: 'NYS Salary Commission'

Subject: **Your mailed March 26th letter "refusing to accept service on behalf of Respondent Commission" -- CJA, et al. v. Commission on Legislative, Judicial & Executive Compensation, et al. (#902654-24)**

Attachments: 3-26-24-ltr-from-engelhart.pdf

TO: Assistant Attorney General Noah Engelhart

On Friday, March 29th, more than eight hours after I had uploaded to NYSCEF my reply affidavit (NYSCEF #33), as required by Justice Ryba's March 19th signed OSC (NYSCEF #17), I discovered, in my home mailbox, the above-attached March 26th letter you had sent me by postal mail, with no indicated *cc* to the Clerk's Office and with a "Re" clause identifying "Return Date: March 29, 2024".

Please advise why you did not simply e-mail me your March 26th letter – especially as you were not enclosing the verified petition and OSC papers that your letter informed me were being "formally refus[ed]" by the AG as "service on behalf of Respondent Commission".

Your letter also misrepresented what had taken place at the March 21st oral argument on the TRO in purporting that you had said that the AG "would [not] be waiving any service requirements under the CPLR". In fact, the transcript reflects (NYSCEF #34, at pp. 27-28) that you stated, with respect to service on the Commission:

> "I don't know where they need to be served. I don't believe there is anything – I don't know where they would need to be served, that's a service issue; it's a plaintiff's issue".

Upon receiving your mailed March 26th letter, I examined the CPLR for the answer as to how to effect personal service on Respondent Commission, which has only a post box address.

According to CPLR §312 entitled "Personal service on a court, board, or commission", I can serve Commission Chair Fahey, who lives in Buffalo or thereabouts, at an address I do not have. Alternatively, CPLR §312-a provides for "Personal service by mail".

Unless the Commission, to which I e-mailed notice of this lawsuit on March 19th (NYSCEF #24) and then again on March 20th (NYSCEF #21), is willing to waive "Personal service by mail" – and I am *cc*'ing the Commission on this e-mail so that it can so-apprise you – please promptly return to me the verified petition and OSC papers that AG office staff receipted at 4:43 pm on March 21st (NYSCEF #23), as recited by my affidavit of service (NYSCEF #22), so that, immediately upon my receipt, I can mail them, as prescribed by CPLR §312-a, to the Commission's address: 64 Beaver Street, Box 454, New York, NY 10004.

As you are presumed to know – as likewise the Commission – pursuant to Public Officer Law §17, entitled "Defense and indemnification of state officers and employees", the AG's "duty to defend or indemnify and save harmless" is "conditioned", in the first instance, upon:

> "delivery to the attorney general or an assistant attorney general at an office of the department of law in the state by the employee of the original or a copy of any summons, complaint, process, notice, demand or pleading within five days after he is served with such document". (§17.4)

In other words, "Personal service by mail" upon the Commission is completely superfluous as the Commission would then be returning to you the same verified petition and OSC papers, as you would be returning to me, for mailing to the Commission.

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

Ex. B-2 to Petitioners' April 3, 2024 Affidavit in Opposition to Cross-Motion & for SJ [R.492-493]

From: Engelhart, Noah <Noah.Engelhart@ag.ny.gov>
Sent: Wednesday, April 3, 2024 1:27 PM
To: Center for Judicial Accountability, Inc. (CJA)

Subject: **RE: Your mailed March 26th letter "refusing to accept service on behalf of Respondent Commission" -- CJA, et al. v. Commission on Legislative, Judicial & Executive Compensation, et al. (#902654-24)**

Good afternoon Ms. Sassower,

I have placed the original papers you attempted to serve on Respondent Commission in the mail to be returned to you. I cannot otherwise provide you legal advice as to your obligation to serve all named Respondents as required by New York law.

No misrepresentation was made in my March 26, 2024 letter regarding a waiver of service requirements (or lack thereof), or indeed any other topic. At oral arguments, I did in fact directly state, on the record, that I would not be waiving service requirements required by statute. See NYSCEF Dkt. 34, p. 31, l. 5-7.

Sincerely,

Noah C. Engelhart
Assistant Attorney General
New York State Office of the Attorney General
Litigation Bureau
The Capitol
Albany, NY 12224

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Monday, April 1, 2024 1:11 PM
To: Engelhart, Noah <Noah.Engelhart@ag.ny.gov>
Cc: 'NYS Salary Commission' <nyscompensation@gmail.com>

Subject: Your mailed March 26th letter "refusing to accept service on behalf of Respondent Commission" -- CJA, et al. v. Commission on Legislative, Judicial & Executive Compensation, et al. (#902654-24)

TO: Assistant Attorney General Noah Engelhart

On Friday, March 29th, more than eight hours after I had uploaded to NYSCEF my reply affidavit (NYSCEF #33), as required by Justice Ryba's March 19th signed OSC (NYSCEF #17), I discovered, in my home mailbox, the above-attached March 26th letter you had sent me by postal mail, with no indicated *cc* to the Clerk's Office and with a "Re" clause identifying "Return Date: March 29, 2024".

Please advise why you did not simply e-mail me your March 26th letter – especially as you were not enclosing the verified petition and OSC papers that your letter informed me were being "formally refus[ed]" by the AG as "service on behalf of Respondent Commission".

Your letter also misrepresented what had taken place at the March 21st oral argument on the TRO in purporting that you had said that the AG "would [not] be waiving any service requirements under the CPLR". In fact, the transcript reflects (NYSCEF #34, at pp. 27-28) that you stated, with respect to service on the Commission:

> "I don't know where they need to be served. I don't believe there is anything – I don't know where they would need to be served, that's a service issue; it's a plaintiff's issue".

Upon receiving your mailed March 26th letter, I examined the CPLR for the answer as to how to effect personal service on Respondent Commission, which has only a post box address.

According to CPLR §312 entitled "Personal service on a court, board, or commission", I can serve Commission Chair Fahey, who lives in Buffalo or thereabouts, at an address I do not have. Alternatively, CPLR §312-a provides for "Personal service by mail".

Unless the Commission, to which I e-mailed notice of this lawsuit on March 19th (NYSCEF #24) and then again on March 20th (NYSCEF #21), is willing to waive "Personal service by mail" – and I am *cc*'ing the Commission on this e-mail so that it can so-apprise you – please promptly return to me the verified petition and OSC papers that AG office staff receipted at 4:43 pm on March 21st (NYSCEF #23), as recited by my affidavit of service (NYSCEF #22), so that, immediately upon my receipt, I can mail them, as prescribed by CPLR §312-a, to the Commission's address: 64 Beaver Street, Box 454, New York, NY 10004.

As you are presumed to know – as likewise the Commission – pursuant to Public Officer Law §17, entitled "Defense and indemnification of state officers and employees", the AG's "duty to defend or indemnify and save harmless" is "conditioned", in the first instance, upon:

> "delivery to the attorney general or an assistant attorney general at an office of the department of law in the state by the employee of the original or a copy of any summons, complaint, process, notice, demand or pleading within five days after he is served with such document". (§17.4)

In other words, "Personal service by mail" upon the Commission is completely superfluous as the Commission would then be returning to you the same verified petition and OSC papers, as you would be returning to me, for mailing to the Commission.

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

Ex. B-3 to Petitioners' April 3, 2024 Affidavit in Opposition to Cross-Motion & for SJ [R.494-496]

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Wednesday, April 3, 2024 3:06 PM
To: 'Engelhart, Noah'
Cc: 'NYS Salary Commission'

Subject: **Thank you. However, for the record, PLUS request for confirmation from the Commission -- CJA, et al. v. Commission on Legislative, Judicial & Executive Compensation, et al. (#902654-24)**

TO: Assistant Attorney General Noah Engelhart

Thank you for your below e-mail, responding to mine – and for advising that the verified petition and OSC papers that I had served upon the AG, at 4:43 pm on March 21st, for the Commission, were being returned to me, as requested, so that, absent waiver by the Commission, I could make "Personal service by mail" upon it, pursuant to CPLR §312-a.

However, for the record, your answer at "NYSCEF Dkt. 34, p. 31, l. 5-7" that "I'm not waiving any service requirements as required by statute" – did not identify the CPLR, nor pertain to the Commission. Rather, it was your response to my separate question regarding personal service on Chief Administrative Judge Zayas, for whom you had already appeared – and the colloquy on that subject begins at p. 28, line 16, with Justice Ryba saying "You can ask me your second question", ending at p. 31, lines 8-9, with Justice Ryba's words, "All right. Oral argument is complete".

As you have not *cc*'d the Commission on your e-mail, nor indicated that it had declined to waive service – and the Commission did not e-mail me directly as to same – I am *cc*'ing the Commission on this e-mail, with a request that it confirm that, in fact, it declined to waive service and so-informed you – and that it identify whether the decision not to waive service was made collectively and, if not, by which members.

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: Engelhart, Noah <Noah.Engelhart@ag.ny.gov>
Sent: Wednesday, April 3, 2024 1:27 PM
To: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>

Subject: RE: Your mailed March 26th letter "refusing to accept service on behalf of Respondent Commission" -- CJA, et al. v. Commission on Legislative, Judicial & Executive Compensation, et al. (#902654-24)

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Assistant Attorney General
New York State Office of the Attorney General
Litigation Bureau
The Capitol
Albany, NY 12224

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Sent: Monday, April 1, 2024 1:11 PM
To: Engelhart, Noah <Noah.Engelhart@ag.ny.gov>
Cc: 'NYS Salary Commission' <nyscompensation@gmail.com>

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> "delivery to the attorney general or an assistant attorney general at an office of the department of law in the state by the employee of the original or a copy of any summons, complaint, process, notice, demand or pleading within five days after he is served with such document". (§17.4)

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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

Unified Court System Bulletin No. UCS-341

Subject

April 2024 Salary Increase for Judges, Justices, and New York City Court Clerks of the Unified Court System (UCS)

Date Issued

March 19, 2024

Purpose:

The purpose of this bulletin is to inform agencies of OSC's automatic processing of the April 2024 Salary Increases for Judges, Justices, and New York City Court Clerks of the UCS.

Affected Employees:

Judges, Justices and New York City County Clerks in Bargaining Unit 86 who meet the eligibility criteria are affected.

Background:

Chapter 60 of the Laws of 2015, amended in the Laws of 2019 Chapter 59, Part VVV, created the Special Commission on Judicial Compensation to examine, evaluate and make recommendations with respect to the adequate levels of compensation and non-salary benefits for Judges and Justices of the state paid courts of the Unified Court System (UCS). In the Final Report on Judicial Compensation dated 12/04/2023, the Commission has recommended that all NYS Judges receive phased-in salary increases over four fiscal years beginning April 1, 2024.

Chapter 491 of the Laws of 2009 provide County Clerks in the counties comprising the City of New York to receive an annual salary not less than the minimum annual compensation received by a justice of the New York State Supreme Court elected from the same judicial district.

Effective Dates:

Cycle	Effective Date	Check Date
Administration 1 Current	03/28/2024	04/10/2024

Eligibility Criteria:

Judges, Justices, and New York City Court Clerks of the UCS in BU 86 whose Comp Rate Code is LEG with a Payroll Status of Active or Leave with Pay on or after 03/28/2024 are eligible for this salary increase.

OSC Actions:

OSC will process the April 2024 salary increase for Judges and Justices who meet the eligibility criteria as follows:

- If the Payroll Status is Active or Leave With Pay on 03/28/2024, OSC will insert a row on the Job Data record with an Effective Date of 03/28/2024 using the Action/Reason code of Pay Rate Change/SAC (Mass Salary Increase).
- If the employee does not meet the eligibility criteria on 03/28/2024 but becomes eligible in Pay Period 1, after the payment effective date, OSC will insert a row on the Job Data record with an Effective Date equal to the date of Hire, Rehire, Position Change, Transfer or Return from Leave action using the Action/Reason code of Pay Rate Change/CSL (Correct Salary).
- If the employee has subsequent rows in an eligible position, OSC will insert a row on the Job Data record using the Action/Reason code Pay Rate change/CSL (Correct Salary).

The compensation rate on each inserted row will be updated as follows:

Title	Current 4/1/2019	New 4/1/202
Court of Appeals		
Chief Judge	$240,800	$265,600

Title	Current 4/1/2019	New 4/1/202
Associate Judge	$233,400	$257,500
Appellate Division		
Presiding Justice	$227,800	$251,300
Associate Justice	$222,200	$245,100
Appellate Term		
Presiding Justice	$220,300	$243,000
Associate Justice	$215,700	$237,900
Administrative Judges		
Chief Administrative Judge	$227,800	$251,300
Dean of Judicial Institute	$222,000	$244,900
First Deputy Chief Administrative Judge	$225,000	$248,200
DCAJ (NYC)	$222,200	$245,100
DCAJ (outside NYC)	$222,200	$245,100
AJ (in NYC; Judicial District; County)	$218,500	$241,000
Supreme Court		
Justice	$210,900	$232,600
Court of Claims		
Presiding Judge	$222,200	$245,100

Title	Current 4/1/2019	New 4/1/202
Judge	$210,900	$232,600
County Court		
	$210,900	$232,600
	$202,800	$223,700
	$200,400	$221,100
Family Court		
	$210,900	$232,600
	$200,400	$221,100
Surrogate's Court		
	$210,900	$232,600
	$209,600	$231,200
	$200,500	$221,200
	$200,400	$221,100
Civil Court of NYC and Criminal Court of NYC		
Judge of the Civil Court	$196,200	$216,400
Housing Judge of the Civil Court	$189,900	$216,400
Judge of the Criminal Court	$196,200	$216,400

Title	Current 4/1/2019	New 4/1/202
District Court		
Pres., Board of Judge (Nassau)	$196,200	$216,400
Judge (Nassau)	$196,200	$216,400
Pres., Board of Judge (Suffolk)	$196,200	$216,400
Judge (Suffolk)	$196,200	$216,400
City Courts outside NYC		
Chief Judge, City Court	$189,900	$216,400
City Court Judge 100%	$189,900	$216,400
City Court Judge 75%	$142,400	$162,300
City Court Judge 50%	$95,000	$108,200
City Court Judge 25%	$47,500	$54,100
Special City Court Judge Holding 2 positions 50% & 25%	$142,500	$162,300
Special AJSC (Underlying Surrogate)	$210,900	$232,600
minus Tax & Finance Stipend Amount		
$573	$210,327	$232,027
$740	$210,160	$231,860
$807	$210,093	$231,793

Title	Current 4/1/2019	New 4/1/202
$943	$209,957	$231,657
$1,110	$209,790	$231,490
$1,300	$209,600	$231,300
$1,615	$209,285	$230,985
$1,886	$209,014	$230,714
$2,125	$208,775	$230,475
$2,221	$208,679	$230,379
$3,230	$207,670	$229,370
$4,251	$206,649	$228,349
$6,851	$204,049	$225,749
$1,886 Acting Administrative Judge	$216,614	$239,114
NY County Clerks - Current Cycle Pursuant to County Law, Article 25, Section 908	$210,900	$232,600

Agency Actions:

Agencies must submit a Pay Change on the Job Action Requests page using the appropriate Reason code (see below) to pay the April 2024 salary increase to eligible employees in Agency 05680.

- Reason code SAC (Mass Salary Increase) – for transaction with an Effective Date equal to 03/28/2024 (Administration)

- Reason code CSL (Correct Salary) – for transactions with an Effective Date after 03/28/2024 (Administration)

The salary on each inserted row for employees in Agency 05680 is determined using the charts above – **See OSC Actions**.

Salary Table Update: UCS will provide a chart showing the annual rates that currently exist on the Salary Grades table for Salary Administration Plan UCC and Salary Grade 570 with an effective date equal to 04/04/2019 and the increased annual rates which are effective 03/28/2024.

Position Table Update: UCS will submit a spreadsheet to OSC that contains the increased Approved Salary Rates which will be used to update the Position Information for the impacted employees.

Control-D Reports Available After Processing:

Control-D Report NHRP704 (Mass Salary Increase Report) will be available after processing of the automatic salary increases. This report identifies all Judges and Justices who receive the salary increase and identifies the salaries that were automatically increased.

Questions:

Questions regarding this bulletin may be directed to the Payroll Earnings mailbox.

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SUPREME COURT OF STATE OF NEW YORK
COUNTY OF ALBANY

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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/Plaintiffs,

-against-

Index #902654-24

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 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.

Petitioners' April 3, 2024 Memorandum of Law in Opposition to Attorney General James' March 26, 2024 Cross-Motion to Dismiss the Verified Petition & in Support of Summary Judgment to Petitioners Pursuant to CPLR §3211(c)

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INTRODUCTION

Petitioners submit this memorandum of law in opposition to Respondent Attorney General Letitia James' March 26, 2024 cross-motion to dismiss the verified petition, by her "of counsel" Assistant Attorney General Noah Engelhart (NYSCEF #28, #29, #30, #31, #32), and in support of petitioners' entitlement to summary judgment pursuant to CPLR §3211(c).

The motion to which Attorney General James' cross-motion is made is petitioners' "Order to Show Cause to Determine Threshold Issues, Including Preliminary Injunction with TRO" (NYSCEF #13), signed by Albany County Supreme Court Part 1 Duty Judge/Justice Christina Ryba on March 19, 2024, with its title removed, and setting a return date of March 29, 2024 (NYSCEF #17).

Attorney General James' cross-motion, however, is not returnable on March 29, 2024 – notwithstanding such date is indicated at the top of the notice of cross-motion, to the right of the caption (NYSCEF #28). Rather, the notice sets a return date of April 12, 2024, with petitioners' "responsive papers" due at least seven days prior thereto, *to wit*, April 5, 2024.

On March 29, 2024, petitioners filed a reply affidavit (NYSCEF #33) to the portions of Attorney General James' March 26, 2024 cross-motion that were her opposition to petitioners' order to show cause. Petitioners now file this memorandum of law of law as to the balance – the single paragraph at the end of Attorney Geneal James' March 26, 2024 opposition/cross-motion memorandum of law beneath the title "Cross-Motion to Dismiss" (NYSCEF #30) – and conclude by invoking CPLR §3211(c) for summary judgment to petitioners.

Attorney General James' Cross-Motion to Dismiss the Verified Petition Must be Denied, *as a Matter of Law*

The one-paragraph "Cross-Motion to Dismiss" at the end of Attorney General James' March 26, 2024 opposition/cross-motion memorandum of law reads:

> "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 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,[fn3] Petitioners' lack standing to sue in this matter,[fn4] many of the Respondents have legislative[fn5] 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." (NYSCEF #30, pp. 21-22, underlining added).

As demonstrated by petitioners' March 29, 2024 reply affidavit (NYSCEF #33), incorporated herein by reference, Attorney General James' "above reasons" "set forth more fully above" "discussed in more detail above" by her March 26, 2024 opposition/cross-motion memorandum of law (NYSCEF #30) fraudulently conceal the content of petitioners' January 18, 2024 Opposition Report (NYSCEF #6), whose most cursory review establishes that petitioners have an open-and-shut, summary judgment entitlement to the VOIDING of the Commission's December 4, 2023 Report – and to the STRIKING of the $34.6M appropriation in

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"fn3 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."

"fn4 See Footnote 2."

The referred to "Footnote 2" reads: "Again, it must be noted that Petitioners appear to be challenging the lawfulness and constitutionality of potential *future* legislation."

"fn5 See Footnote 3."

Legislative/Judiciary Budget Bill #S.8301/A.8801 based thereon – because, as stated at ¶19 of the verified petition (NYSCEF #1):

> "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*."

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.

Two of the four – CPLR §7804(f) and CPLR §3001 – are not themselves grounds for dismissal. CPLR §7804(f), entitled "Objections in point of law", reads in its most pertinent part:

> "A respondent may raise an objection in point of law by setting it forth in his answer or by a motion to dismiss the petition, made upon notice within the time allowed for answer. …"

CPLR §3001 is the declaratory judgment statute, reading in its most pertinent part:

> "The supreme court may render a declaratory judgment having the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy whether or not further relief is or could be claimed. If the court declines to render such a judgment it shall state its grounds. …"

Only CPLR §3211(a)(2) and CPLR §3211(a)(7)) are grounds for dismissal and Attorney General James identifies these grounds, respectively, as "lack of subject matter jurisdiction" and "failure to state a cause of action".

Implicit in Attorney General James' cross-moving to dismiss for "lack of subject matter jurisdiction pursuant to CPLR §3211(a)(2)" is that her "discussed in more detail above" opposition to the preliminary injunction involved "lack of subject matter jurisdiction". This is false. Her March 26, 2024 memorandum of law presents no "lack of subject matter jurisdiction" opposition

to petitioners' order to show cause for a preliminary injunction. Indeed, it is petitioners, by the first branch of their order to show cause, to transfer this case to federal court, who argued "lack of subject matter jurisdiction" based on Judiciary Law §14 (NYSCEF #14, ¶¶2-6) – and the facts pertaining to AAG Engelhart's concealment of that jurisdictional issue, first at the March 21, 2024 oral argument on the TRO, and then by Attorney General James' March 26, 2024 memorandum of law, are particularized by petitioners' March 29, 2024 affidavit in further support of the requested transfer (NYSCEF #33, at ¶¶10-12).

As for "failure to state a cause of action pursuant to CPLR §3211(a)(7)", the absence of any briefing by Attorney General James' memorandum of law as to that ground for dismissal is because she has NOT complied with its controlling requirements, embodied in ALL caselaw, by ALL courts. As stated by the Appellate Division, Third Department in *Haire v. Bonelli*, 57 A.D.3d 1354, 1355 (2008):

> "When courts consider a motion under CPLR 3211, pleadings are afforded a liberal construction, with all alleged facts accepted as true" (underlining added), citing *Leon v. Martinez*, 84 NY2d 83, 87-88 (1994) .

The Court of Appeals termed this "the well known principle", stating, in *Barr v. Wackman*, 36 N.Y.2d 371, 375 (1975) – 19 years before its decision in *Leon v. Martinez*:

> "We note at the outset the well known principle that on a motion to dismiss for failure to state a cause of action every fact alleged must be assumed to be true and the complaint liberally construed in plaintiff's favor (see, e.g., *Sage v Culver*, 147 NY 241, 245 [1895]" (underlining added).

As already detailed by petitioners' March 29, 2024 reply affidavit, Attorney General James' memorandum of law conceals ALL the petition's accepted-to-be-true allegations as to the facial violations of Chapter 60, Part E, of the Laws of 2015 by the Commission's December 4, 2023 Report and as to the content of petitioners' January 18, 2024 Opposition Report, as, for instance:

> "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*.
>
> "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;
> >
> > (iii) 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'.
> >
> > (iv) 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." (italics, hyperlinking, and underlining in the original)".

Such accepted-as-true allegations – which are TRUE, as comparison of the Commission's December 4, 2023 Report (NYSCEF #4) with Chapter 60, Part E, of the Laws of 2015 (NYSCEF # 2) readily reveals – is an Article 78 cause of action under both CPLR §7803(1): "whether the body or officer failed to perform a duty enjoined upon it by law" and CPLR §7803(3): "whether a determination was made in violation of lawful procedure, was affected by an error or law".

So, too, does Attorney General James conceal, *in toto*, the petition's also-presumed-to-be-true allegations that the respondent public officers have mandatory checks-and-balances, constitutional oversight duties with respect to the Commission, as, for instance:

> "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."
>
> "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." (underlining and hyperlinking in the original).

Such, too, plainly state a cause of action under CPLR §7803(1) – and for declarations pursuant to CPLR §3001, as requested by petitioners' "Prayer for Relief" for their first cause of action (NYSCEF #1, p. 15).

As for petitioners' second cause of action, such is expressly pursuant to State Finance Law 7-A – so stated by its ¶39, which reads:

> "As such 'recommendations' [of the Commission, referred to at pp. 18-19 of Legislative/Judiciary Budget Bill #S.8301/A.8801] 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" (hyperlinking in the original).

and by petitioners' "Prayer for Relief" for 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".

Yet, Attorney General James' cross-motion does not cite to State Finance Law Article 7-A for dismissal of the petition, or even of the second cause of action as to which her "set forth more fully above" "Petitioners' claims are not ripe" section (at pp. 6-7) had argued that because #S.8301/A.8801 had "[not] left committee, been voted on by either the Senate or Assembly, or signed by the Governor into law", it was "clearly premature and…must be dismissed as not ripe for judicial review". As such, she concedes that State Finance Law Article 7-A furnishes no basis for dismissal of the petition's second cause of action. Indeed, this is clear from 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).

All reflect that the citizen-taxpayer statute encompasses prospective, anticipated, and impending misappropriation.[1]

Moreover, not revealed by Attorney General James' March 26, 2024 cross-motion is that a week earlier, on March 19, 2024, the Unified Court System, headed by Respondents Wilson and Zayas, had issued a bulletin announcing that based on the Commission's December 4, 2023 Report, checks would be issued on April 10, 2024, to reflect the judicial salary increases that would be effective April 1, 2024 (NYSCEF #47).

[1] 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 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)."

Petitioners Have a *Matter of Law* Entitlement to Summary Judgment Pursuant to CPLR §3211(c)

CPLR §3211(c), entitled "Evidence permitted; immediate trial, motion treated as one for summary judgment", reads as follows:

> "Upon the hearing of a motion made under subdivision (a) or (b), either party may submit any evidence that could properly be considered on a motion for summary judgment. Whether or not issue has been joined, the court, after adequate notice to the parties, may treat the motion as a motion for summary judgment. The court may, when appropriate for the expeditious disposition of the controversy, order immediate trial of the issues raised on the motion."

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. As stated by petitioners:

> "There is a 100 percent entitlement to a merits determination in petitioners'/plaintiffs' favor, because the Commission's Report must be voided as violative of the statute pursuant to which it purports to be rendered.
>
> That is clear both in *Center for Judicial Accountability, et al.*, and the *Delgado* case, in which your Honor was the trial judge.
>
> You know that the safeguards, the guardrails, what is purported as the safeguards and guardrails, the restrictions have to be followed by the Commission in order for that statute to be constitutional and there has to be oversight.
>
> If you look at the Court of Appeals decision, and Judge Wilson's concurring opinion, he said that there has to be strict scrutiny of compliance, with the statutes, in order – okay. And there has to be oversight. There hasn't been oversight.

> This Report has the force of law predicated on compliance with the statute. The Commission hasn't complied with the statute. It will take effect April 1st having nothing to do with the appropriation bill – the 46 point – 36.4 million dollars. There is no defense here.
>
> It's the attorney general's duty, where this is no merits defense. The attorney general has standing. The comptroller has standing to protect the public. That's their duty. In the absence of their doing so, Center for Judicial Accountability and I have stepped in, on behalf of the public interest and the People of the State of New York, to prevent this larceny from taking place. There are no technical objections based upon the citizen-taxpayer action statute and the case law as to standing.
>
> For Mr. Engelhart to argue that there is no standing. No. There is a merits entitlement and it's the duty of the public officers to uphold the public's rights.
>
> …
>
> And apart from the TRO, I am requesting an evidentiary hearing on the entitlement to a preliminary injunction, because there is no defense to the Report of the Commission on Legislative, Judicial and Executive Compensation, and what all of the predecessor lawsuits have in common, *Center for Judicial* – the Court didn't address the violations of prior Commission Reports, except by the fraud that nothing was presented, same thing in the *Delgado* case, where the petition actually alleged noncompliant violations of the statute which you Honor eliminated in making its decision." (NYSCEF #34, pp. 22-24)

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 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.

The lower court decisions in *Delgado v. State of New York*[2] are:

- Justice Ryba's June 7, 2019 decision which, in addition to rejecting Attorney General James' attempt to dismiss for lack of standing, principally relied on the Appellate Division, Third Department's December 27, 2018 decision in *CJA v. Cuomo…DiFiore*, to uphold the constitutionality of the "force of law" enabling statute of the Committee on Legislative and Executive Compensation, Chapter 59, Part HHH, of the Laws of 2018, materially identical to the "force of law" enabling statute of the Commission on Legislative, Judicial and Executive Compensation, Chapter 60, Part E, of the Laws of 2015, challenged in *CJA v. Cuomo…DiFiore*;

- the Appellate Division, Third Department's March 18, 2021 decision, affirming Justice Ryba's June 7, 2019 decision, with a modification, stating:

> "As a final matter, as this is a declaratory judgment action, Supreme Court should have made a declaration in defendants' favor on plaintiffs' first cause of action, rather than dismissing it (see Inter-Power of N.Y. v Niagara Mohawk Power Corp., 208 AD2d 1073, 1075 [1994]; Einbinder v Ancowitz, 38 AD2d 721, 721 [1972], lv denied 30 NY2d 485 [1972]). We modify the judgment accordingly.
>
> …
>
> ORDERED that the judgment is modified, on the law, without costs, by declaring that the Laws of 2018, chapter 59, §1, part HHH has not been shown to be unconstitutional, and, as so modified, affirmed."

The pertinent lower court decisions in *CJA v. Cuomo…DiFiore*[3] are:

- Acting Justice/Court of Claims Judge Denise Hartman's November 28, 2017 decision – the same as Attorney General James includes in her "Appendix of Unreported Cases" (NYSCEF #31), accompanying her dismissal cross-motion;[4]

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[2] CJA's webpage for the record of *Delgado v New York State* is here and includes the NYSCEF dockets and VIDEOS of oral argument before Justice Ryba, at the Appellate Division, Third Department, and at the Court of Appeals. It also includes petitioners' "legal autopsy"/analysis of Justice Ryba's June 7, 2019 decision as part of their "legal autopsy"/analysis of the Appellate Division, Third Department's March 18, 2021 decision, here.

[3] CJA's webpage for the *CJA v. Cuomo…DiFiore* record is here and includes two VIDEOS of oral argument before the Appellate Division, Third Department.

[4] Petitioners' "legal autopsy"/analysis of Judge Hartman's November 28, 2017 decision is here – and is included in their "Rebuttal to Appendix of Unreported Cases" (NYSCEF #37).

- The Appellate Division, Third Department's December 27, 2018 decision, which "affirmed" Judge Hartman's November 28, 2017 decision.[5]

Suffice to add that in *Delgado*, where Attorney General James' May 6, 2019 notice of motion to dismiss expressly cited to "lack of standing" as a dismissal grounds – unlike at bar – Justice Ryba rejected her argument that the *Delgado* plaintiffs did not have citizen-taxpayer standing, stating:

> "the Court finds that plaintiffs' challenge to Part HHH and the Committee's recommendations [in its December 10, 2018 Report], both of which address the compensation of state officials, have 'a sufficient nexus to fiscal activities of the State to allow for section 123-b standing' (Rudder v. Pataki, 93 NY2d at 281 [1999]). The Court therefore finds that plaintiffs have standing to bring this action."

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 Secondum, 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

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[5] Petitioners' "legal autopsy"/analysis of the Appellate Division, Third Department's December 27, 2018 decision, with their transmitting March 26, 2019 letter to the Court of Appeals, are Exhibit B-1 and B-2 to their March 29, 2024 reply affidavit (NYSCEF #35, NYSCEF #36).

> 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).

CONCLUSION

Based on the foregoing, Attorney General James' cross-motion to dismiss the verified petition must be denied, *as a matter of law* – with summary judgment to petitioners pursuant to CPLR §3211(c).

s/

ELENA RUTH SASSOWER, unrepresented individual petitioner,
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

April 3, 2024*
White Plains, New York

* The centenary of the birth, on April 3, 1924, of George Sassower, ESQ., to whom petitioners' January 18, 2024 Opposition Report (NYSCEF #6), on which this lawsuit rests, is dedicated.

SUPREME COURT OF STATE OF NEW YORK
COUNTY OF ALBANY

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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/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.

Index #902654-24

Oral Argument Requested

April 3, 2024 Notice of Motion for Relief against Respondent Attorney General James, including Disqualification, upon Transfer to Federal Court

S I R S :

PLEASE TAKE NOTICE that upon the April 3, 2024 affidavit of the unrepresented individual petitioner Elena Ruth Sassower, petitioners' accompanying memorandum of law, and upon all papers and proceedings heretofore had, a motion will be made before Supreme Court Justice Jennifer Sober at Rensselaer County Courthouse, 80 Second Street, Troy, New York 12180, on Friday, April 19, 2024, at 1:00 p.m., for 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:

   (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 §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.

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR §2214(b), answering papers, if any, are to be served on petitioners seven days before the return date, *to wit*, April 12, 2024.

Dated: White Plains, New York
April 3, 2024*

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

TO: Attorney General Letitia James/ ATT: Assistant Attorney General Noah Engelhart

* The centenary of the birth, on April 3, 1924, of George Sassower, ESQ., who courageously battled against the New York State Attorney General for flagrant violation of official duties and litigation fraud and who suffered the defamations of fabricated, fraudulent judicial decisions, such as *Sassower v. Signorelli*, 472 NYS2d 702 (AD2 1984), also inflicted on the equally courageous Doris L. Sassower, ESQ. – a decision the Attorney General uses as authority for the false proposition "The Attorney General, by statute (Executive Law, §63, subd.1), is required to represent [the defendant]."

Petitioners' April 3, 2024 Moving Affidavit for Relief vs Respondent AG James [R.523-525]

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,

Petitioners/Plaintiffs,

Index #902654-24

Petitioners' April 3, 2024 Affidavit in Support of Motion for Relief against Respondent Attorney General James, including Disqualification, upon Transfer to Federal Court

-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:

1. I am the unrepresented individual petitioner/plaintiff,[1] fully familiar with all the facts, papers, and proceedings herein.

2. This affidavit is submitted to support of petitioners' accompanying April 3, 2024 notice of motion for relief against Respondent Attorney General James, including her disqualification, upon transfer of this case to federal court, because, as stated, in bold, in the notice of motion (NYSCEF #49):

> "**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 §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**".

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: my April 3, 2024 opposing affidavit (NYSCEF #38) and April 3, 2024 opposing memorandum of law (NYSCEF #48).

4. Suffice to add that my 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.

[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.

5. In the words of my beloved father, George Sassower, ESQ., to whom petitioners' January 18, 2024 Opposition Report (NYSCEF #6) on which this lawsuit rests is dedicated – and who would have turned 100 years old today – "to say more is supererogatory".

s/

ELENA RUTH SASSOWER

April 3, 2024
White Plains, New York

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

Petitioners/Plaintiffs,

-against-

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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.

Petitioners' April 3, 2024 Memorandum of Law for Relief against Respondent Attorney General James, including Disqualification, upon Transfer to Federal Court

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INTRODUCTION

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 court",[1] fashioned throughout on knowingly false and misleading factual assertions,

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[1] "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*

material omissions,[2] and on law that is inapplicable, misstated, or both.

* * *

Petitioners' First Branch of Relief:
Costs & Sanctions Pursuant to 22 NYCRR §130-1.1

NYCRR §130-1.1 provides for costs and sanctions against a party or his attorney for "frivolous" conduct in "Every [signed] pleading, written motion, or other paper".

§130-1.1(c) defines conduct as "frivolous" if:

> "(1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law;
>
> (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or
>
> (3) it asserts material factual statements that are false."

Attorney General James' March 26, 2024 opposition/cross-motion, signed by AAG Engelhart, meets the test for frivolousness on all three counts. As demonstrated by petitioners' March 29, 2024 reply affidavit (NYSCEF #33), April 3, 2024 opposing affidavit (NYSCEF #38), and April 3, 2024 opposing memorandum of law (NYSCEF #48), she has brazenly disregarded the most fundamental legal standards. Fashioned on fraud and deceit throughout, it is "completely without merit in law", chocked with "material factual statements that are false", and intended to

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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']."

[2] 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]"

"delay or prolong the resolution of the litigation or maliciously injure [the petitioners herein]". The same is true of the preview thereof: AAG Engelhart's performance at the March 21, 2024 oral argument, excepting that such was not committed *via* a signed paper.

§130-1.1(b) states:

> "Where the award or sanction is against an attorney, it may be against the attorney personally or upon a partnership, firm,…government agency…with which the attorney is associated and that has appeared as attorney of record. The award or sanctions may be imposed upon any attorney appearing in the action or upon a partnership, firm…with which the attorney is associated."

Pursuant to §130-1.2, sanctions of up to $10,000 may be imposed for "any single occurrence of frivolous conduct". Unlike costs, which are payable to the party or attorney making the motion, sanctions are reimbursement to the state, pursuant to §130-1.3, as follows:

> "Payments of sanctions by an attorney shall be deposited with the Lawyers' Fund for Client Protection established pursuant to section 97-t of the State Finance Law. Payments of sanctions by a party who is not an attorney shall be deposited with the clerk of the court for transmittal to the Commissioner of Taxation and Finance. The court shall give notice to the Lawyers' Fund of awards of sanctions payable to the fund by sending a copy of the order awarding sanctions, or by sending other appropriate notice, to the Lawyers' Fund for Client Protection…"

At bar, the state is entitled to maximum sanctions for the "occurrence[s]" of "frivolous" signed papers by AAG Engelhart on behalf of Attorney General James and her co-respondents and petitioners are entitled to such costs as they can recover.

Petitioners' Second Branch of Relief:
Referral of the Judiciary Law §487 Misdemeanor
to Criminal Authorities & Treble Damages

Judiciary Law §487, "Misconduct by attorneys", states, in pertinent part:

"An attorney or counselor who:

1. Is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party;

…

Is guilty of a misdemeanor, and in addition to the punishment prescribed therefor by the penal law, he forfeits to the party injured treble damages, to be recovered in a civil action."

In *Amalfitano v. Rosenberg*, 12 NY3d 8, 14 (2009), the Court of Appeals recognized that "the evident intent" of Judiciary Law §487 is "to enforce an attorney's special obligation to protect the integrity of the court and its truth-seeking function". The New York attorney having the greatest "special obligation" is the New York State Attorney General. As such, Judiciary Law §487 is especially appropriate to the situation at bar – mandating referral of Respondent Attorney General James, her "of counsel" AAG Engelhart, colluding AG attorney staff, and attorney-respondents and their colluding attorney staff to criminal authorities for the "misdemeanor" of deceit and intending to deceive the Court and petitioners. So, too, must they be made to pay "treble damages" to petitioners, recoverable through a civil action – and reinforcing the Court's duty to render an appropriate adjudication to facilitate same is that the legislative respondents have cynically not created the fund that State Finance Law §123-g identifies was to be established under State Finance Law §123-h,[3] by which petitioners could be reimbursed for litigation costs and expenses of this meritorious citizen-taxpayer action.

[3] State Finance Law §123-g, entitled "Costs and fees", states:

"1. The court shall have the authority to fix a reasonable sum to reimburse the plaintiff for costs and expenses, including attorney fees in an action wherein judgment was rendered for the plaintiff. Such attorney fees shall only be paid from the fund

Petitioners' Third Branch of Relief:
"Appropriate Action" Pursuant to §100.3D
of the Chief Administrator's Rules Governing Judicial Conduct

Part 100 of the Chief Administrator's Rules Governing Judicial Conduct are designed to ensure the integrity of judicial proceedings. Part 100.3D entitled "Disciplinary Responsibilities" states, in mandatory language:

> "(2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a substantial violation of the Code of Professional Responsibility shall take appropriate action." (underlining added).

New York's Rules of Professional Conduct, promulgated as joint rules of the Appellate Divisions, are Part 1200 of Title 22 of New York Codes, Rules and Regulations. Particularly relevant is the Code's Rule 1 "Terminology" section, which specifies "fraud" as involving:

> "scienter, deceit, intent to mislead, or knowing failure to correct misrepresentations that can be reasonably expected to induce detrimental reliance by another" (Rule 1(i)).

It also defines "law firm" to include "a government law office" (Rule 1(h)).

Rule 3.1, entitled "Non-Meritorious Claims and Contentions", states:

> "a lawyer shall not…defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous…". (subsection a).

The definition of "frivolous" is the same as under 22 NYCRR §130.1.1(c) and includes "knowingly assert[ing] material factual statements that are false" (subsection b(3)).

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established under section one hundred twenty-three-h of this article to the extent of money available therein.

2. No intervenors, unless they are necessary parties, shall be awarded attorney fees." (underlining added).

There is no State Finance Law §123-h.

Rule 3.3, entitled "Conduct Before a Tribunal", states:

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose to the tribunal controlling legal authority known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) offer or use evidence that the lawyer knows to be false. or use evidence that the lawyer knows to be false. If a lawyer…has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal…

Rule 8.4, entitled "Misconduct", states:

"A lawyer or law firm shall not:

(a) violate or attempt to violate the Rules of Professional Conduct…

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice."

Rule 5.1 is entitled "Responsibilities of Law Firms, Partners, Managers and Supervisory Lawyers" and states:

"(a) A law firm shall make reasonable efforts to ensure that all lawyers in the firm conform to these Rules.

(b) (1) A lawyer with management responsibilities in a law firm shall make reasonable efforts to ensure that other lawyers in the law firm conform to these Rules.

(2) A lawyer with direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the supervised lawyer conforms to these Rules.

> (c) A law firm shall ensure that the work of partners and associates is adequately supervised, as appropriate. A lawyer with direct supervisory authority over another lawyer shall adequately supervise the work of the other lawyer, as appropriate…
>
> (d) A lawyer shall be responsible for a violation of these Rules by another lawyer if:
>
> (1) the lawyer orders or directs the specific conduct or, with knowledge of the specific conduct, ratifies it; or
>
> (2) the lawyer is a partner in a law firm or is a lawyer who individually or together with other lawyers possesses comparable managerial responsibility in a law firm in which the other lawyer practices or is a lawyer who has supervisory authority over the other lawyer; and
>
> (i) knows of such conduct at a time when it could be prevented or its consequences avoided or mitigated but fails to take reasonable remedial action; or
>
> (ii) in the exercise of reasonable management or supervisory authority should have known of the conduct so that reasonable remedial action could have been taken at a time when the consequences of the conduct could have been avoided or mitigated."

As demonstrated by petitioners' March 29, 2024 reply affidavit and April 3, 2024 opposing affidavit and opposing memorandum of law (NYSCEF #33, NYSCEF #38, NYSCEF #48), New York's Rules of Professional Conduct and, specifically, Rule 3.1, Rule 3.3, Rule 8.4, and Rule 5.1, have been flagrantly violated.

Pursuant to §100.3D(2) of the Chief Administrator's Rules Governing Judicial Conduct, "appropriate action" would include referrals to the Appellate Division attorney grievance committees, if not criminal authorities – and this is consistent with the Court of Appeals' unequivocal directive:

> "the courts are charged with the responsibility of insisting that lawyers exercise the highest standards of ethical conduct…Conduct that tends to reflect adversely on the legal profession as a whole and to undermine public confidence in it warrants disciplinary action (*see Matter of Holtzman*, 78 NY2d 184, 191 cert denied, ___

US __, 112 S.Ct 648; *Matter of Nixon*, 53 AD2d 178, 181-182; *cf., Matter of Mitchell*, 40 NY2d 153, 156).", *Matter of Rowe*, 80 NY2d 336, 340 (1992).[4]

Petitioners' Fourth Branch of Relief:
Disqualification of Respondent Attorney General James
Pursuant to Executive Law §63.1, State Finance Law Article 7-A,
and Rule 1.7 of the New York Rules of Professional Conduct

Executive Law §63.1 identifies that the Attorney General's litigation position is contingent on "the interest of the state". It reads as follows:

> "The attorney-general shall:
>
> 1. Prosecute and defend all actions and proceedings in which the state is interested, and have charge and control of all the legal business of the departments and bureaus of the state, or of any office thereof which requires the services of attorney or counsel, in order to protect the interest of the state, but this section shall not apply to any of the military department bureaus or military offices of the state. No action or proceeding affecting the property or interests of the state shall be instituted, defended or conducted by any department, bureau, board, council, officer, agency or instrumentality of the state, without a notice to the attorney-general apprising him of the said action or proceeding, the nature and purpose thereof, so that he may participate or join therein if in his opinion the interests of the state so warrant." (underlining added).

State Finance Law Article 7-A also contemplates the Attorney General's affirmative role in safeguarding against "wrongful expenditure, misappropriation, misapplication, or any other illegal or unconstitutional disbursement of state funds or state property" (§123-b) – including as plaintiff:

> §123-a(3) defines "person" to include "the attorney general" and is the only "person" so-specified;
>
> §123-c(3) states "Where the plaintiff in such action is a person other than the attorney general, a copy of the summons and complaint shall be served upon the attorney general."

[4] "A court cannot countenance actions, on the part of an attorney, which are unethical and in violation of the attorney's Canon on Ethics… …A court cannot stand idly by and allow a violation of law or ethics to take place before it.", *People v. Gelbman*, 568 N.Y.S2d 867, 868 (Just. Ct. 1991).

> §123-d states that costs and security "shall not apply to any action commenced by the attorney general in the name of and on behalf of the people of the state."
>
> §123-e(2) states that "upon application by the plaintiff or the attorney general on behalf of the people of the state" a preliminary injunction and TRO may be granted.

The Attorney General's duty is thus not to provide knee-jerk defense, but to determine "the interest of the state". Where there is no legitimate defense to a lawsuit, the Attorney General's obligation is not to defend, but to intervene and/or represent or substitute for the plaintiff so as to uphold "the interest of the state".

Certainly, if Attorney General James had any legitimate defense to the petition, she would not have engaged in the litigation fraud she has by her March 26, 2024 dismissal/cross-motion – and by AAG Engelhart's March 21, 2024 oral argument on petitioners' order to show cause for a TRO.

Attorney General James has made no claim that her defense of her fellow respondents is based on "the interest of the state". Nor has she denied or disputed that she has direct interests in not validating the accuracy of petitioners' January 18, 2024 Opposition Report (NYSCEF #6) – nor can she, as the Opposition Report rests, pivotally, on the records of *CJA v. Cuomo…DiFiore* and *CJA v. JCOPE, et al.*, identified by petitioners' testimony at the Commission's October 13, 2023 hearing as Exhibits A and B as to the corruption infesting the judiciary at all levels, "throwing cases by fraudulent judicial decisions". As stated by petitioners' March 18, 2024 affidavit in support of their order to show cause (NYSCEF #14, ¶¶8-9) – and repeated by their March 29, 2024 reply affidavit in further support (NYSCEF #33, ¶18):

> "8. ….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."

Attorney General James' client is the state, whose "interest" she is mandated to "protect". Where there is "a conflict of duties, the attorney general's primary obligation is to the body politic rather than to its officers, departments, commissions, or agencies.", 7 Am. Jur. 2d §12.

In *CJA v. Cuomo…DiFiore* and in *CJA v. JCOPE, et al.*, the Attorney General could not lawfully represent the public officers and entities sued, pursuant to Executive Law §63.1 and State Finance Law Article 7-A, because there was NO "merits" defense to their corruption and larceny of taxpayer monies, recited, with evidence, by the pleadings. In both cases, in the absence of any defense, including "non-merits" technical objections, the Attorney General, himself/herself a defendant/respondent, corrupted the judicial process, totally, to protect corrupt public officer and entities – and was rewarded by fraudulent judicial decisions that obliterated or falsified the facts and the law as to the Attorney General's litigation fraud and as to petitioners' iron-clad causes of action. None of these decisions revealed, let alone analyzed, the text of Executive Law §63.1 and State Finance Law Article 7-A, determinative of petitioners' rights – and all ignored that the Attorney General was not even purporting that his/her defense representation was based on "the interest of the state" or that such determination, which the Attorney General did not purport to have been made, was untainted by conflicts of interest.[5]

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[5] In *CJA v. Cuomo…DiFiore*, commenced September 2, 2016, Respondent Attorney General James, who took office on January 1, 2019, corrupted the judicial process at the Court of Appeals, totally and without consequence – and the particulars of what she did and what the Court of Appeals did are summarized by the *CJA v. JCOPE, et al*. verified petition, *via* its Exhibits D-2 and D-3, which are petitioners' complaints based thereon to the Appellate Division attorney grievance committees and to the Commission on Judicial Conduct embodied in their March 5, 2021 complaint to JCOPE against Attorney General James (Exhibit D-1).

In *CJA v. JCOPE, et al.*, commenced June 7, 2022, Respondent Attorney General James corrupted

In *Greene v. Greene*, 47 NY2d 447, 451 (1979), the Court of Appeals articulated key principles governing attorney disqualification for conflict of interest:

> "It is a long-standing precept of the legal profession that an attorney is duty bound to pursue his client's interests diligently and vigorously within the limits of the law (Code of Professional Responsibility, canon 7). …
>
> …where it is the lawyer who possesses personal…or financial interest at odds with that of his client, these prohibitions apply with equal force (Code of Professional Responsibility, DR 5-101, subd [A]). Viewed from the standpoint of a client, as well as that of society, it would be egregious to permit an attorney to act on behalf of the client in an action where the attorney has a direct interest in the subject matter of the suit. …the conflict is too substantial, and the possibility of adverse impact upon the client and the adversary system too great, to allow the representation."

The former DR 5-101 is now reflected in Rule 1.7 of New York's Rules of Professional Conduct. Rule 1.7(a)(2) bars a lawyer from representing a client if:

> "there is a significant risk that the lawyer's professional judgment on behalf of a client will be adversely affected by the lawyer's own financial, business, property, or other personal interests."

Based on the record of this lawsuit, where Attorney General James has not even purported that her representation of respondents is in "the interest of the state", the predicate for representation pursuant to Executive Law §63.1 – and where it demonstrably is not, there being no defense to the January 18, 2024 Opposition Report (NYSCEF #6) on which this lawsuit is based – petitioners are entitled to an order disqualifying Attorney General James from representing anyone but herself and directing the Attorney General's representation/intervention on behalf of petitioners, pursuant to Executive Law §63.1 and State Finance Law Article 7-A, *via* independent counsel – or, at least preliminarily, and as requested by petitioners' above-quoted ¶9 of their March 18, 2024 affidavit in support of their order to show cause, that Attorney General James be directed:

---

the judicial process from the outset, continuing at the Appellate Division, Third Department, also totally and without consequence – and the complaints against her based thereon to JCOPE's successor, the Commission on Ethics and Lobbying in Government (COELIG), are part of the Appellate Division, Third Department record: #30, #31 #32, #33.

"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."

* * *

CONCLUSION

Based on the foregoing, petitioners are entitled to the relief sought by their accompanying April 3, 2024 notice of motion (NYSCEF #49), as it is compelled by the evidentiary facts and the law arising therefrom.

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

April 3, 2024*
White Plains, New York

* The centenary of the birth, on April 3, 1924, of George Sassower, ESQ., who courageously battled against the New York State Attorney General for flagrant violation of official duties and litigation fraud and who suffered the defamations of fabricated, fraudulent judicial decisions, such as *Sassower v. Signorelli*, 472 NYS2d 702 (AD2 1984), also inflicted on the equally courageous Doris L. Sassower, ESQ. – a decision the Attorney General uses as authority for the false proposition "The Attorney General, by statute (Executive Law, §63, subd.1), is required to represent [the defendant]."

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/Plaintiffs,

Index No. 902654-24

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 REPLY TO PETITIONERS' OPPOSITION TO RESPONDENTS' MOTION TO DISMISS AND IN OPPOSITION TO PETITIONERS' MOTION FOR SUMMARY JUDGMENT

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
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Noah C. Engelhart
Assistant Attorney General, of Counsel

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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 Reply to Petitioners/Plaintiffs' (hereinafter "Petitioners") opposition to Respondents' motion to dismiss, and in opposition to Petitioners' motion for summary judgment. In the interest of judicial economy, Respondents' Reply Memorandum of Law in further support of the motion to dismiss also incorporates Respondents' response to Petitioners' motion for summary judgment.

PROCEDURAL HISTORY

Petitioners commenced this hybrid special proceeding pursuant to CPLR Article 78 and action for declaratory judgment via Verified Petition and proposed Order to Show Cause ("OTSC") on March 18, 2024. *See* NYSCEF Dkts. 1-18. Oral arguments were conducted virtually on March 21, 2024 on the issue of Petitioners' request for a temporary restraining order ("TRO"), which was ultimately denied by Judge Ryba. On March 26, 2024, Respondents submitted written opposition to Petitioners' request for a preliminary injunction ("PI") and cross-moved to dismiss. *See* NYSCEF Dkts. 28-32. Petitioners submitted a Reply to Respondents' opposition to the PI on March 29, 2024. *See* NYSCEF Dkts. 33-37. Petitioners further submitted a Response to Respondents' motion to dismiss and cross-moved for summary judgment on or about April 3, 2024. *See* NYSCEF Dkts. 38-48. Petitioners filed a further motion for sanctions, disqualification, and transfer to federal court on April 4, 2024. *See* NYSCEF Dkts. 48-51.[1]

[1] Respondents' opposition to this latter motion will be submitted as a separate filing.

STANDARD FOR REVIEW

On a motion to dismiss pursuant to CPLR 3211, the law is well settled that "the Complaint must be liberally construed, the allegations therein must be deemed true, the Plaintiffs must be afforded every favorable inference which may be drawn therefrom, and the court must determine only whether the facts as alleged fit within any cognizable legal theory." *See Lodichand v. Kogut*, 30 Misc. 3d 891, 894 (Nassau County Sup. Ct. 2011), citing *Leon v. Martinez*, 84 N.Y.2d 83, 88 (1994). However, "bare legal conclusions and factual claims [that] are flatly contradicted by the evidence are not presumed to be true on a motion to dismiss.'" *Gerrish v. State University of New York at Buffalo*, 129 A.D.3d 1611 (4th Dep't 2015) (quoting *Olszewski v. Waters of Orchard Park*, 303 A.D.2d 995, 995 (2003)). "The court need not, and should not, accept legal conclusions, unwarranted inferences, unwarranted deductions, baseless conclusions of law, or sweeping legal conclusions cast in the form of factual allegations." *Goode v. Charter Oak Fire Ins. Co.*, 8 Misc. 3d 1023[A] (Nassau County Sup. Ct. 2005).

Here, despite Petitioners' arguments to the contrary (*see* NYSCEF Dkt. 48, pp. 6-9[2]), Petitioners are not entitled to this Court accepting *legal* conclusions as true, only *factual* allegations. *See Goode*, 8 Misc. 3d 1023[A]. This includes Petitioners' legal conclusions in their papers filed in the present case, *as well as* in the Opposition Report that Petitioners themselves created. Petitioners cannot allege certain conduct to be fraud or certain conduct to be in violation of various laws and expect that assertion to be deemed true, even in the context of a motion to dismiss. If this Court were to accept Petitioners' *legal* conclusions as true, then no party could ever prevail on a motion to dismiss, rendering CPLR 3211 completely meaningless. As set forth below and in Respondents' previously filed papers, the Verified Petition must be dismissed.

[2] Pagination cited in this memorandum of law is to the pagination provided by NYSCEF.

ARGUMENT

POINT I

RESPONDENTS' FAILURE TO ADDRESS THE MERITS OF PETITIONERS' CLAIMS IS NOT A CONCESSION OF ANY FACT OR ARGUMENT AND TO HAVE DONE SO WOULD BE INAPPOPRIATE IN A MOTION TO DISMISS

In voluminous filings post-dating Respondents' cross-motion to dismiss (*see, e.g.* NYSCEF Dkts. 33, 48), Petitioners repeatedly and incorrectly assert that Respondents' failure to address the merits of some of Petitioners' arguments (or the merits of Petitioners' Opposition Report) is a direct concession of those points. *See, e.g.*, NYSCEF Dkt. 33, ¶¶ 8, 10, 12, 15, 17, 19. First, Respondents made no concessions to any of Petitioners' arguments or allegations, implied, explicit, or otherwise. Respondents have not yet answered the Verified Petition. It would be inappropriate for Respondents to have addressed Petitioners' factual claims in a motion to dismiss, as such a motion is limited to objections in point of law. CPLR § 7804(f); *see also* CPLR § 3211(a). The Respondents' motion to dismiss addresses the following arguments (lack of ripeness, lack of standing, failure to state a cause of action, legal immunity of various parties, etc.), and it is submitted that the Verified Petition should be dismissed on those grounds.

POINT II

PETITIONERS HAVE FAILED TO SERVE RESPONDENT COMMISSION

Petitioners devote a significant amount of their responsive papers and associated exhibits to their attempts to affect service on Respondent NYS Commission on Legislative, Judicial, and Executive Compensation (hereinafter "Commission"). *See, e.g.*, NYSCEF Dkt. 33, ¶ 40; NYSCEF Dkt. 38, ¶¶ 5-13, Exhibits A, B-1, B-2, B-3. Petitioners have been made aware, multiple times, the Office of the Attorney General does not represent Respondent Commission at this time. *See, e.g.*, NYSCEF Dkt. 34 at pp. 4, 7, 27; *see also* NYSCEF Dkts. 39, 41. The Office of the Attorney General cannot provide Petitioner with legal advice as to how to carry out their own service

requirements under the CPLR. *See* NYSCEF Dkt. 34, at p. 27-28; *see also* NYSCEF Dkt. 39. Neither can the Court, as stated by Judge Ryba during oral arguments. *See* NYSCEF Dkt. 34, p. 28. Respondents have not waived any service requirements. NYSCEF Dkt. 34, at p. 31. Despite the above, Petitioners have attempted now twice to serve Respondent Commission by hand-delivering papers to the Office of the Attorney General. *See* NYSCEF Dkts. 22, 23, 39. Such attempted service should be deemed insufficient.

POINT III

PETITIONERS ARE NOT ENTITLED TO A TRANSFER TO FEDERAL COURT

Respondents have not consented to transfer to federal court or conceded that such a transfer is required. *See*, *e.g.*, NYSCEF Dkt. 33, ¶ 10. Petitioners have cited no countervailing case law to support their motion to transfer or to rebut the binding case precedent cited by Respondents in their opposition to the preliminary injunction, including binding Third Department precedent involving these very same Petitioners and the very same arguments regarding transfer to federal court. *Ctr. for Judicial Accountability, Inc. v. Cuomo*, 167 A.D.3d 1406 (3d Dep't 2018). Petitioners' response appears to be that they disagree with that holding and allege, without factual or legal support, that it is a product of fraud. *See, e.g.*, NYSCEF Dkt. 33, ¶ 10-12. Despite their assertion to the contrary, Petitioners' request to transfer to federal court should be denied.

POINT IV

PETITIONERS ARE NOT ENTITLED TO REPRESENTATION BY THE OFFICE OF THE ATTORNEY GENERAL

Petitioners are not entitled to representation by the Office of the Attorney General as requested in the OTSC. *See, e.g.*, NYSCEF Dkt 33, ¶¶ 15, 18. Petitioners have cited no legal authority to support their argument that the Attorney General be required to represent them in this pending action (despite also being a named Respondent and now also the target of sanctions by

Petitioners) or to rebut the binding case precedent cited by Respondents in their opposition to the preliminary injunction. *Ctr. for Judicial Accountability, Inc. v. Cuomo*, 167 A.D.3d 1406 (3d Dep't 2018). As such, Petitioners' request that the Court order the Attorney General to represent them in this matter, either directly or via independent counsel, should be denied.

POINT V

PETITIONER CJA'S CLAIMS MUST BE DISMISSED

Petitioners have cited no legal authority to contradict Respondents' argument, previously made in Respondents' opposition to a preliminary injunction (NYSCEF Dkt. 30, p. 14) that Petitioner Sassower cannot assert claims on behalf of Petitioner CJA because she is not an attorney as required to be by the CPLR in order to represent a corporation. CPLR § 321(a); *Ctr. for Judicial Accountability, Inc. v. Cuomo*, Ind. No. 5122-16, at *4 (Albany County Sup.Ct. Dec. 21, 2016); *Pelaez v. Silvertsone*, 19 N.Y.3d 954 (2012); *Boente v. Peter C. Kurth Off. Of Architecture & Planning, P.C.*, 113 A.D.3d 803, 804 (2d Dep't 2014). The sole case cited by Petitioners, *Cass v. New York*, (*see* NYSCEF Dkt. 33, ¶ 34), is distinguishable in that it involves dismissal of a *defendant* not a plaintiff or petitioner, on completely different grounds, and the Third Department in that case held that dismissal *was still warranted* even if it had no practical consequence. *Cass v. New York*, 88 A.D.2d 305, 308 (3d Dep't 1982). Despite Petitioners' claims that making this argument is "shameful" and "of little practical consequence," based upon the authority cited above and in Respondents' opposition to the preliminary injunction (NYSCEF Dkt. 30, p. 14), CJA must be dismissed from this special proceeding.

POINT VI

PETITIONERS HAVE FAILED TO STATE A CAUSE OF ACTION FOR MANDAMUS RELIEF

In Respondents' underlying papers, Respondents argue that to the extent that any of the relief requested by Petitioners is interpreted as a writ of mandamus to compel any or all of the Respondents to take certain actions, that request for relief must be denied because such action is discretionary and not ministerial in nature. *See* NYSCEF Dkt. 30, pp. 15, 16, 17-18. In response, Petitioners cite no case law that supports their request for mandamus relief, presumably to compel Respondents to take certain affirmative action in response to Petitioners' Opposition Report, including action involving the report generated by Respondent Commission. In fact, the only case cited by Petitioners is *N.Y. Civil Liberties Union v. State*, which they claim supports their request for mandamus relief. NYSCEF Dkt. 33, ¶ 38. Despite Petitioners' assertion to the contrary, that case establishes that mandamus relief is available only to enforce a *clear legal right* where a public official has failed to perform a duty enjoined by law. *N.Y. Civil Liberties Union v. State*, 4 N.Y.3d 175, 184 (2005). Traditionally, mandamus "lies to compel the performance of a purely ministerial act where there is a clear legal right to the relief sought." *Klostermann v. Cuomo*, 61 N.Y.2d 525, 539 (1984). The Court of Appeals has stated that, "[m]andamus [to compel] is an extraordinary remedy, available as against an administrative officer, only to compel the performance of a duty enjoined by law." *Klostermann*, 61 N.Y.2d at 539-40; *Matter of Schmitt v. Skovira*, 53 A.D.3d 918, 920 (3d Dep't 2008); *quoting New York Civ. Liberties Union v. State of New York*, 4 N.Y.3d 175, 184 (2005). Here, Petitioners have not identified any legal right, clear or otherwise, to any of the relief requested from the various public officials in this case. Further, the relief requested is not a ministerial activity required to be performed by any of the Respondents, and thus not subject to mandamus by the Court. "The act sought to be compelled must be ministerial,

nondiscretionary and nonjudgmental," and "be premised upon specific statutory authority mandating performance in a specific manner." *Brown v. New York State Dep't of Social Services*, 106 A.D.2d 740, 741 (3d Dep't 1984), *lv denied,* 65 N.Y.2d 604 (1985); *Matter of Johnson v. Fischer*, 104 A.D.3d 1004, 1005 (3d Dep't 2013). Petitioners cite to no facts in support of the request for mandamus to compel, other than to repeatedly espouse the alleged uncontestable legal veracity of their "Opposition Report". *See, e.g.*, NYSCEF Dkt. 33, ¶¶ 37, 39, 41. Again, the "Opposition Report" is a document created by Petitioners, not a law, regulation, or other legal authority that compels action by Respondents. Respondents motion to dismiss the mandamus claims should be granted.

POINT VII

PETITIONERS' CLAIMS AGAINST CERTAIN RESPONDENTS ARE BARRED BY LEGAL IMMUNITY

Petitioners offer no cognizable argument based in case law to rebut the finding that Respondent Hochul and Respondent Delgado are entitled to legislative immunity, other than an attempt to reframe Respondent Hochul and Respondent Delgado's alleged culpability in terms of their role as a check on the power of the Legislature. *See, e.g.,* NYSCEF Dkt. 33, ¶¶ 43-45; *see generally* NYSCEF Dkt. 48. The Governor's check on the power of the Legislature comes in the form of her signing bills into law or vetoing them, which is a legislative function which entitles her to legislative immunity. *See, e.g., Larabee v. Spitzer*, 19 Misc. 3d 226, 237 (New York County Sup. Ct. 2008), *aff'd sub nom.*, 65 A.D. 3d 74 (1st Dep't 2009). Such acts are also clearly discretionary in nature and not subject to mandamus relief, as discussed previously.

The carve out to legislative immunity that Petitioners cite to in their response papers involves permitting judicial review of the constitutionality of acts of the legislature. *See* NYSCEF Dkt. 33, ¶ 43 (citing *Powell v. McCormack* , 395 U.S. 486 (1969)). Respondents' motion to dismiss

does not argue that Respondent Senate or Respondent Assembly, as institutions, are entitled to legislative immunity. Rather, the argument is made as to individual legislator respondents. Petitioners make no argument as to why the individual legislators named in this case, Respondents Stewart-Cousins or Heastie, should not be entitled to legislative immunity, other than to allege that legislative immunity would not shield them from liability for defrauding the state. *See, e.g.,* NYSCEF Dkt. 33, ¶ 43. There are no facts alleged in the Verified Petition which establish such claims.

Petitioners also offer no argument or case law to rebut the finding that Respondents Wilson and Zayas are entitled to judicial immunity. As discussed previously, any attempt to reframe Respondent Wilson's or Zayas's alleged culpability in this special proceeding as being based on what Petitioner believes to be insufficient oversight clearly addresses a non-ministerial function and thus is not subject to mandamus relief.

POINT VIII

PETITIONERS FAIL TO ESTABLISH ENTITLEMENT TO A PRELIMINARY INJUNCTION

A. Likelihood of Success on the Merits

For the above reasons, and as set out in Respondents' opposition to the preliminary injunction and cross-motion to dismiss, Petitioners have failed in their papers or in oral arguments to demonstrate a likelihood of success on the merits.

B. Irreparable Harm

In response to Respondents' contention that Petitioners failed to demonstrate a risk of irreparable harm, Petitioners appear to only cite their own affidavit. *See* NYSCEF Dkt. 33, ¶ 48. In that very quote, however, Petitioners appear to concede the only potential harm in this case is purely financial loss to the state. Such financial harm would not qualify as irreparable harm for

the purposes of a preliminary injunction. *See, e.g.*, *Town of Liberty Volunteer Ambulance Corp. v. Catskill Reg'l Med. Ctr.*, 30 A.D.3d 739, 739 (3d Dep't 2006).

C. Balancing of the Equities

Again, in response to Respondents' contention that the balance of the equities tips in their favor, Petitioners appear to only cite to their own moving papers and oral argument in support of their contention to the contrary. *See* NYSCEF Dkt. 33, ¶ 50. Despite Petitioners' repeated assertion that the Respondents have conceded the purported "truth" of their Opposition Report (*see, e.g., id.*), Respondents make no such concessions, as any arguments made to date have pertained to the legal insufficiency of the Verified Petition, which should result in dismissal.

For these reasons, Petitioners' request for a preliminary injunction should be denied.

POINT IX

PETITIONERS' CROSS MOTION FOR SUMMARY JUDGMENT IS PREMATURE AND MUST BE DENIED

Petitioners' cross motion for summary judgment must be denied as premature. NYSCEF Dkt. 48, pp. 11-15. "Any party may move for summary judgment in any action, *after issue has been joined*." CPLR 3212(a) (emphasis added). "A motion for summary judgment may not be made before issue is joined and the requirement is strictly adhered to." *Blue Island Development, LLC v. Town of Hempstead*, 131 A.D.3d 497, 501 (2d Dep't 2015) (citing *City of Rochester v. Chiarella*, 65 N.Y.2d 92, 101 (1985)). "Joinder of issue requires the service of a complaint by the plaintiff and an answer or counterclaim by the defendant." *Shaibani v. Soraya*, 71 A.D.3d 1121, 1121 (2d Dep't 2010).

This strictly enforced rule also applies to declaratory judgment actions, and to actions in which the plaintiff asserts that there is no issue of fact. *Myung Chun v. North American Mortgage Co.*, 285 A.D.2d 42, 45 (1st Dep't 2001) ("Even where there [is] no triable issue, summary

judgment could not be granted prior to joinder of issue."); *Milk v. Gottschalk*, 286 N.Y.S.2d 39, 41 (3d Dep't 1968) ("Although the papers present no triable issue, we may not award summary judgment in advance of the joinder of issue."); *State University Construction Fund v. Aetna Casualty & Surety Co.*, 169 A.D.2d 52, 54-55 (3d Dep't 1991).

Furthermore, this rule equally prohibits the filing of a cross motion for summary judgment in response to a motion to dismiss. *Union Turnpike Association, LLC v. Getty Realty Corp.*, 27 A.D.3d 725, (2d Dep't 2006) (affirming denial of plaintiff's cross motion for summary judgment "[s]ince there is no indication in the record that issue had yet been joined, the Supreme Court was powerless to grant summary judgment on the complaint prior to joinder of issue."); *Ward v. Guardian Indus. Corp.*, 17 A.D.3d 1100, (4th Dep't 2005) (plaintiff's cross motion for summary for judgment filed in response to defendant's pre-joinder motion to dismiss was premature and should be denied); *Gold Medal Packing, Inc. v. Rubin*, 6 A.D.3d 1084, 1085 (4th Dep't 2004) (denying plaintiff's cross motion for summary judgment because "[s]ummary judgment is appropriate only after issue has been joined . . . and it is undisputed that defendant had not yet answered the amended complaint . . . ."). In short, the Court cannot, regardless of the circumstances under which a pre-answer summary judgment motion is attempted, issue summary judgment in favor of either party before issue has been joined.

In the instant action, Respondents have filed a motion to dismiss pursuant to CPLR 7804(f) and 3211(a). However, Respondents have not yet filed an answer (or counterclaim) to the Verified Petition, nor is there any requirement that they do so at this time. Indeed, the filing of a motion pursuant to CPLR 7804(f) and 3211(a) has extended Respondents' time to file an answer. CPLR 7804(f); *see also* CPLR 3211(f). In the face of the strict requirement that a summary judgment

motion not be filed until issue has been joined, Petitioners' cross motion for summary judgment must be denied as premature.

To the extent Petitioners' cross motion can be construed as a request for the Court to convert Respondents' motion to dismiss into a motion for summary judgment, there is no basis for such a request. CPLR 3211(c) permits, in certain limited circumstances, a court to treat a motion to dismiss "as a summary judgment motion" whether or not issue has been joined and after adequate notice to the parties. However, such a conversion is not permissible in the present case, where a plaintiff or petitioner is moving for summary judgment on its own complaint prior to joinder of issue. As the Court of Appeals held in *City of Rochester*, conversion of a motion to dismiss to a motion for summary judgment under CPLR 3211(c) "is available to a party attacking a pleading who had not pleaded yet, a defendant moving against a complaint before answering . . . but it *may not* be used by a pleader . . . to foreclose a responsive pleading before an opponent has had a chance to answer the claim." *City of Rochester v. Chiarella*, 65 N.Y.2d 92, 101 (1985). Here, Petitioners are attempting to do precisely what the Court of Appeals said is forbidden; namely, trying to obtain summary judgment on their own pleading before the Respondents have had an opportunity (or been required to) serve an answer. *Id.*

Further, unlike cases in which courts have undertaken to convert motions to dismiss into summary judgment, the Respondents did not "chart a summary judgment course" through its motion to dismiss. *See Wilt v. Brunswick Plaza, LLC*, 281 A.D.2d 840, 841 (3d Dep't 2001) (holding that the Supreme Court properly refused to convert the defendant's motion to dismiss under CPLR 3211(c) because the defendant "did not expressly chart a summary judgment course."). To the contrary, the crux of Respondents' motion to dismiss is that the Court is without jurisdiction to hear this action due to Petitioners claims not yet being ripe, Petitioners' lack of

standing, Petitioners' failure to state a cause of action against all Respondents, and certain Respondents immunity. Respondents' motion to dismiss cannot reasonably be interpreted to seek summary judgment when the main contention of that motion is that the Court does not have jurisdiction at this time to render judgment on the merits of the Verified Petition or that Petitioners have failed to state a cause of action upon which the Court can grant relief. Nor does Respondents' motion to dismiss address the underlying merits of Petitioners' own interpretation of the laws and legal rules surrounding the legislative increase in judicial compensation. Respondents are not required to address these arguments where there is no subject matter jurisdiction or when the Verified Petition fails to state a cause of action. There is no basis for conversion of Respondents' motion to dismiss to a motion for summary judgment and, to the extent Petitioners' cross motion can be read to even contemplate such a conversion, it should be denied.[3]

CONCLUSION

For the reasons discussed above, the preliminary injunctive relief sought by Petitioners should be denied in its entirety, Respondents' cross-motion to dismiss should be granted in its entirety, Petitioners' cross-motion for summary judgment should be denied.

Dated: April 11, 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] Even if the Court were to convert Respondents' motion to dismiss into a summary judgment motion, which it should not, CPLR 3211(c) requires that notification be issued to the parties of the conversion. In the event of such a conversion, Respondents would respectfully request that the Court afford Respondents a reasonable opportunity to make evidentiary submissions consistent with a summary judgment motion. *See Rich v. Lefkovits*, 56 N.Y.2d 276 (1982).

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
Email: Noah.Engelhart@ag.ny.gov

TO: Elena Ruth Sassower
Petitioner Pro Se
(Via NYSCEF)

Center for Judicial Accountability, Inc.
Petitioner
(Via NYSCEF)

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 3,754. 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

Judge Sober's April 12, 2024 So-Ordered Letter Granting Extension to Defendant AG James [R.558]

STATE OF NEW YORK
COUNTY COURT CHAMBERS
RENSSELAER COUNTY COURTHOUSE
TROY, NEW YORK 12180
(518) 788-9524
soberchambers@nycourts.gov

JENNIFER G. SOBER
JUDGE

JULIE N. LAQUIDARA
LAW CLERK

April 12, 2024

Noah C. Engelhart
Assistant Attorney General
New York State Office of the Attorney General
Litigation Bureau
The Capitol
Albany, New York 12224

Re: Center for Judicial Accountability et al. v. NYS Commission on Legislative, Judicial and Executive Compensation, et al.- Index No.: 902654-24 (Article 78 Proceeding)

Dear Attorney Engelhart:

The Court is in receipt of your request for an extension to respond to Petitioner's motion dated April 3, 2024. Said request is hereby granted, with Respondents' response now due on **April 19, 2024**.

SO ORDERED!

Very truly yours,

Jennifer G. Sober
County Court Judge

JGS:jnl
cc: Center for Judicial Accountability et al.

04/12/2024

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

DIVISION OF STATE COUNSEL
LITIGATION BUREAU

April 16, 2024

Honorable Jennifer Sober
Albany County Supreme Court
16 Eagle Street
Albany, New York 12207

Re: Center for Judicial Accountability, Inc., et al. v. NYS Commission on Legislative, Judicial, and Executive Compensation, et al.
Index # 902654-24
Return Date: March 29, 2024

Dear Judge Sober:

Please accept this letter as an update to the Court regarding Respondent New York State Commission on Legislative, Judicial, and Executive Compensation (hereinafter "Commission"). Upon information and belief, Petitioners mailed a copy of the pleadings in this case to Respondent Commission via PO Box, and those papers were received on or about April 10, 2024. On April 12, 2024, Respondent Commission formally requested representation from the Office of the Attorney General. As such, the undersigned will now appear on the Commission's behalf in this special proceeding.

Currently, there is a motion to dismiss the Verified Petition filed by the other Respondents pending before the Court. *See* NYSCEF Nos. 28-32. This motion to dismiss was timely filed before the Answer date set for March 27, 2024. *See* NYSCEF No. 17. Given the timeline described above, Respondent Commission would request an extension until **May 3, 2024** to answer or otherwise file moving papers with respect to the Verified Petition.

Thank you for your kind consideration of this request.

Respectfully yours,

s/Noah C. Engelhart
Noah C. Engelhart
Assistant Attorney General
Attorney for Respondents

cc: Elena Ruth Sassower
Petitioner Pro Se

(Via NYSCEF)

Center for Judicial Accountability, Inc.
Petitioner
(Via NYSCEF)

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

Petitioners' April 17, 2024 Affidavit in Response to AAG Engelhart's April 16, 2024 Letter to the Court

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:

1. I am the unrepresented individual petitioner/plaintiff,[1] fully familiar with all the facts, papers, and proceedings herein.

2. I submit this affidavit in response to Assistant Attorney General Engelhart's April 16, 2024 letter to the Court, filed yesterday afternoon *via* NYSCEF (#54), as to which I notified the Court this morning that I would be responding (Exhibit A).

3. Bearing an indicated "Return Date: March 29, 2024", the letter purports to be:

> "an update to the Court regarding Respondent New York State Commission on Legislative, Judicial and Executive Compensation"

and thereupon states:

> "Upon information and belief, Petitioners mailed a copy of the pleadings in this case to Respondent Commission via PO Box, and those papers were received on or about April 10, 2024. On April 12, 2024, Respondent Commission formally requested representation from the Office of the Attorney General. As such, the undersigned will now appear on the Commission's behalf in this special proceeding.
>
> Currently, there is a motion to dismiss the Verified Petition filed by the other Respondents pending before the Court. *See* NYSCEF Nos. 28-32. This motion to dismiss was timely filed before the Answer date set for March 27, 2024. *See* NYSCEF No. 17. Given the timeline described above, Respondent Commission would request an extension until **May 3, 2024** to answer or otherwise file moving papers with respect to the Verified Petition. (bold in the original).

4. AAG Engelhart's "timeline described above" is materially incomplete and deceitful, concealing the facts and law establishing the unlawfulness of AG James' representation of the Commission and that the requested "extension" is dilatory, frivolous – indeed, a fraud.

5. Starting with the "Return Date: March 29, 2024", AAG Engelhart does not reveal that such was the return date fixed by Albany County Supreme Court Justice/Part 1 Duty Judge Christina Ryba on March 19, 2024 when she signed petitioners' order to show cause to determine threshold issues (NYSCEF #17) – and that from that date onward, the Commission was on notice of the OSC

[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.

and the verified petition, but dodged service, aided and abetted by the other respondents and, most especially, by Respondent AG James and AAG Engelhart.

6. The particulars as to this are recited by my March 22, 2024 affidavit of service (NYSCEF #22) – and, thereafter, by my April 3, 2024 affidavit in opposition to AG James' March 26, 2024 cross-motion to dismiss the verified petition (NYSCEF #38, ¶¶5-13). The April 3, 2024 affidavit recited and annexed the exchange of e-mails on April 1st and April 3rd between myself and AAG Engelhart, to which I *cc*'d the Commission (NYSCEF #40, #42), giving notice that, absent the Commission's waiver of "personal service by mail" pursuant to CPLR §312-a, that I would be so-serving it.

7. I received no response from the Commission to these April 1st and April 3rd e-mails, just as I received no response from it to my initial March 19th and March 20th e-mails (NYSCEF #24, #21).

8. On April 8, 2024, I mailed the Commission, at 64 Beaver Street, Box 454, New York, New York 10004, by priority mail, the verified petition that I had served upon the AG's Albany Office, for the Commission, on March 21st (NYSCEF #23) – the same as my April 1st e-mail to AAG Engelhart had requested he mail back to me so that I could mail it to the Commission,[2] absent waiver – plus what AAG Engelhart had not returned to me, the signed March 19th OSC, which I believe he withheld, knowing that if I mailed only the verified petition to the Commission, it would not be sufficient service. Enclosed in the priority mail envelope I sent to the Commission were the required two copies of the statement of service by mail and acknowledgment of receipt, plus a stamped addressed envelope to be mailed back to me. According to the USPS tracking info, it was delivered on April 10, 2024 (Exhibit B).

[2] I did make two minor typographical corrections to two pages: to page 8 (fn. 3, ln. 4) – the addition of a missing quotation mark before the word "non-appropriation"; and to page 13 (¶34, 1st word) – the addition of a missing letter p in the word "Chapter". The corrected verified petition will be uploaded to NYSCEF to replace the current NYSCEF #1.

9. On April 11, 2024, AAG Engelhart filed a memorandum of law in reply to petitioners' April 3, 2024 opposition to his March 26, 2024 cross-motion to dismiss the verified petition (NYSCEF #52), with a frivolous Point II "Argument" (at pp. 3-4) entitled "Petitioners have Failed to Serve Respondent Commission", which – although citing to "NYSCEF Dkt. 33, ¶40; NYSCEF Dkt. 38, ¶¶5-13, Exhibits A, B-1, B-2, B-3" – concealed that petitioners, by then, either had served, or were in process of serving, the Commission by mail.

10. According to AAG Engelhart's instant letter, "On April 12, 2024, Respondent Commission formally requested representation from the Office of the Attorney General". He does not say that there was no "informal" request from the Commission before that – and when. He also does not indicate whether his e-mail of that date to the Court (Exhibit C), requesting a week's extension of the April 12th due date for his answering papers to petitioners' April 3, 2024 motion for relief against Respondent AG James, including disqualification, upon transfer to federal court (NYSCEF #49), which he asserted to be needed due to "internal review procedures", was occasioned by the Commission's request for representation.

11. In any event, pursuant to Executive Law §63.1, which predicates the AG's litigation posture, either to prosecute or defend, on "the interest of the state", Respondent AG James could not grant the Commission's April 12th "formal[] request[]" for representation, without "internal review procedures" to determine whether doing so was in "the interest of the state". Yet, tellingly, AAG Engelhart's letter does not say that "internal review procedures" so-determined – nor even baldly purport that the AG's representation of the Commission that he announces is in "the interest of the state". To the contrary, by the words "As such", it seems obvious that the Commission's "formal[] request for representation" sufficed for its granting.

12. AAG Englehart's letter then conceals that "Currently" there are TWO motions of petitioners "pending before the Court", both involving Executive Law §63.1, as well as State Finance Law Article 7-A:

- petitioners' March 19, 2024 OSC signed by Justice Ryba, with the "Return Date: March 29, 2024" (NYSCEF #17), whose second "threshold issue" is:

> "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"; and

- petitioners' April 3, 2024 motion for relief against Respondent AG James, with an April 19, 2024 return date (NYSCEF #49) that is now, presumably, April 26, 2024, as a result of AAG Engelhart's extension request based on "internal review procedures" (Exhibit D), whose fourth branch seeks an order:

> "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.'" (underlining in the original).

13. Instead, the ONLY motion that AAG Engelhart's letter identifies as "pending before the Court" is:

> "a motion to dismiss the Verified Petition filed by the other Respondents … *See* NYSCEF Nos. 28-32. This motion to dismiss was timely filed before the Answer date set for March 27, 2024. See NYSCEF No. 17."

14. Even this description is materially false. The so-called "motion" is AG James' March 26, 2024 cross-motion to dismiss the verified petition (NYSCEF #28) – and the motion to which it is

a cross-motion is petitioners' March 19, 2024 OSC to determine threshold issues (NYSCEF #17). The "Answer date set for March 27, 2024" was for "ANSWERING PAPERS, if any" with respect to the OSC.

15. It is based on AAG Engelhart's materially deceitful presentation – or, as he puts it, "Given the timeline described above" – that he requests, for Respondent Commission, "until **May 3, 2024** to answer or otherwise file moving papers with respect to the Verified Petition".

16. This is a further deceit. As is clear from petitioners' January 18, 2024 Opposition Report (NYSCEF #6) on which the verified petition rests (NYSCEF #1), no amount of time will enable the Commission to "answer or otherwise file moving papers with respect to the Verified Petition" because there is NO DEFENSE to its showing of the Commission's statutory violations and fraud by its "false instrument" December 4, 2023 Report – and the massive imposition on this state's taxpayers, resulting therefrom.

17. *As a matter of law*, this disentitles the Commission to the AG's representation pursuant to Executive Law §63.1 – and entitles petitioners to the AG's representation or intervention, and so-reinforced by State Finance Law Article 7-A.

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".

s/

ELENA RUTH SASSOWER

April 17, 2024
White Plains, New York

TABLE OF EXHIBITS

Exhibit A: Petitioners' April 17, 2024 e-mail to the Court

Exhibit B: Postal receipt and tracking for service by mail upon the Commission

Exhibit C: AAG Engelhart's April 12, 2024 e-mail to the Court

Exhibit D: Petitioners' April 12, 2024 e-mail to the Court

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Wednesday, April 17, 2024 9:46 AM
To: 'soberchambers@nycourts.gov'
Cc: 'Engelhart, Noah'; 'Moore, John'

Subject: **AAG Engelhart's letter of yesterday's date -- CJA v. Commission on Legislative, Judicial, and Executive Compensation, et al., Albany County #902654-24**

TO: Judge Sober

I have received, *via* NYSCEF, AAG Engelhart's letter to you of yesterday's date (NYSCEF #48) and will respond by the end of the day to his announcement that he "will now appear on the Commission's behalf" – and requesting "an extension until **May 3, 2024** to answer or otherwise file moving papers with respect to the Verified Petition".

Thank you.

Elena Sassower, unrepresented individual petitioner, acting on her own behalf
& on behalf of the People of the State of New York and the Public Interest
914-421-1200

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Friday, April 12, 2024 2:40 PM
To: 'soberchambers@nycourts.gov' <soberchambers@nycourts.gov>
Cc: 'Engelhart, Noah' <Noah.Engelhart@ag.ny.gov>; 'Amy Serson' <aserson@nycourts.gov>; 'Paul J Ruf' <pruf@nycourts.gov>; 'Moore, John' <John.Moore@ag.ny.gov>

Subject: Responding to AAG Engelhart's request -- RE: Center for Judicial Accountability et al. v. NYS Commission on Legislative, Judicial, and Executive Compensation, et al., Albany County Sup. Ct. Ind. No. 902654-24

TO: Judge Sober

I welcome the AG's "internal review procedures" as to how this important lawsuit has been handled -- the subject of my April 3, 2024 motion for "relief against Respondent Attorney General James, including disqualification, upon transfer to federal court".

I assume that the additional week that AAG Engelhart has requested will mean that the return date of my April 3, 2024 motion will be a week later, Friday, April 26th, rather than Friday, April 19th, but this is something that he has not indicated in his request.

Thank you.

Elena Sassower, unrepresented individual petitioner, acting on her own behalf
& on behalf of the People of the State of New York and the Public Interest
914-421-1200

From: Engelhart, Noah <Noah.Engelhart@ag.ny.gov>
Sent: Friday, April 12, 2024 12:14 PM
To: soberchambers@nycourts.gov
Cc: Amy Serson <aserson@nycourts.gov>; Paul J Ruf <pruf@nycourts.gov>; Moore, John <John.Moore@ag.ny.gov>; elena@judgewatch.org

Subject: Center for Judicial Accountability et al. v. NYS Commission on Legislative, Judicial, and Executive Compensation, et al., Albany County Sup. Ct. Ind. No. 902654-24

Good afternoon Judge Sober,

The Office of the Attorney General represents Respondents Hochul, Delgado, Wilson, Zayas, Stewart-Cousins, Heastie, James, DiNapoli, NY Senate, and NY Assembly in the above special proceeding filed in Albany County Supreme Court where Your Honor is the assigned justice. Petitioners filed a motion for sanctions and other relief in this case on April 3, 2024, returnable April 19, 2024 (NYSCEF No. 49-51). Respondents' answering papers are due today, April 12, 2024. Due to internal review procedures, Respondents respectfully request that the Court grant Respondents an additional 7 days to respond to said motion, with responsive papers being due April 19, 2024.

Thank you for your consideration of this request. Should the request be granted, please let me know if a confirming letter should be uploaded to NYSCEF.

All the best,
Noah Engelhart

Noah C. Engelhart
Assistant Attorney General
New York State Office of the Attorney General
Litigation Bureau
The Capitol
Albany, NY 12224
Phone: (518) 776-2701

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FAQs (https://tools.usps.com/go/TrackConfirmAction?qtc_tLabels1=9505514189664099876857#)

Ex. B-1 to Petitioners' April 17, 2024 Responding Affidavit [R.570]

Tracking Number:

9505514189664099876857

Remove (https://tools.usps.com/go/TrackConfirmAction?qtc_tLabels1=9505514189664099876857#)

Copy (https://tools.usps.com/go/TrackConfirmAction?qtc_tLabels1=9505514189664099876857#) Add to Informed Delivery (https://informeddelivery.usps.com/)

Latest Update

Your item was delivered to the front desk, reception area, or mail room at 12:55 pm on April 10, 2024 in NEW YORK, NY 10004.

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USPS Tracking Plus® (https://tools.usps.com/go/TrackConfirmAction?qtc_tLabels1=9505514189664099876857#)

Delivered
Delivered, Front Desk/Reception/Mail Room
NEW YORK, NY 10004
April 10, 2024, 12:55 pm

Out for Delivery
NEW YORK, NY 10004
April 10, 2024, 6:10 am

Arrived at Post Office
NEW YORK, NY 10007
April 10, 2024, 4:29 am

Arrived at USPS Facility
NEW YORK, NY 10007
April 10, 2024, 12:32 am

Departed USPS Regional Facility
NEW YORK NY DISTRIBUTION CENTER
April 10, 2024, 12:02 am

Arrived at USPS Regional Facility
NEW YORK NY DISTRIBUTION CENTER
April 9, 2024, 4:38 am

Departed USPS Regional Facility
WHITE PLAINS NY DISTRIBUTION CENTER
April 9, 2024, 1:33 am

Arrived at USPS Regional Origin Facility
WHITE PLAINS NY DISTRIBUTION CENTER
April 8, 2024, 8:38 pm

Departed Post Office
WHITE PLAINS, NY 10601
April 8, 2024, 5:42 pm

USPS in possession of item
WHITE PLAINS, NY 10601
April 8, 2024, 5:30 pm

Hide Tracking History (https://tools.usps.com/go/TrackConfirmAction?qtc_tLabels1=9505514189664099876857#)

What Do USPS Tracking Statuses Mean? (https://faq.usps.com/s/article/Where-is-my-package)

UNITED STATES POSTAL SERVICE.

MARTINE
170 MARTINE AVE
WHITE PLAINS, NY 10601-3330
(800)275-8777

04/08/2024 05:32 PM

Product	Qty	Unit Price	Price
Priority Mail® Flat Rate Env	1		$9.85
New York, NY 10004			
Flat Rate			
Expected Delivery Date Thu 04/11/2024			
Tracking #: 9505 5141 8966 4099 8768 57			
Insurance			$0.00
Up to $100.00 included			
Total			$9.85
Grand Total:			$9.85
Credit Card Remit			$9.85

Card Name: VISA
Account #: XXXXXXXXXXXX7351
Approval #: 06427G
Transaction #: 538
AID: A0000000031010 Chip
AL: VISA CREDIT
PIN: Not Required CHASE VISA

Text your tracking number to 28777 (2USPS) to get the latest status. Standard Message and Data rates may apply. You may also visit www.usps.com USPS Tracking or call 1-800-222-1811.

Save this receipt as evidence of insurance. For information on filing an insurance claim go to https://www.usps.com/help/claims.htm or call 1-800-222-1811

Ex. B-2 to Petitioners' April 17, 2024 Responding Affidavit [R.571]

From: Engelhart, Noah <Noah.Engelhart@ag.ny.gov>
Sent: Friday, April 12, 2024 12:14 PM
To: soberchambers@nycourts.gov
Cc: Amy Serson; Paul J Ruf; Moore, John; elena@judgewatch.org

Subject: **Center for Judicial Accountability et al. v. NYS Commission on Legislative, Judicial, and Executive Compensation, et al., Albany County Sup. Ct. Ind. No. 902654-24**

Good afternoon Judge Sober,

The Office of the Attorney General represents Respondents Hochul, Delgado, Wilson, Zayas, Stewart-Cousins, Heastie, James, DiNapoli, NY Senate, and NY Assembly in the above special proceeding filed in Albany County Supreme Court where Your Honor is the assigned justice. Petitioners filed a motion for sanctions and other relief in this case on April 3, 2024, returnable April 19, 2024 (NYSCEF No. 49-51). Respondents' answering papers are due today, April 12, 2024. Due to internal review procedures, Respondents respectfully request that the Court grant Respondents an additional 7 days to respond to said motion, with responsive papers being due April 19, 2024.

Thank you for your consideration of this request. Should the request be granted, please let me know if a confirming letter should be uploaded to NYSCEF.

All the best,
Noah Engelhart

Noah C. Engelhart
Assistant Attorney General
New York State Office of the Attorney General
Litigation Bureau
The Capitol
Albany, NY 12224
Phone: (518) 776-2701

Ex. B-3 to Petitioners' April 17, 2024 Responding Affidavit

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Friday, April 12, 2024 2:40 PM
To: 'soberchambers@nycourts.gov'
Cc: 'Engelhart, Noah'; 'Amy Serson'; 'Paul J Ruf'; 'Moore, John'

Subject: **Responding to AAG Engelhart's request -- RE: Center for Judicial Accountability et al. v. NYS Commission on Legislative, Judicial, and Executive Compensation, et al., Albany County Sup. Ct. Ind. No. 902654-24**

TO: Judge Sober

I welcome the AG's "internal review procedures" as to how this important lawsuit has been handled -- the subject of my April 3, 2024 motion for "relief against Respondent Attorney General James, including disqualification, upon transfer to federal court".

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Thank you.

Elena Sassower, unrepresented individual petitioner, acting on her own behalf
& on behalf of the People of the State of New York and the Public Interest
914-421-1200

From: Engelhart, Noah <Noah.Engelhart@ag.ny.gov>
Sent: Friday, April 12, 2024 12:14 PM
To: soberchambers@nycourts.gov
Cc: Amy Serson <aserson@nycourts.gov>; Paul J Ruf <pruf@nycourts.gov>; Moore, John <John.Moore@ag.ny.gov>; elena@judgewatch.org

Subject: Center for Judicial Accountability et al. v. NYS Commission on Legislative, Judicial, and Executive Compensation, et al., Albany County Sup. Ct. Ind. No. 902654-24

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Thank you for your consideration of this request. Should the request be granted, please let me know if a confirming letter should be uploaded to NYSCEF.

All the best,
Noah Engelhart

Noah C. Engelhart
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New York State Office of the Attorney General
Litigation Bureau
The Capitol
Albany, NY 12224
Phone: (518) 776-2701

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/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.

Index No. 902654-24

RESPONDENTS' OPPOSITION TO PETITIONERS' MOTION FOR SANCTIONS, DISQUALIFICATION, AND TRANSFER TO FEDERAL COURT

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, New York State Commission on Legislative, Judicial, and Executive Compensation and Thomas DiNapoli
The Capitol
Albany, New York 12224-0341
Telephone: (518) 776-2701

John F. Moore
Assistant Attorney General, of Counsel

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Respondents/Defendants Kathy Hochul, Antonio Delgado, Rowan Wilson, Joseph Zayas, Andrea Stewart-Cousins, Carle Heastie, Letitia James, and Thomas DiNapoli, in their official capacities, New York State Commission on Legislative, Judicial, and Executive Compensation, the New York State Senate, and the New York State Assembly ("Respondents") respectfully submit this opposition to Petitioners'/Plaintiffs' ("Petitioners") motion for sanctions, disqualification, and transfer to federal court.

PROCEDURAL STATEMENT

Petitioners[1] commenced this hybrid special proceeding pursuant to CPLR Article 78 and action for declaratory judgment via Verified Petition and proposed Order to Show Cause ("OTSC") on March 18, 2024. *See* NYSCEF Nos. 1-18. Oral arguments were conducted virtually on March 21, 2024 on the issue of Petitioners' request for a temporary restraining order ("TRO"), which was denied by Justice Ryba. On March 26, 2024, Respondents submitted written opposition to Petitioners' request for a preliminary injunction ("PI") and cross-moved for dismissal. *See* NYSCEF Nos. 28-32. Petitioners submitted a Reply to Respondents' opposition to the PI on March 29, 2024. *See* NYSCEF Nos. 33-37. Petitioners further submitted a Response to Respondents' motion to dismiss and cross-moved for summary judgement on or about April 3, 2024. *See* NYSCEF Nos. 38-48. Petitioners filed a further motion for sanctions, disqualification, and transfer to federal court on April 4, 2024. *See* NYSCEF Nos. 48-51.

[1] Respondents objected to Petitioner Sassower raising claims on behalf of Petitioner CJA in prior filings because as a non-attorney Petitioner Sassower cannot raise claims on behalf of a corporation or voluntary association. *See* NYSCEF No. 30, Point III(C) (citing CPLR 321(a); *Pelaez v. Silvertsone*, 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)).

ARGUMENT

POINT I

PETITIONERS' MOTION FOR SANCTIONS IS BASELESS

Petitioners filed a motion seeking costs and sanctions against Attorney General ("AG") James and Assistant Attorney General Noah Engelhart (AAG Engelhart) under a variety of theories, including 22 NYCRR § 130-1.1, Judiciary Law § 487, the Chief Administrator's Rules Governing Judicial Conduct § 100.3D, and the New York Rules for Professional Conduct. *See* NYSCEF No. 51, pp. 4 – 9 of 14. Petitioners' motion is baseless in all respects.

A. The Record Fails To Support Petitioners' Motion for Sanctions Pursuant to 22 NYCRR § 130-1.1

Petitioners allege that Respondents' opposition to Petitioners' request for an Order to Show Cause ("OTSC") and cross-motion for dismissal meets the definition of "frivolous conduct" pursuant to 22 NYCRR § 130.1.1. *See* NYSCEF No. 51, p. 4. This is incorrect.

Conduct is frivolous if it is "completely without merit in law," "undertaken primarily to delay or prolong the resolution of the litigation," or "asserts material factual statements that are false. 22 NYCRR 130–1.1(c). Here, the record does not support an award of sanctions under any of the prongs. Petitioners identify no specific instances of conduct which constitutes any of the above three criteria, other than to assert, in conclusory fashion, that AAG Engelhart's filings and arguments made at oral argument were frivolous. In lieu of citing to any specific examples of conduct in violation of § 130.1.1(c), Petitioners instead cite only to their own reply and opposition papers to substantiate such claims. *See* NYSCEF No. 51, p. 4. Petitioners' arguments to this end is based on nothing more than the sweeping conclusion that their disagreement Respondents' legal arguments constitutes *per se* constitutes fraud and misrepresentation. The Court is referred to

Respondents' legal arguments at NYSCEF Nos. 30, 52, and it is submitted that Respondents' arguments are in fact based on relevant and applicable legal standards.

Despite Petitioners' conclusory assertions to the contrary, the record is devoid of any instance of AAG Engelhart's filings or appearances on the record amounting to frivolous conduct pursuant to 22 NYCRR § 130-1.1. As such, Petitioners' motion for sanctions for frivolous conduct should be denied.

B. Pletitioners' Claim for Sanctions Pursuant to Judiciary Law § 487 Fails on the Merits.

Petitioners continue their motion for sanctions by alleging an even more serious accusation of criminal conduct by AAG Engelhart in violation of Judiciary Law § 487. *See* NYSCEF No. 51, pp. 5 – 6. Judiciary Law § 487 provides for civil damages and criminal liability for any attorney who, in pertinent part: "…[i]s guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party." N.Y. Jud. L. § 487(1).

A cause of action under Judiciary Law § 487 must plausibly allege an intent on behalf of the accused party to deceive the court. *Haggerty v. Ciarelli & Dempsey*, 374 F. App'x 92, 93 (2d Cir. 2010). This intent cannot be assumed by the nature of the parties or their roles in pending litigation (e.g., such intent cannot even be assumed for adversarial parties). *Id.* (citing *Lazich v. Vittoria & Parker*, 189 A.D.2d 753 (2d Dep't 1993). A cognizable claim under Judiciary Law § 487 also requires "a chronic and extreme pattern of legal delinquency." *Solow Mgt. Corp. v. Seltzer*, 18 A.D.3d 399, 400 (1st Dep't 2005). Such a "chronic and extreme pattern" must be sufficient pled by specific factual allegations, otherwise the claim (or arguably any motion for sanctions under Section 487) must be dismissed. *See, e.g.*, *Space Race, LLC v. Alabama Space Science Exhibit Commn.*, 2020 NY Misc. LEXIS 1936, at *13–14 (Sup Ct. N.Y. Cty. 2020). For example, the court in *Space Race, LLC* granted a motion to dismiss a claim under Judiciary Law

§ 487, because, as here, there was a failure to allege "facts indicating that those defendants made a material misrepresentation of fact, with knowledge of its falsity, with an intent to induce reliance, reliance by [plaintiff] on the misrepresentation, and damages." *Id.* at *9, 14 (citing *Euryclea P'Ship, LP v. Seward & Kissel, LLP*, 12 N.Y.3d 553 (2009); *Solow Mgt. Corp.*, 18 A.D.3d 399 (1st Dep't 2017)). The court in *Space Race* specifically noted that "conclusory allegations do not suffice" for either a fraud claim, or by extension, a claim under Judiciary Law § 487. *Id.; see also Shaffer v. Gilberg*, 125 A.D.3d 632, 636 (2d Dep't 2015) (upholding a dismissal of a claim under Judiciary Law § 487 based on a finding that plaintiff's allegations were "conclusory and factually insufficient").

Here, Petitioners have not alleged any facts to support their motion for sanctions, damages, and/or referral for criminal prosecution under Judiciary Law § 487. Instead, Petitioners merely assert, in conclusory fashion, that AG James and AAG Engelhart violated Section 487, with no specific conduct alleged, other than that Respondents opposed Petitioners' self-described "meritorious" citizen-taxpayer action. *See* NYSCEF No. 51, pp. 5-6. To the extent that Petitioners seek to incorporate their prior reply and opposition papers as support for their motion for sanctions under Judiciary Law § 487, those papers are entirely devoid of any admissible evidence or credible allegation that AG James or AAG Engelhart acted with intent to either deceive the Court or Petitioners. As such, Petitioners' motion for sanctions pursuant to Judiciary Law § 487 should be denied.

C. Standard for Sanctions Pursuant to Chief Administrator Rules Governing Judicial Conduct § 100.3(D)

Finally, Petitioners assert that the Court is mandated to take appropriate action pursuant to Section 100.3(D) of the Chief Administrator's Rules Governing Judicial Conduct in response to the alleged violation(s) of the New York Rules of Professional Responsibility. Section 100.3(D)

states "[a] judge who receives information indicating a substantial likelihood that a lawyer has committed a substantial violation of the Rules of Professional Conduct (22 NYCRR Part 1200) shall take appropriate action." Rules Governing Judicial Conduct (22 NYCRR) §§ 100.3(D)(2). Here, Petitioners allege that AG James and AAG Engelhart violated Rule 3.1[2], Rule 3.3[3], Rule 8.4[4], and Rule 5.1[5] of the Rules of Professional Conduct and that this Court is required to refer the matter to both the grievance committee and criminal prosecution. *See* NYSCEF No. 51, p. 9.

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[2] Rule 3.1 states, in relevant part, that: "A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous." N.Y. Rules of Prof'l Conduct (22 NYCRR 1200.0), Rule 3.1.

[3] Rule 3.3 states, in relevant part, that: "(a) A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; (2) fail to disclose to the tribunal controlling legal authority known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or (3) offer or use evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false." N.Y. Rules of Prof'l Conduct (22 NYCRR 1200.0), Rule 3.3(a).

[4] Rule 8.4 states, in relevant part, that: "A lawyer or law firm shall not: (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another; (b) engage in illegal conduct that adversely reflects on the lawyer's honesty, trustworthiness or fitness as a lawyer; (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation; (d) engage in conduct that is prejudicial to the administration of justice." N.Y. Rules of Prof'l Conduct (22 NYCRR 1200.0), Rule 8.4(a)-(d).

[5] Rule 5.1 states, in relevant part, that: "a) A law firm shall make reasonable efforts to ensure that all lawyers in the firm conform to these Rules. (b) (1) A lawyer with management responsibility in a law firm shall make reasonable efforts to ensure that other lawyers in the law firm conform to these Rules. (2) A lawyer with direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the supervised lawyer conforms to these Rules. (c) A law firm shall ensure that the work of partners and associates is adequately supervised, as appropriate. A lawyer with direct supervisory authority over another lawyer shall adequately supervise the work of the other lawyer, as appropriate. In either case, the degree of supervision required is that which is reasonable under the circumstances, taking into account factors such as the experience of the person whose work is being supervised, the amount of work involved in a particular matter, and the likelihood that ethical problems might arise in the course of working on the matter. (d) A

As they failed to do previously, Petitioners cite to no instance of conduct by either AG James or AAG Engelhart in support of these allegations other than to allege in conclusory fashion that the rules have been "flagrantly violated". To substantiate this sweeping conclusion, they again refer the Court back to Petitioners' own prior reply and opposition papers. *See* NYSCEF No. 51, p. 9 of 14. Despite Petitioners' assertion to the contrary, the papers cited to contain nothing which demonstrates either AG James or AAG Engelhart violated any of the cited Rules of Professional Conduct. Instead, Petitioners appear to assert that any opposition to the arguments in the Verified Petition (*see, e.g.,* NYSCEF No. 48, pp. 11-12) must, by virtue of Petitioners' belief in the validity of their arguments, constitute frivolous, meritless, fraudulent, or deceitful conduct. The record is entirely devoid of any instance of either AG James or AAG Engelhart committing fraud, filing a frivolous motion, deceiving the court, violating any rule or standard for professional conduct, or any other sanctionable conduct. At all times, Respondents' legal arguments were made in good faith, on the basis of properly cited and relevant statutory and case law precedent, and on the facts as known to the Respondents.

Furthermore, Petitioners assertion that AG James "aided and abetted" the New York State Commission on Legislative, Judicial, and Executive Compensation (the "Commission") in "dodging service" is patently without merit. *See* NYSCEF No. 51, p. 3. The record is clear that

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lawyer shall be responsible for a violation of these Rules by another lawyer if: (1) the lawyer orders or directs the specific conduct or, with knowledge of the specific conduct, ratifies it; or (2) the lawyer is a partner in a law firm or is a lawyer who individually or together with other lawyers possesses comparable managerial responsibility in a law firm in which the other lawyer practices or is a lawyer who has supervisory authority over the other lawyer; and (i) knows of such conduct at a time when it could be prevented or its consequences avoided or mitigated but fails to take reasonable remedial action; or (ii) in the exercise of reasonable management or supervisory authority should have known of the con duct so that reasonable remedial action could have been taken at a time when the consequences of the conduct could have been avoided or mitigated." N.Y. Rules of Prof'll Conduct (22 NYCRR 1200.0), Rule 5.1.

AAG Engelhart directly and clearly informed Petitioner Sassower that the Commission did not appear to have been served, and consequently that the Office of the Attorney General ("OAG") had not received a request for representation by the Commission, and that therefore the OAG did not represent the Commission at the time of those communications.[6] *See* NYSCEF No. 34, pp. 4, 27. This position was reiterated to Petitioners in subsequent communications. *See, e.g.*, NYSCEF Nos. 39, 41. If a party has not appeared via an attorney, service must be upon the party. *See. e.g., City of N.Y. v. Miller*, 72 A.D.3d 726, 727-28 (2d Dept. 2010). The refusal of an attorney to accept improper service or waive service does not constitute sanctionable conduct. *See, e.g., USA Med. LLC v. LABQ Clinical Diagnostics, LLC*, 2023 NY Slip Op 30388(U), at *5 (Kings County Sup. Ct. Feb. 3, 2023) ("An individual not authorized to accept service does not thereby resist service by refusing to accept what the individual cannot accept").

Respondents also advise the Court that this pattern of behavior by Petitioners is not unprecedented. In fact, the present Petitioners previously and frequently filed motions for sanctions against opposing counsel in prior lawsuits, which were found to be without merit by various courts. These baseless prior motions for sanctions were properly denied, as should the present motion. *See, e.g.*, *CJA v. Cuomo*, Index No. 1788-14, at p. 5[7] (Sup. Ct. Albany Cty. Oct. 9, 2014) ("[a]lso, the Court has searched the records and found absolutely no basis to award sanctions in this matter or to take any type of disciplinary action against the AAG or any other lawyers affiliated with defendants."); *Sassower v. NYS Joint Commission on Public Ethics*, Index

[6] Since the instant motion was filed, Respondent Commission has requested representation from this office (see Engelhart letter at NYSECF No. 54), and this office has appeared on that Respondent's behalf, but that was not the case during the period relevant to this motion.
[7] Pagination refers to Respondents' Appendix of Unreported Cases, NYSCEF No. 31, to which a copy of this decision is annexed.

No. 904235-22, at p. 32[8] (Sup. Ct. Albany Cty. Nov. 23, 2022); *Sassower v. Gannett Co., Inc.*, 2011 NY Slip Op 32872(U), at *13 (Sup. Ct. Suffolk Cty. Sept. 22, 2011), *aff'd Sassower v. Gannett Co., Inc.*, 109 A.D.3d 607 (2d Dep't 2013).

For the above reasons, Petitioners' motion for sanctions must be denied in its entirety.

POINT II

PETITIONERS' MOTION TO DISQUALIFY ATTORNEY GENERAL JAMES IS EQUALLY BASELESS AND WITHOUT MERIT

Liberally construed, Petitioners appear to seek disqualification of AG James because Petitioners contend they are entitled to representation by the OAG. As discussed in Respondents' opposition to the preliminary injunction, this argument is without merit and has in fact been previously adjudicated as such. *See, e.g., Ctr. for Judicial Accountability, Inc. v. Cuomo*, 167 A.D.3d 1406, 1409 (3d Dept. 2018) ("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."). Instead, Petitioners simply (and repeatedly) allege fraud by various public officials and in various prior legal decisions as a purported basis to disqualify AG James. *See, e.g.,* NYSCEF No. 51, pp. 9-11. Petitioners also allege an apparent conflict of interest between AG James and the "interest of the state" which prohibits AG James from representing the Respondents in this action (*see* NYSCEF No. 51, pp. 10-13), despite the statutory authority to the contrary. *See* N.Y. Exec. L. § 63.1. This alleged conflict of interest is entirely based on the premature assumption that Petitioners are already entitled to their requested relief. *See, e.g.*, NYSCEF No. 51, p. 11 (in which Petitioners assert there is "no legitimate defense" to the present lawsuit).

[8] Also contained in the Appendix at NYSCEF No. 31.

Petitioners have otherwise presented no cognizable legal argument or factual basis to disqualify AG James from performing her statutory duties under Executive Law § 63 or Public Officers Law § 17. Like their meritless motion for sanctions, Petitioners have previously raised this argument for disqualification of the AG, and it has been rejected by courts of various levels. *See, e.g., Ctr. For Judicial Accountability, Inc. v. Cuomo*, 167 A.D.3d 1406, 1409 (3d Dept. 2018), *appeal dismissed*, *Ctr. for Judicial Accountability, Inc. v. Cuomo*, 33 N.Y.3d 993 (2019); *CJA v. Cuomo*, Index No. 1788-14, at p. 5[9] (Sup. Ct. Albany Cty. Oct. 9, 2014). Petitioners' unsupported assertions that these prior judicial decisions constitute some unspecified "fraud" should be disregarded.

As such, Petitioners' motion to disqualify AG James should be denied.

POINT III

PETITIONERS' MOTION TO TRANSFER TO FEDERAL COURT SHOULD BE DENIED

Petitioners' motion for sanctions and disqualification also appears to renew their request for this Court to transfer this entire proceeding to federal court. Petitioners "rest on the record" on this issue, including their prior written filings and the record of the OTSC. *See* NYSCEF No. 50, ¶¶ 2-4. Petitioners cite to no cognizable legal argument based in statute or case law to establish the necessity (or even legal possibility) of transferring this matter to federal court. As stated in Respondents' opposition to the preliminary injunction, which in part requested such a transfer, there is no basis for transferring this matter to federal court and the Third Department previously ruled that Petitioners' claims of a conflict of interest based on the subject matter of their claims

[9] Contained in NYSCEF No. 31.

involving compensation for New York judges does not deprive the court of jurisdiction. *See* NYSCEF No. 30, pp. 7-8.[10]

As such, Petitioners motion to transfer this special proceeding to federal court should be denied.

CONCLUSION

For the reasons discussed above, Petitioners' motion for sanctions, disqualification, and transfer to federal court should be denied in its entirety.

Dated: April 19, 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 State Assembly, Letitia James, New York State Commission on Legislative, Judicial, and Executive Compensation and Thomas DiNapoli
The Capitol
Albany, New York 12224

By: */s John F. Moore*
John F. Moore
Assistant Attorney General, of Counsel
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TO: Elena Ruth Sassower
Petitioner Pro Se
(Via NYSCEF)

Center for Judicial Accountability, Inc.
Petitioner
(Via NYSCEF)

[10] NYSCEF provided pagination.

STATEMENT PURSUANT TO 22 NYCRR 202.8-b

I, John F. Moore, 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 3,951. 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/

_____

John F. Moore

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

Petitioners' April 25, 2024 Reply Affidavit in Further Support of April 3, 2024 Motion for Relief against Respondent AG James

-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:

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 reply to Respondent Attorney General James' April 19, 2024 "opposition" (NYSCEF #60) to petitioners' April 3, 2024 motion for relief against her, including disqualification, upon transfer to federal court (NYSCEF #49, #50, #51) and in further support of the motion.

3. The "opposition", bearing the name of Assistant Attorney General John Moore, "of counsel", and signed by him, which does not state that it is a "memorandum of law", although giving that appearance and so-described by its NYSCEF listing, reinforces petitioners' entitlement to ALL the relief their April 3rd notice of motion seeks (NYSCEF #49). Indeed, as AAG Moore's April 19th memorandum of law is an additional flagrant act of "frivolous conduct" as defined by NYCRR §130-1.1(c)[2] – indeed is far more serious than that, being yet further "fraud on the court" – it warrants an additional maximum $10,000 sanctions award, now specifically against him, pursuant to NYCRR 130-1.1(b),[3] the basis for which is here demonstrated.

---

[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.

[2] AAG Moore's April 19th opposition memorandum of law recites (at p. 2), the definition of "frivolous conduct":

> "Conduct is frivolous if it is 'completely without merit in law,' 'undertaken primarily to delay or prolong the resolution of the litigation,' or "asserts material factual statements that are false. 22 NYCRR 130-1.1(c)."

[3] Petitioners' April 3rd moving memorandum of law (at p. 3) quotes 22 NYCRR §130-1.1(b), as follows:

> "Where the award or sanction is against an attorney, it may be against the attorney personally or upon a partnership, firm,… government agency…with which the attorney is associated and that has appeared as attorney of record. The award or sanctions may be imposed upon any attorney appearing in the action or upon a partnership, firm…with which the attorney is associated." (underlining added).

4. Moreover, because AAG Moore's April 19th opposition memorandum of law replicates, as its "Procedural Statement", the "Procedural History" of the April 11th reply memorandum of law that "of counsel" AAG Engelhart signed (NYSCEF #52), without identifying this fact, and references AAG Engelhart's April 11th reply memorandum of law only in its Point I "Argument" (at p. 3) by referring the Court to NYSCEF #52 as establishing that petitioners' April 3rd motion is baseless, when NYSCEF #52 does nothing of the sort and is, from beginning to end, a "fraud on the court", warrants another maximum $10,000 sanctions, pursuant to NYCRR §130-1.1 for the April 11th reply memorandum of law. In substantiation thereof, I incorporate by reference petitioners' accompanying "legal autopsy"/analysis of AAG Engelhart's April 11th reply memorandum of law (Exhibit A), which I wrote and to whose accuracy I attest, demolishing it, virtually line-by-line.

5. Just as no affirmation accompanied AAG Engelhart's April 11th reply memorandum of law, attesting to the truth of the factual assertions on which its "Argument" rest, so none accompanies AAG Moore's April 19th opposition memorandum of law. An affirmation, which would have subjected AAG Moore to the penalties of perjury, is where he should have reasonably identified that he is AAG Engelhart's supervisor and explained why AAG Engelhart did not sign the April 19th opposition that he instead signed, filing his appearance, on the NYSCEF docket, shortly before uploading it.

6. Only accidentally did I discover that AAG Moore is AAG Engelhart's supervisor when, upon my receipt of the NYSCEF notification of AAG Moore's April 19th opposition, I e-mailed the Court that I was assuming the return date for the motion had been changed to April 26th – *cc*'ing AAG Engelhart and AAG Moore (Exhibit B-1). An automatic reply e-mail from AAG Engelhart apprised me that he was out of the office until April 23rd and "In case of time sensitive emergencies, please contact my supervisor John Moore at John.Moore@ag.ny.gov." (Exhibit B-2).

7. As may be seen from the e-mail chain of Exhibit B-1, the week earlier, when AAG Engelhart had sent the Court his April 12th e-mail requesting a week's extension to file answering papers to petitioners' motion, due that day and stating such was necessary "Due to internal review procedures", Mr. Moore's e-mail address was included in his *cc*'s, but there was no indication by AAG Engelhart's e-mail who Mr. Moore was.

8. That AAG Moore is AAG Engelhart's supervisor and was obviously involved in the "internal review procedures" shows that the AG's "internal review procedures" are completely sham – and, tellingly, AAG Moore's April 19th opposition makes no reference to the additional week requested by AAG Engelhart for filing answering papers to the motion, let alone his "internal review procedures" excuse.

9. For the convenience of the Court, a Table of Contents follows.

Table of Contents

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* * *

AAG Moore's "Procedural Statement" (p. 1) is Materially Incomplete and Fraudulent

10. The single paragraph that constitutes AAG Moore's "Procedural Statement" does not identify that its content, in full and *verbatim*,[4] is the "Procedural History" of AAG Engelhart's April 11th reply memorandum of law (NYSCEF #52, at p. 1).

11. As AAG Moore's "Procedural Statement" is identical to AAG Engelhart's "Procedural History", it is fraudulent in identical respects – and the particulars as to AAG Engelhart's "Procedural History" are furnished by petitioners' Exhibit A "legal autopsy"/analysis (at pp. 3-5).

12. Indeed, AAG Moore's "Procedural Statement" is even more fraudulent by its failure to include any updating to the course of this case subsequent to petitioners' April 3rd filings, *to wit*,

- AAG Engelhart's April 11th reply memorandum of law (NYSCEF #52) to petitioners' April 3rd opposition to his March 26th cross-motion (NYSCEF #38 – NYSCEF #48);
- AAG Engelhart's April 12th e-mail request for a week's extension to file answering papers to petitioners' April 3rd sanctions motion for purposes of accommodating "internal review procedures" (NYSCEF #58);
- the Court's granting of the requested extension, on April 12th, by a so-ordered letter (NYSCEF #53);
- AAG Engelhart's April 16th letter to the Court, with a RE: clause indicating a March 29, 2024 return date, and, after purporting to furnish "an update to the Court regarding Respondent New York State Commission on Legislative, Judicial, and Executive Compensation", requesting until May 3, 2024, for Respondent Commission that he was now representing "to answer or otherwise file moving papers with respect to the Verified Petition" (NYSCEF #54);

[4] The only difference is a minor grammatical change and a changed footnote 1, whose content no longer states: "Respondents' opposition to this latter motion [for sanctions] will be submitted as a separate filing", which had annotated "See NYSCEF Nos. 48-51" – the last words of the April 11th "Procedural History". The changed footnote 1 in AAG Moore's April 19th memorandum of law reiterates respondents' objection to "Petitioner Sassower raising claims on behalf of Petitioner CJA", citing to "NYSCEF No. 30, Point III(C)", which is AAG Engelhart's March 26th memorandum of law combining opposition to petitioners' March 19th OSC with a dismissal cross-motion. The location of this changed footnote 1 is also changed. It annotates the first word of the "Procedural Statement", which is "Petitioners".

- Petitioners' April 17th responding affidavit (NYSCEF #55), demonstrating the fraudulence of AAG Engelhart's April 16th letter and stating, by its concluding two paragraphs:

> "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'."

AAG Moore's Three-Point Argument is Fraudulent

AAG Moore's Fraudulent Point I
"Petitioners' Motion for Sanctions is Baseless" (pp. 2-8)

13. This three-part section is fashioned on repetitive assertions that petitioners' April 3rd motion papers "identify no specific instances…other than to assert, in conclusory fashion" (at p. 2); "[without] citing to any specific examples" (at p. 2); "[based on] the sweeping conclusion that their disagreement [with] Respondents' legal argument constitutes *per se* [] fraud and misrepresentation" (at p. 2); "conclusory assertions…[belied by] the record" (at p. 3); "have not alleged any facts" (at p.

4); "merely assert, in conclusory fashion…with no specific conduct alleged" (at p. 4); "entirely devoid of any admissible evidence or credible allegation that AG James or AAG Engelhart acted with intent to either deceive the Court or Petitioners" (at p. 4); "cite to no instance of conduct by either AG James or AAG Engelhart…other than to allege in conclusory fashion…" (at p. 6); "nothing which demonstrates either AG James or AAG Engelhart violated any of the cited Rules of Professional Conduct" (at p. 6). Its summarizing master gem (at p. 6) states

> "The record is entirely devoid of any instance of either AG James or AAG Engelhart committing fraud, filing a frivolous motion, deceiving the court, violating any rule or standard for professional conduct, or any other sanctionable conduct. At all times, Respondents' legal arguments were made in good faith, on the basis of properly cited and relevant statutory and case law precedent, and on the facts as known to the Respondents."

14. These are flagrant frauds, proven by NYSCEF #51, petitioners' April 3rd memorandum of law in support of their motion, to which AAG Moore's Point I cites to repeatedly. Disregarding its page 1 "Introduction" stating:

> "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 court'",[fn] fashioned throughout on knowingly false and misleading factual assertions, material omissions,[fn] and on law that is inapplicable, misstated, or both",

AAG Moore does not cite to NYSCEF #33 and #38 at all – and cites to NYSCEF #48 only once. Instead, he completely falsifies their content to avoid confronting their damning presentation of specifics that fill their pages with further evidentiary particulars furnished by their exhibits and evidentiary links. He contests not a single specific, feigning instead that specifics do not exist.

15. While deriding petitioners for resting their April 3rd motion on their prior submissions, AAG Moore purports (at pp. 2-3), as rebuttal:

> "The Court is referred to Respondents' legal arguments at NYSCEF Nos. 30, 52, and it is submitted that Respondents' arguments are in fact based on relevant and applicable legal standards."

This is another flagrant fraud. NYSCEF #52, which AAG Moore does not identify, is, as above-recited, AAG Engelhart's April 11th memorandum of law – and its fraudulence would have been readily apparent to AAG Moore, starting with its title "in Reply to Petitioners' Opposition to Respondents' Motion to Dismiss and in Opposition to Petitioners' Motion for Summary Judgment" (underlining added). Respondents made no "motion to dismiss" the petition – and petitioners made no "motion for summary judgment". As for NYSCEF #30, which AAG Moore also does not identify, it is AAG Engelhart's March 26th memorandum of law in opposition to petitioners' March 19th OSC and in support of his March 26th dismissal cross-motion. This is the very document whose fraud has given rise to petitioners' April 3rd motion and that NYSCEF #33, #38, #48 expose as:

> "not just frivolous, but a 'fraud on the court',[fn] fashioned throughout on knowingly false and misleading factual assertions, material omissions,[fn] and on law that is inapplicable, misstated, or both." (NYSCEF #51, at pp. 1-2).

16. AAG Moore then offers up a paragraph (at pp. 6-7) falsely purporting that "Petitioners' assertion that AG James 'aided and abetted' [Respondent Commission] in 'dodging service' is patently without merit", citing to "NYSCEF No. 51, p. 3" – and, thereafter, to "NYSCEF No. 34, pp.4, 27" and then "NYSCEF Nos. 39, 41" – completely avoiding, concealing, and not responding to, let alone rebutting, my recitation of substantiating facts in my April 17th affidavit (NYCEF #55, at ¶¶5-10) and in my two prior affidavits to which my April 17th affidavit cites and links: my March 22, 2024 affidavit of service (NYSCEF #22) and my April 3, 2024 affidavit in opposition to Respondent AG James' March 26, 2024 dismissal cross-motion (NYSCEF #38, ¶¶5-13).

17. AAG Moore then concludes his Point I with a scurrilous paragraph (at pp. 7-8) that seeks to besmirch petitioners' motion by citing to fraudulent decisions in other cases, stating:

> "Respondents also advise the Court that this pattern of behavior [moving for sanctions] is not unprecedented. In fact, the present Petitioners previously and frequently filed motions for sanctions against opposing counsel in prior lawsuits,

> which were found to be without merit by various courts. These baseless prior motions for sanctions were properly denied, as should the present motion. *See, e.g.*, *CJA v. Cuomo*, Index No. 1788-14, at p. 5.[fn7] (Sup. Ct. Albany Cty, Oct. 9 2014) ('[a]lso, the Court has searched the records and found absolutely no basis to award sanctions in this mater or to take any type of disciplinary action against the AAG or any other lawyers affiliated with defendants.'); *Sassower v. NYS Joint Commission on Public Ethics*, Index No. 904235-22, at p. 32.[fn8] (Sup. Ct. Albany Cty. Nov. 23, 2022); *Sassower v. Gannett Co.*, Inc., 2011 NY Slip Op 32872(U), at *13 (Sup. Ct. Suffolk Cty. Sept. 22, 2011), *aff'd Sassower v. Gannet Co., Inc.*, 109 A.D.3d 607 (2d Dep't 2013)."

Apart from the fact that appellants' entitlement to the sanctions sought by their April 3rd motion rests on the record of this case, NOT on decisions in other cases, the records of the three cited-to cases establish the flagrant fraudulence of the cited-to four decisions from three cases – and the records are ALL posted and accessible from CJA's website, www.judgewatch.org.[5] AAG Moore does not claim to have reviewed the case records or to have any personal knowledge of them – and such required of him an affirmation, as he well knows.

AAG Moore's Fraudulent Point II
"Petitioners' Motion to Disqualify Attorney General James is Equally Baseless and Without Merit" (pp. 8-9)

18. The two paragraphs of Point II, and its additional concluding sentence, are fraudulent

[5] Tellingly, AAG Moore does not include any decisions from *CJA v. Cuomo…DiFiore*, whose record, posted on CJA's website, is here. His **first cited-to decision**, of October 9, 2014 of Albany County Supreme Court, is from the predecessor *CJA v. Cuomo, et al.* citizen-taxpayer action, whose record is here. That decision is Exhibit E to the September 2, 2016 verified complaint in *CJA v. Cuomo…DiFiore*, with Exhibit G being a "legal autopsy"/analysis of it and of the final August 1, 2016 decision therein. The **second cited-to decision**, of November 23, 2022, also of Albany Supreme Court, is the case that AAG Moore mistitles, in keeping with that decision. It is *CJA v. JCOPE, et al.* – and its NYSCEF dockets are accessible from CJA's website, here. The Supreme Court Albany County NYSCEF docket is here and the Appellate Division, Third Department NYSCEF docket is here. Petitioners' "legal autopsy"/analysis of the November 23, 2022 decision is here – and focal to the appeal, just argued, on April 22, 2024, at the Appellate Division. The **third and fourth cited-to decisions**, of September 22, 2011 of Suffolk County Supreme Court and of the August 21, 2013 affirmance of the Appellate Division, Second Department are for the case *Sassower v. Gannett*, whose records are here. Petitioners' "legal autopsy"/analysis of the September 22, 2011 decision, to which the Appellate Division, Second Department's August 21, 2013 affirmance makes no mention, is here. *Sassower v. Gannett* is among the cases identified by the March 30, 2012 verified complaint (at pp. 6-7) in petitioners' first *CJA v. Cuomo, et al.* lawsuit – a declaratory judgment action – as having been "thrown" by fraudulent decisions and the record of that lawsuit, brought in Bronx County Supreme Court and then fraudulently transferred to New York County Supreme Court, where it remains, is posted on CJA's website, here.

– and, once again, the proof is petitioners' April 3rd memorandum of law in support of their motion, NYSCEF #51, at pp. 8-12, to which AAG Moore cites three times in the first paragraph, disparaging and falsifying its content to conceal that he has NO response to the plain language of Executive Law §63.1 and State Finance Law Article 7-A, the facts and law relating thereto, and Respondent AG James' conflicts of interest, particularized, with evidence.

19. The first sentence of the five-sentence first paragraph (at p. 8) reads:

> "Liberally construed, Petitioners appear to seek disqualification of AG James because Petitioners contend they are entitled to representation by the OAG." (underlining added).

Implicit in the words "liberally construed" and "appear" is that AAG Moore is NOT reciting petitioners' express basis for Respondent AG James' disqualification. Indeed, the basis is independent of petitioners' entitlement to representation because, in the first instance, "Attorney General James has made no claim that her defense of her fellow respondents is based on 'the interest of the state'", "Attorney General James has not even purported that her representation of respondents is in 'the interest of the state'" (NYSCEF #51, pp. 9, 11). AAG Moore does not assert – let alone furnish any law—that this fact, which he does not deny, but instead conceals, does not mandate Respondent AG James' disqualification pursuant to Executive Law §63.1, which it plainly does where, additionally, as petitioners' January 18, 2024 Opposition Report makes evident (NYSCEF #6), "the interest of the state" is entirely with petitioners – there being NO defense to its showing of flagrant statutory violations and fraud by Respondent Commission, requiring the VOIDING of its "false instrument" December 4, 2023 Report, *as a matter of law*.

20. The second sentence (at p. 6) continues with multiple fraud:

> "As discussed in Respondents' opposition to the preliminary injunction, this argument is without merit and has in fact been previously adjudicated as such. *See, e.g., Ctr for Judicial Accountability, Inc. v. Cuomo*, 167 A.D.3d 1406, 1409 (3d Dept. 2018) ('We further find unavailing Sassower's argument that Executive Law §63(1) and State Finance Law Article 7-A require the Attorney General be directed to provide her with representation or intervene on her behalf.')."

The referred-to "Respondents' opposition to the preliminary injunction" is AAG Engelhart's March 26th cross-motion (NYSCEF # 30), whose fraud, including pertaining to the Appellate Division, Third Department's decision in *CJA v. Cuomo…DiFiore*, is particularized by petitioners' March 29th affidavit (NYSCEF #33, ¶¶11-12, 21) that has given rise to this motion. As for the "argument" purported to be "without merit" and "previously adjudicated as such", it is NOT the one that AAG Moore "liberally construe[s]", but the one he conceals, *to wit*, that "Attorney General James has made no claim that her defense of her fellow respondents is based on 'the interest of the state'"; "Attorney General James has not even purported that her representation of respondents is in 'the interest of the state'" – whose particulars petitioners' April 3rd memorandum of law in support of this motion furnishes (NYSCEF #51, pp. 9, 11).

21. The third sentence (at p. 6) continues with multiple fraud:

> "Instead, Petitioners simply (and repeatedly) allege fraud by various public officials and in various prior legal decisions as a purported basis to disqualify AG James. *See, e.g.*, NYSCEF No. 51, p. 9-11."

Here concealed is that Respondent AG James is the "public official" who is the focus of petitioners' "NYSCEF No. 51, pp. 9-11" and her fraud, in tandem with judges in *CJA v. Cuomo…DiFiore* and *CJA v. JCOPE, et al.*, is not just "allege[d]", but established by the records of those lawsuits, furnished by hyperlinks. Indeed, also concealed is that she procured those "various prior legal decisions" as a respondent, representing herself and her co-respondents, where, likewise, there was not even a claim of a determination having been made as to "the interest of the state", as Executive Law §63.1 requires – or that such determination as she did not purport to have been made was untainted by conflicts of interest.

22. The fourth and fifths sentences (at p. 6) continue with multiple fraud:

> "Petitioners also allege an apparent conflict of interest between AG James and the 'interest of the state' which prohibits AG James from representing the Respondents in this action (*see* NYSCEF No. 51, pp. 10-13), despite the statutory authority to the

> contrary. *See* N.Y. Exec. L. §63.1. This alleged conflict of interest is entirely based on the premature assumption that Petitioners are already entitled to their requested relief. *See, e.g.* NYSCEF No. 51, p. 11 (in which Petitioners assert there is 'no legitimate defense' to the present lawsuit)."

The cited-to pages of NYSCEF #51 do NOT "allege an apparent conflict", but particularize "actual conflict", with substantiating proof from *CJA v. Cuomo…DiFiore* and *CJA v. JCOPE, et al.*, none of which AAG Moore identifies. Nor is there "statutory authority to the contrary" allowing Respondent AG James to represent her fellow respondents when doing so conflicts with the "interest of the state". This includes Executive Law §63.1, which tellingly, AAG Moore does not quote. As for petitioners' supposed "premature assumption" on which the "alleged conflict of interest is entirely based" – *to wit*, that petitioners are "already entitled" to summary judgment because "there is 'no legitimate defense' to the present lawsuit", it is not only a fact obvious from the most cursory review of their January 18, 2024 Opposition Report (NYSCEF #6) on which this lawsuit rests, but is now the basis of their CPLR §3211(c) request for summary judgment embodied in their April 3rd opposition to Respondent AG James' dismissal cross-motion (NYSCEF #38 – NYSCEF #48) – entitlement to which AAG Engelhart's fraudulent April 11th reply memorandum of law (NYSCEF #52) further proves, as established by appellants' accompanying "legal autopsy"/analysis of it (Exhibit A).

23. As for the first sentence of AAG Moore's three-sentence second paragraph (at p. 7), it reads:

> "Petitioners have otherwise presented no cognizable legal argument or factual basis to disqualify AG James from performing her statutory duties under Executive Law §63 or Public Officers Law §17."

This is utter fraud. The basis of petitioners' April 3rd motion is that AG James is NOT "performing her statutory duties under Executive Law §63" – as to which their April 3rd memorandum of law in support of the motion furnished four full pages of "legal argument" and "factual basis" (NYSCEF #51, pp. 8-12) – NONE of which AAG Moore identifies as they are dispositive.

As for Public Officers Law §17, here put forward for the first time, but without quoting it, this is another fraud, as its ¶2 expressly states: "This duty to provide for a defense shall not arise where such civil action or proceeding is brought by or on behalf of the state" (underlining added). In other words, the AG must first determine whether, pursuant to Executive Law §63.1 and such statutes as State Finance Law Article 7-A, her duty is to herself bring the action or proceeding or to intervene or substitute for the plaintiffs "on behalf of the state". The record of this lawsuit is devoid of any claim by Respondent AG James of determinations made pursuant to Executive Law §63.1 and State Finance Law Article 7-A as to "the interest of the state" – and it is from the determinations that were her duty to make that petitioners' entitlement to representation/intervention arises.

Suffice to add that even apart from the express language of Public Officers Law §17.2, the controlling principle is, as stated by petitioners' April 3rd moving memorandum of law (NYSCEF #51, at p. 10):

> "Attorney General James' client is the state, whose 'interest' she is mandated to 'protect'. Where there is 'a conflict of duties, the attorney general's primary obligation is to the body politic rather than to its officers, departments, commissions, or agencies.', 7 Am. Jur. 2d §12".

To the same effect, 7A Corpus Juris Secundum §11(b) entitled "Conflicting Interests", stating:

> "In case of a conflict of duties, the primary obligation of the attorney general is to the state rather than to its officers or agencies,[fn] and where he is charged with the duty of requiring performance by state officials or bodies of their duties, this duty is not overcome by a conflicting requirement that he shall represent such official or bodies in court proceedings, but the duty to prosecute overcomes the duty to represent.[fn]"

In the words of *USA v. Terry*, 806 Fed. Supp. 490, 494 (SDNY 1992):

> "the Attorney General acts parens patriae, asserting a 'quasi sovereign' interest for the common good of the people of the State of New York. *Alfred L. Snapp Son, Inc. v. Puerto Rico*, 458 U.S. 592, 600-08…(1982); *People v. Abrams v. 11 Cornell Co.*, 695 F.2d 34, 38-40 (2d Cir. 1982), vacated in part on other grounds, 718 F.2d 22 (2d Cir. 1983) (*en banc*)."

24. The second and third sentences of AAG Moore's second paragraph (at p. 8) close by stating:

> "Like their meritless motion for sanctions, Petitioners have previously raised this argument for disqualification of the AG, and it has been rejected by courts of various levels. *See, e.g., Ctr For Judicial Accountability, Inc. v Cuomo*, 167 A.D.3d 1406, 1409 (3d Dept. 2018), *appeal dismissed*, *Ctr. for Judicial Accountability, Inc. v. Cuomo*, 33 N.Y.3d 993 (2019); *CJA v. Cuomo*, Index No. 1788 No. 1788-14, at p. 5[fn] (Sup. Ct. Albany Cty. Oct. 9, 2014). Petitioners' unsupported assertions that these prior judicial decisions constitute some unspecified 'fraud' should be disregarded." (underlining added).

Again, utter fraud. There is NOTHING "unsupported" or "unspecified" about the fraud of the cited decisions "of various levels" in *CJA v. Cuomo…DiFiore* and of Albany Supreme Court in the predecessor *CJA v. Cuomo, et al.* first citizen taxpayer action, encompassed therein, pertaining to Respondent AG James' disqualification and that of her AG predecessors – and the record of *CJA v. Cuomo…DiFiore*, with its "legal autopsy"/analyses of the decisions, as well as of the successor case, *CJA v. JCOPE, et al.*, and its "legal autopsy"/analyses, are summarized and furnished by petitioners' April 3rd memorandum of law supporting this motion, NYSCEF #51, pp. 9-11.[6]

AAG Moore's Fraudulent Point III
"Petitioners' Motion to Transfer to Federal Court Should be Denied" (pp. 9-10)

25. The three-sentence, single paragraph of Point III and its additional concluding sentence are fraudulent – and the proof is "the record" on which petitioners' April 3rd moving affidavit rests, identified by AAG Moore only as NYSCEF #50 and without revealing its content.

26. The moving affidavit quotes from petitioners' April 3rd notice of motion (NYSCEF #49) as to the basis for the transfer request, preserving the bold font in the original, as follows:

> **"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 §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**

[6] *See*, additionally, fn. 5, *supra*.

– and 'rule of necessity' cannot be invoked by reason thereof".

AAG Moore conceals this Judiciary Law §14 jurisdictional issue entirely – and by his first and second sentences (at p. 9) disingenuously and fraudulently states:

> "Petitioners' motion for sanctions and disqualification also appears to renew their request for this Court to transfer this entire proceeding to federal court. Petitioners 'rest on the record' on this issue, including their prior written filings and the record of the OTSC. *See* NYSCEF No. 5, ¶¶2-4. Petitioners cite to no cognizable legal argument based in statute or case law to establish the necessity (or even legal possibility) of transferring this matter to federal court." (underlining added).

27. The third sentences (at p. 9) then continues with further fraud:

> "As stated in Respondents' opposition to the preliminary injunction, which in part requested such a transfer, there is no basis for transferring this matter to federal court and the Third Department previously ruled that Petitioners' claims of a conflict of interest based on the subject matter of their claims involving compensation for New York judges does not deprive the court of jurisdiction. *See* NYSCEF No. 30, pp. 7-8.[fn10]" (underlining added).

The cited NYSCEF #30 is the referred-to "Respondents' opposition to the preliminary injunction, which in part requested such a transfer". This is AAG Engelhart's March 26th memorandum of law in opposition to petitioners' March 19th OSC and in support of his March 26th dismissal cross-motion, whose fraudulence, starting with its opposition to the OSC's first branch, for transfer, is particularized by ¶¶9-12 of petitioners' March 29th reply affidavit in further support of the OSC, NYSCEF #33. This includes as to what AAG Moore purports to be the previous ruling of the Third Department that "the subject matter of their claims involving compensation for New York judges does not deprive the court of jurisdiction". This is utter fraud. Facially obvious from the Third Department decision in *CJA v. Cuomo…DiFiore* is that it did not rule on any Judiciary Law §14 jurisdictional issue. This, over and beyond the fact that ¶10 of petitioners' March 29th reply affidavit (NYSCEF #33) expressly stated that it "did not rule on any jurisdictional issue pertaining to Judiciary Law 14" and that at the March 21st oral argument on the TRO (NYSCEF #34, at pp. 23-25)

I had so-alerted AAG Engelhart when he had fraudulently claimed that the Third Department's decision had ruled.

AAG Moore's "Conclusion" is Fraudulent (at p. 10)

28. AAG Moore's single sentence "Conclusion" reads:

> "For the reasons discussed above, Petitioners' motion for sanctions, disqualification, and transfer to federal court should be denied in its entirely."

His "reasons discussed above", being completely fraudulent, as hereinabove demonstrated, so is his "Conclusion".

s/

ELENA RUTH SASSOWER

April 25, 2024
White Plains, New York

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Exhibit A: Petitioners' "legal autopsy"/analysis of AAG Engelhart's April 11, 2024 reply memorandum of law in further support of his March 26, 2024 dismissal cross-motion

Exhibit B-1: Petitioners' April 12, 2024 e-mail to the Court

Exhibit B-2: April 12, 2024 automatic reply e-mail from AAG Engelhart

Exhibit A to Petitioners' April 25, 2024 Reply Affidavit
in Further Support of their April 3, 2024 Motion for Relief against Respondent AG James, Including Disqualification, Upon Transfer to Federal Court

CJA, et al. v. Commission on Legislative, Judicial & Executive Compensation, et al.
(Albany Co. #902654-24)

* * *

"Legal Autopsy"/Analysis of Respondent Attorney General James' April 11, 2024 Memorandum of Law in Reply & Opposition (NYSCEF #52)

This analysis is a "legal autopsy"[1] of Respondent Attorney General Letitia James' April 11, 2024 falsely-titled "Memorandum of Law in Reply to Petitioners' Opposition to Respondents' Motion to Dismiss and in Opposition to Petitioners' Motion for Summary Judgment", by "of counsel" Assistant Attorney General Noah Engelhart. As hereinafter demonstrated, its 12-page content, from beginning to end, is filled with knowingly false and deceitful factual assertions, material omissions,[2] baldly asserted legal propositions that are false, and on law that is inapplicable, misstated, or both.

Insofar as its title, Respondent AG James made no "motion to dismiss" the petition – and petitioners made no "motion for summary judgment", as hereinafter shown.

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

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[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] 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]"

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Respondent AG James' Untitled Prefatory Paragraph (p. 1) is Materially Fraudulent

The two sentences of Respondent AG James' untitled prefatory paragraph are each materially fraudulent – and in the same respect. Respondents did not make a "motion to dismiss" and petitioners did not make a "motion for summary judgment". As NYSCEF #28 plainly shows, on March 26th respondents made a cross-motion to dismiss, to which, as NYSCEF #38, #48 plainly show, petitioners responded, on April 3rd, by a request for summary judgment, pursuant to CPLR §3211(c), in their opposition affidavit and opposition memorandum of law.

Respondent AG James' "Procedural History" (p. 1) is Incomplete and Materially Fraudulent

The six sentences of Respondent AG James' "Procedural History" are each materially deceitful or fraudulent.

The first sentence (at p. 1) is materially deceitful, stating:

> "Petitioners commenced this hybrid special proceeding pursuant to CPLR Article 78 and action for declaratory judgment via Verified Petition and proposed Order to Show Cause ('OTSC') on March 18, 2024. *See* NYSCEF Dkts. 1-18." (underlining added).

Materially omitted is that the "hybrid" is also a citizen-taxpayer action pursuant to State Finance Law Article 7-A, a statute that expressly confers upon petitioners' standing and expressly contemplates that the Attorney General will be a plaintiff or intervene on behalf of a plaintiff, as sought by the second branch of petitioners' "proposed Order to Show Cause" (NYSCEF #13), whose requested relief is not identified.

The second sentence (at p. 1) is materially deceitful, stating:

> "Oral arguments were conducted virtually on March 21, 2024 on the issue of Petitioners' request for a temporary restraining order ('TRO'), which was ultimately denied by Judge Ryba." (underlining added).

Materially omitted is what happened to petitioners' "proposed Order to Show Cause", to which the first sentence refers, namely, that it was signed on March 19th by Justice Ryba (NYSCEF #17), who removed from its title that the Order to Show Cause was "to Determine Threshold Issues, Including Preliminary Injunction with TRO" (NYSCEF #13), struck out the TRO, and made it returnable a full ten days later, on March 29th.

Also materially omitted is that the March 21st oral argument on the TRO resulted from petitioners immediately rectifying their inadvertent non-compliance with Uniform Court Rule 202.7(f), requiring notice to respondents – and furnishing Justice Ryba with an "Amended Order to Show Cause to Determine Threshold Issues, Including Preliminary Injunction with TRO", which she did

not sign (NYSCEF #18), though nonetheless holding argument on the TRO on March 21st, which she denied not "ultimately", but at its conclusion (NYSCEF #34, at p. 25).

The third sentence (at p. 1) is materially deceitful, stating:

> "On March 26, 2024, Respondents submitted written opposition to Petitioners' request for a preliminary injunction ('PI') and cross-moved to dismiss. *See* NYSCEF Dks. 28-32." (underlining added).

Materially omitted are the following:

(1) that respondents' "written opposition" was not only to the "preliminary injunction", as the cover of Respondent AG James' March 26th memorandum of law misleadingly purported (NYSCEF #30), but also to the first two branches of petitioners' March 19th OSC (NYSCEF #17), *to wit*:

> "(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";

(b) that respondents' March 26th "written opposition" was not separate from their cross-motion, as might be inferred from this sentence, but part of it;

(c) that notwithstanding Respondent AG James' designation of a "cross-motion", its return date was not the same as the motion to which it was a "cross-motion", namely March 29th, the return date of petitioners' March 19th OSC, but two weeks later, April 12th (NYSCEF #28).

The fourth sentence (at p. 1) is materially deceitful, stating:

> "Petitioners submitted a Reply to Respondents' opposition to the PI on March 29, 2024. *See* NYSCEF Dkts. 33-37." (underlining added).

Materially omitted is that petitioners' March 29th reply (NYSCEF #33) was not only to "Respondents' opposition to the PI" – which is the third branch of their March 19th OSC – but to respondents' opposition to all three of its branches.

The fifth sentence (at p. 1) now moves to affirmative falsehood, stating:

> "Petitioners further submitted a Response to Respondents' motion to dismiss and cross-moved for summary judgment on or about April 3, 2024. *See* NYSCEF Dkts. 38-48." (underlining added).

Here, Respondent AG James:

- transmogrifies her March 26th dismissal cross-motion (NYSCEF #28) into "Respondents' motion to dismiss";

- falsifies that petitioners "cross-moved for summary judgment", when what they did was to request summary judgment, in their favor, pursuant to CPLR §3211(c), in their opposition to Respondent AG James' CPLR §3211(a) dismissal cross-motion – which they did not "on or about April 3, 2024", but on April 3, 2024. (NYSCEF #38, #48, at pp. 1, 9).

The sixth sentence and its annotatating footnote (at p. 1) are materially deceitful, stating:

> "Petitioners filed a further motion for sanctions, disqualification, and transfer to federal court on April 4, 2024. *See* NYSCEF Dkts. 48-51.[fn1]"
>
> "[fn1] Respondents' opposition to this latter motion will be submitted as a separate filing." (underlining added).

As petitioners did not make the "cross-mo[tion] for summary judgment" that the previous sentence falsely purports, they made no "further motion" – or, as referred-to by the footnote –"latter motion". Rather, they made a "Motion for Relief against Respondent Attorney General James, including Disqualification, upon Transfer to Federal Court", filing it, not on April 4, 2023, but on April 3, 2024 – a date expressly identified on their notice of motion (NYSCEF #49) as:

> "The centenary of the birth, on April 3, 1924, of George Sassower, ESQ., who courageously battled against the New York State Attorney General for flagrant violation of official duties and litigation fraud and who suffered the defamations of fabricated, fraudulent judicial decisions, such as *Sassower v. Signorelli*, 472 NYS2d 702 (AD2 1984), also inflicted on the equally courageous Doris L. Sassower, ESQ. – a decision the Attorney General uses as authority for the false proposition 'The Attorney General, by statute (Executive Law, §63, subd.1), is required to represent [the defendant].'" (hyperlinks in the original).

Respondent AG James' "Standard for Review" (at p. 2) is Fraudulent

This two-paragraph section is fraudulent – beginning with its title. The ONLY "Standard for Review" this section furnishes is for dismissal "pursuant to CPLR 3211". Altogether concealed is that Respondent AG James' dismissal cross-motion was "pursuant to CPLR 3211(a)(2), CPLR 3211(a)(7), CPLR 7804(f) and CPLR 3001" (NYSCEF #28) – and what different standards apply, if any.

As for the first paragraph (at p. 2), it skews and quotes inapplicable law that "bare legal conclusions and factual claims [that] are flatly contradicted by the evidence are not presumed to be true on a motion to dismiss" – inapplicable because the verified petition (NYSCEF #1) presents "NO "bare legal conclusions and factual claims [that] are flatly contradicted by the evidence" – and Respondent AG James did not move for dismissal pursuant to CPLR §3211(a)(1): "a defense is founded upon documentary evidence".

The second paragraph (at p. 2) then makes false argument based thereon, as follows:

> "Here, despite Petitioners' arguments to the contrary (*see* NYSCEF Dkt. 48, pp. 6-9[fn2]), Petitioners are not entitled to this Court accepting legal conclusions as true, only factual allegations. *See Goode*, 8 Misc 3d 1023[A]. This includes Petitioners' legal conclusions in their papers filed in the present case, *as well as* in the Opposition Report that Petitioners themselves created. Petitioners cannot allege certain conduct to be fraud or certain conduct to be in violation of various laws and expect that assertion to be true, even in the context of a motion to dismiss. If this Court were to accept Petitioners' *legal* conclusions as true, then no party could ever prevail on a motion to dismiss, rendering CPLR 3211 completely meaningless. …" (italics in the original.

The material deceit and fraud of this second paragraph – and the first – are revealed, readily, by Respondent AG James' above record citation "NYSCEF Dkt. 48, pp. 6-9[fn2], as these pages particularize her violation of CPLR §3211 by her dismissal cross-motion, plus her concealment of petitioners' causes of action pursuant to CPLR Article 78, CPLR §3001, and State Finance Law Article 7-A, as follows:

> "Two of the four – CPLR §7804(f) and CPLR §3001 – are not themselves grounds for dismissal. CPLR §7804(f), entitled 'Objections in point of law', reads in its most pertinent part:
>
> > 'A respondent may raise an objection in point of law by setting it forth in his answer or by a motion to dismiss the petition, made upon notice within the time allowed for answer. …'
>
> CPLR §3001 is the declaratory judgment statute, reading in its most pertinent part:
>
> > 'The supreme court may render a declaratory judgment having the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy whether or not further relief is or could be claimed. If the court declines to render such a judgment it shall state its grounds. …'
>
> Only CPLR §3211(a)(2) and CPLR §3211(a)(7)) are grounds for dismissal and Attorney General James identifies these grounds, respectively, as 'lack of subject matter jurisdiction' and 'failure to state a cause of action'.

Implicit in Attorney General James' cross-moving to dismiss for 'lack of subject matter jurisdiction pursuant to CPLR §3211(a)(2)' is that her 'discussed in more detail above' opposition to the preliminary injunction involved 'lack of subject matter jurisdiction'. This is false. Her March 26, 2024 memorandum of law presents no 'lack of subject matter jurisdiction' opposition to petitioners' order to show cause for a preliminary injunction. Indeed, it is petitioners, by the first branch of their order to show cause, to transfer this case to federal court, who argued 'lack of subject matter jurisdiction' based on Judiciary Law §14 (NYSCEF #14, ¶¶2-6) – and the facts pertaining to AAG Engelhart's concealment of that jurisdictional issue, first at the March 21, 2024 oral argument on the TRO, and then by Attorney General James' March 26, 2024 memorandum of law, are particularized by petitioners' March 29, 2024 affidavit in further support of the requested transfer (NYSCEF #33, at ¶¶10-12).

As for 'failure to state a cause of action pursuant to CPLR §3211(a)(7)', the absence of any briefing by Attorney General James' [March 26, 2024] memorandum of law as to that ground for dismissal is because she has NOT complied with its controlling requirements, embodied in ALL caselaw, by ALL courts. As stated by the Appellate Division, Third Department in *Haire v. Bonelli*, 57 A.D.3d 1354, 1355 (2008):

> 'When courts consider a motion under CPLR 3211, pleadings are afforded a liberal construction, with all alleged facts accepted as true' (underlining added), citing *Leon v. Martinez*, 84 NY2d 83, 87-88 (1994).

The Court of Appeals termed this 'the well known principle', stating, in *Barr v. Wackman*, 36 N.Y.2d 371, 375 (1975) – 19 years before its decision in *Leon v. Martinez*:

> 'We note at the outset the well known principle that on a motion to dismiss for failure to state a cause of action every fact alleged must be assumed to be true and the complaint liberally construed in plaintiff's favor (see, e.g., *Sage v Culver*, 147 NY 241, 245 [1895]' (underlining added).

As already detailed by petitioners' March 29, 2024 reply affidavit, Attorney General James' memorandum of law conceals ALL the petition's accepted-to-be-true allegations as to the facial violations of Chapter 60, Part E, of the Laws of 2015 by the Commission's December 4, 2023 Report and as to the content of petitioners' January 18, 2024 Opposition Report, as, for instance:

> '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*.
>
> '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;
> >
> > (iii) 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'.
> >
> > (iv) 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.' (italics, hyperlinking, and underlining in the original)'.

Such accepted-as-true allegations – which are TRUE, as comparison of the Commission's December 4, 2023 Report (NYSCEF #4) with Chapter 60, Part E, of the Laws of 2015 (NYSCEF # 2) readily reveals – is an Article 78 cause of action under both CPLR §7803(1): 'whether the body or officer failed to perform a duty enjoined upon it by law' and CPLR §7803(3): 'whether a determination was made in violation of lawful procedure, was affected by an error or law'.

So, too, does Attorney General James conceal, *in toto*, the petition's also-presumed-to-be-true allegations that the respondent public officers have mandatory checks-and-balances, constitutional oversight duties with respect to the Commission, as, for instance:

> '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.'
>
> '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.' (underlining and hyperlinking in the original).

Such, too, plainly state a cause of action under CPLR §7803(1) – and for declarations pursuant to CPLR §3001, as requested by petitioners' 'Prayer for Relief' for their first cause of action (NYSCEF #1, p. 15).

As for petitioners' second cause of action, such is expressly pursuant to State Finance Law 7-A – so stated by its ¶39, which reads:

> 'As such 'recommendations' [of the Commission, referred to at pp. 18-19 of Legislative/Judiciary Budget Bill #S.8301/A.8801] 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' (hyperlinking in the original).

and by petitioners' 'Prayer for Relief" for 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'.

Yet, Attorney General James' cross-motion does not cite to State Finance Law Article 7-A for dismissal of the petition, or even of the second cause of action as to which her 'set forth more fully above' 'Petitioners' claims are not ripe' section (at pp. 6-7) had argued that because #S.8301/A.8801 had '[not] left committee, been voted on by either the Senate or Assembly, or signed by the Governor into law', it was 'clearly premature and…must be dismissed as not ripe for judicial review'. As such, she concedes that State Finance Law Article 7-A furnishes no basis for

dismissal of the petition's second cause of action. Indeed, this is clear from 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).

All reflect that the citizen-taxpayer statute encompasses prospective, anticipated, and impending misappropriation.[fn1]

"[fn1] 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 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).

> Moreover, not revealed by Attorney General James' March 26, 2024 cross-motion is that a week earlier, on March 19, 2024, the Unified Court System, headed by Respondents Wilson and Zayas, had issued a bulletin announcing that based on the Commission's December 4, 2023 Report, checks would be issued on April 10, 2024, to reflect the judicial salary increases that would be effective April 1, 2024 (NYSCEF #47)."

NONE of this is responded-to, or identified, by Respondent AG James' "Standard of Review" section – or by any other section of her so-called reply memorandum of law, whose Point IX opposition to petitioners' request for summary judgment pursuant to CPLR §3211(c) cites (at p. 11) *Wilt v. Brunswick Plaza, LLC*, 281 A.D.2d 840, 841 (3d Dep't 2001), but not for its recitation of "well settled", "familiar rules" governing dismissal motions pursuant to CPLR §3211(a)(7):

> "It is well settled that on a motion to dismiss a complaint pursuant to CPLR 3211(a)(7), the court's focus is to determine whether the factual averments of the complaint fit within any cognizable legal theory and, if so, the motion must be denied (*see*, *Unadilla Silo Co. v. Ernst Young*, 234 A.D.2d 754, 754). In so reviewing the pleading, the court is required to accept as true each and every allegation contained therein (*see*, *Cron v. Hargro Fabrics*, 91 N.Y.2d 362, 366). Applying these familiar rules…" (underlining added).

The identical "well settled" "familiar rules" apply to CPLR §7804(f) – and Respondent AG James would have had to look no further than the lower court decision in *CJA v. JCOPE, et al.* (Nov. 23, 2022 decision, at p. 3), which she included in her "Appendix of Unreported Cases" (NYSCEF #31) accompanying her March 26th dismissal cross-motion, for what she is presumed to already know:

> "Where respondents to an Article 78 proceeding move to dismiss under CPLR §7804(f), objections in point of law are limited to 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 true. *Mattioli v. Casscles*, 50 AD2d 1013 (3d Dept 1975)." (Nov. 23, 2022 decision, at p. 3, underlining added).

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)."

Respondent AG James' "Argument" is Fraudulent Throughout

Respondent AG James' Fraudulent Point I (at p. 3):
"Respondents' Failure to Address the Merits of Petitioners' Claims is Not a Concession of any Fact or Argument and to Have Done So Would Have Been Inappropriate in a Motion to Dismiss"

The Point I title heading and the single paragraph beneath it (at p. 3) are fraudulent – so-established by the NYSCEF citation in the first sentence to "NYSCEF Dkts. 33, 48" and at the end of the first sentence "NYSCEF Dkt. 33 ¶¶8, 10, 12, 15, 17, 19".

NYSCEF #33 is petitioners' March 29th reply affidavit in further support of their March 19th OSC to determine threshold issues – and the referred-to "¶¶8, 10, 12, 15, 17, 19" reveal that petitioners' assertions as to the concessions Respondent AG James are deemed to have made do NOT arise from mere "Failure to Address the Merits of Petitioners' Claims". Rather, they arise from her concealment of petitioners' claims, either *in toto* or as to material facts and law, which she instead falsifies to craft her opposition to petitioners' OSC and her dismissal cross-motion.

Thus the cited-to ¶8 states, by way of overview:

> "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, italics, and underlining in the original).

The other cited-to ¶¶10, 12, 15, 17, 19 – and the not cited-to paragraphs between and after them – particularize this concealment and falsification – and Respondent AG James does not deny or dispute their accuracy, nor of the globally cited-to NYSCEF #48 – which is petitioners' April 3rd memorandum of law in opposition to Respondent AG James' March 26th dismissal cross-motion and in support of petitioners' entitlement to summary judgment pursuant to CPLR §3211(c) – other than by the falsehood that what petitioners assert to be concessions, *as a matter of law*, are not concessions. For this proposition, Respondent AG James furnishes NO legal authority, because ALL legal authority is to the contrary, as is clear from basic rules of evidence governing summary judgment and motions generally.

As for Respondent AG James' attempt to justify her purported "failure to address the merits of petitioners' claims" or "failure to address the merits of some of Petitioners' arguments (or the meris of Petitioners' Opposition Report)" – her euphemism for concealment and falsification – she asserts (at p. 3):

> "Respondents have not yet answered the Verified Petition. It would be inappropriate for Respondents to have addressed Petitioners' factual claims in a motion to dismiss, as such a motion is limited to objections in point of law. CPLR §7804(f); *see also* CPLR §3211(a)",

This is further fraud as:

- CPLR §7804(f) and CPLR §3211(a) do not permit concealment and falsification of the "factual claims" of a pleading, all of which are required to be "deemed true"; and

- "objections in point of law" – for which Respondent AG James furnishes no definition – does not mean that "It would be inappropriate" to address "Petitioners' factual claims". To the contrary, it means "threshold objections of the kind listed in CPLR 3211(a)", *Matter of Hull-Hazard, Inc. v. Roberts*, 129 AD2d 348 (3d Dept 1987) – and those require the pleaded "factual claims" be "deemed true";

- her material concealment and falsification pertaining to the first branch of petitioners' March 19th OSC, transfer to federal court, is unconnected to any "Answering the verified petition" excuse.

The final sentence of this section (at p. 3) is a further fraud:

> "The Respondents' motion to dismiss addresses the following arguments (lack of ripeness, lack of standing, failure to state a cause of action, legal immunity of various parties, etc.), and it is submitted that the Verified Petition should be dismissed on those grounds."

Not only were all these "arguments" shown to be fraudulent by petitioners' NYSCEF #33 and #48, which rebutted each of them, resoundingly, but there are NO sections in Respondent AG James' so-called "reply" memorandum of law (NYSCEF #52) for her "lack of ripeness" and "lack of standing" grounds for dismissal, thereby conceding the accuracy of petitioners' opposition with respect to each.

Respondent AG James' Fraudulent Point II (at pp. 3-4)
"Petitioners Have Failed to Serve Respondent Commission"

The facts pertaining to Point II – and Respondent AG James' knowledge, as of April 1st, that petitioners had discovered CPLR §312-a "personal service by mail" and would be effecting service upon Respondent Commission pursuant thereto, absent its waiving service – are set forth in the "responsive papers and associated exhibits" to which it cites: "NYSCEF Dkt. 33, ¶40, NYSCEF Dkt. 38, ¶¶5-13, Exhibits A, B-1 , B-2, and B-3". The accuracy of these is not denied or disputed in any respect – and since petitioners had NOT requested that their two attempts at service on Respondent Commission, *via* the Attorney General's Office, be deemed "sufficient", Respondent AG James' request herein that it be deemed "insufficient" – while, simultaneously, not revealing her knowledge of petitioners' in-progress CPLR §312-a "personal service by mail" upon Respondent Commission – is fraud.

Respondent AG James' Fraudulent Point III (at p. 4)
"Petitioners Are Not Entitled to a Transfer to Federal Court"

This one-paragraph Point III is fraud – established by "NYSCEF Dkt. 33", to which it cites, twice, first to ¶10 and then to ¶¶10-12, not denying or disputing their accuracy in any respect. Instead, the content of these paragraphs is falsified, stating:

> "Petitioners have cited no countervailing case law to support their motion to transfer or to rebut the binding case precedent cited by Respondents in their opposition to the preliminary injunction, including binding Third Department precedent involving these very same Petitioners and the very same arguments regarding transfer to federal court. *Ctr for Judicial Accountability, Inc. v. Cuomo*, 167 A.D.3d 1406 (3d Dep't 2018). Petitioners' response appears to be that they disagree with that holding and allege, without factual or legal support, that it is the product of fraud." (underlining added).

This is flagrant fraud. The cited-to NYSCEF #33, ¶¶10-12 are dispositive of petitioners' entitlement to transfer to federal court – and of the fraud of the Third Department decision in *CJA v. Cuomo…DiFiore*, as to which ¶12 supplied the overwhelming factual and legal support, annexed as Exhibit B-1 and Exhibit B-2, and incorporated by reference, *to wit*, petitioners' "legal autopsy"/analysis of the decision that they furnished to the Court of Appeals by a March 26, 2019 letter in support of their appeal of right. Indeed, ¶12 made verification easy, stating:

> "The portions of the decision that AAG Engelhart excerpts for […Point I [of his March 26th memorandum of law opposing transfer] are rebutted at pages 7-11 [of the 'legal autopsy'/analysis], virtually line-by-line – with [the] overview of how the Appellate Division concealed the Judiciary Law §14 jurisdictional issues with respect to itself, set forth at pages 1-3.[fn2] The accuracy of all these pages – and the balance of the 'legal autopsy/analysis' – has never been denied or disputed by anyone, in any respect."

Respondent AG James' Fraudulent Point IV (at pp. 4-5)
"Petitioners Are Not Entitled to Representation by the Office of the Attorney General"

This one-paragraph Point IV is also fraud – established by "NYSCEF Dkt. 33, ¶¶15, 18" to which it cites, without denying or disputing the accuracy of the cited-to paragraphs – or of the not cited-to adjacent ¶¶13-14, 16-17, 19-21.

Instead, once again, the tactic is to conceal and falsify their content, as by stating (at pp. 4-5):

> "Petitioners have cited no legal authority to support their argument that the Attorney General is required to represent them in this pending action (despite being named a Respondent and now also the target of sanctions by Petitioners) or to rebut the binding case precedent cited by Respondents in their opposition to the preliminary injunction. *Ctr for Judicial Accountability, Inc. v. Cuomo*, 167 A.D.3d 1406 (3d Dep't 2018)." (underlining added).

Again, flagrant fraud – as evident from the cited-to NYSCEF #33, ¶15, identifying:

> "that Executive Law 63.1 makes the AG's litigation posture, either to 'Prosecute' or 'defend', contingent on the interest of the state';
>
> that State Finance Law, Article 7-A, in four separate places, expressly contemplates that that the AG will either be a plaintiff or participate on behalf of plaintiffs. (§123-a(3), §123-c(3), §123-d, §123-e(2))"

and the not cited-to NYSCEF #33,¶¶20-21, stating:

> "20. …[AAG Engelhart] ends his Point II [of his March 26, 2024 memorandum of law pertaining to the AG's representation], as he does his Point I, by citing to the Appellate Division decision in *CJA v. Cuomo…DiFiore*, for the proposition that 'The Third Department addressed these same arguments of Petitioners and found them to be without merit'.
>
> 21. Once again, dispositive of the fraud of the Appellate Division *CJA v. Cuomo…DiFiore* decision – and of the fraud AAG Engelhart commits by his quotation of sentences from it for his Point II – is [the] 'legal autopsy'/analysis (Exhibit B-1), whose pages 11-13 of particulars has never been denied or disputed by the AG or anyone else."

Tellingly, other than concealment, there is no response to petitioners' ¶16 and ¶¶18-19 that Respondent AG James does not claim to have made "ANY determination as to the 'interest of the state'", does not purport that her "defense of respondents is 'in the interest of the state', as Executive Law §63.1 mandates", and suffers from conflicts of interest with respect to petitioners' Opposition Report, requiring her compliance with conflict-of-interest protocols.

Respondent AG James' Fraudulent Point V (at p. 5)
"Petitioner CJA's Claims Must be Dismissed"

This one-paragraph Point V is also fraud – established by "NYSCEF Dkt. 33, ¶34" to which it cites. Although seeming to deny and dispute its accuracy, this is only because it falsifies the content of the cited-to NYSCEF #33,¶34. ¶34 states, as follows:

> "[Dismissal as to CJA, on grounds that it is not represented by an attorney] is of no consequence – and shameful. Quite apart from the fact that 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, all claims alleged in the petition on behalf of the CJA are also alleged on [the individual petitioner's] behalf, making dismissal of CJA's claims 'of little practical consequence'. *Cf.*, *Cass v. New York*, 88 AD2d 305, 308 (3rd Dept. 1982), dismissal of action against the state as being 'a result of little practical consequence since the two State officers [Comptroller and Chief Administrative Judge of the courts] remain as parties defendants.'" (underlining in the original).

Respondent AG James' Fraudulent Point VI (at pp. 6-7)
"Petitioners Have Failed to State a Cause of Action for Mandamus Relief"

This one-paragraph Point VI, spanning nearly a page and a half, is also fraud – established by "NYSCEF Dkt. 33, ¶38" and "NYSCEF Dkt. 33, ¶¶37, 39, 41" to which it cites – and by the adjacent paragraphs pertaining to mandamus to which it does not cite: ¶¶35-36, 40, 42.

As stated by the not cited-to NYSCEF #33,¶36:

> "There is nothing 'discretionary' about the checks and balances, oversight duties sought to be enforced by this Article 78 proceeding – starting with VOIDING the Commission's December 4, 2023 Report, based on petitioners' January 18, 2024 Opposition Report – and the only way AAG Engelhart is able to make such fraudulent claim [in his March 29th memorandum of law in support of the dismissal cross-motion] is by concealing, totally, the content of the Opposition Report – and such specific facial violations of Chapter 60, Part E, of the Laws of 2015 by the Commission's Report as are set forth at ¶33 of the petition." (capitalization and underlining in the original).

This is precisely what this Point VI continues to do –

> "concealing, totally, the content of the Opposition Report – and such specific facial violations of Chapter 60, Part E, of the Laws of 2015 by the Commission's Report as are set forth at ¶33 of the petition" –

while, simultaneously engaging in falsehoods as to what petitioners stated with respect to *N.Y. Civil Liberties Union v. State*. It was, as follows, by their cited-to NYSCEF #33,¶38 and ¶39:

> "38. As for *N.Y. Civil Liberties Union v. State*, 4 N.Y.3d 175, 184 (2005), repetitively cited by AAG Engelhart [in his March 26th memorandum of law in support of the dismissal cross-motion] for the proposition that petitioners are not entitled to mandamus relief, it establishes just the opposite, stating:
>
> > 'Inasmuch as plaintiffs seek to test the action or inaction of a public officer, their sole available remedy lies, as the courts below held, in a CPLR article 78 proceeding seeking mandamus to compel. Mandamus is available, however, only to enforce a clear legal right where the public official has failed to perform a duty enjoined by law (*see* CPLR 7803; *Matter of Legal Aid Socy. of Sullivan County, Inc. v. Scheinman,* 53 NY2d 12, 16). Thus, mandamus does not lie to enforce the performance of a duty that is discretionary, as opposed to ministerial (*see Matter of Brusco v. Braun,* 84 NY2d 674, 679). 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' (*Tango v. Tulevech,* 61 NY2d 34, 41)."

> 39. Petitioners' January 18, 2024 Opposition Report does not permit 'different acceptable results'. It allows for only one – the VOIDING of the Commission's December 4, 2023 Report, *as a matter of law*, based on its flagrant violations of Chapter 60, Part E, of the Laws of 2015." (underlining added).

Point VI does not deny this, but instead perverts it, stating:

> "…the only case cited by Petitioners is *N.Y. Civil Liberties Union v. State*, which they claim supports their request for mandamus relief. NYSCEF Dkt. 33, ¶38. Despite Petitioners' assertion to the contrary, that case establishes that mandamus relief is available only to enforce a clear legal right where a public official has failed to perform a duty enjoined by law. …Here, Petitioners have not identified any legal right, clear or otherwise, to any of the relief requested from the various public officials in this case. … Petitioners cite to no facts in support of the request for mandamus to compel, other than to repeatedly espouse the alleged uncontestable legal veracity of their 'Opposition Report'. *See, e.g.*, NYSCEF Dkt. 33, ¶¶ 37, 39, 41. Again, the 'Opposition Report' is a document created by Petitioners, not a law, regulation, or other legal authority that compels action by Respondents". (underlining added).

In other words, by wholly concealing the factual basis for mandamus – *to wit*, the "flagrant violations of Chapter 60, Part E of the Laws of 2015" by the Commission's Report, so-demonstrated by the petitioners' Opposition Report and alleged by their verified petition – this Point V fraudulently purports that petitioners "cite to no facts" for mandamus to compel and besmirch the Opposition Report as "not a law…that compels action by Respondents" – concealing that it is based on the "law", Chapter 60, Part E of the Laws of 2015, whose "flagrant violations" by the Commission it so resoundingly demonstrates as to "compel[] action by Respondents" in discharge of their mandated constitutional checks-and-balances duties.

Respondent AG James' Fraudulent Point VII (at pp. 7-8)
"Petitioners' Claims against Certain Respondents are Barred by Legal Immunity"

This three-paragraph section is also fraud – established by the cited-to "NYSCEF Dkt. 33, ¶¶43-45; *see generally* NYSCEF Dkt. 48".

The first paragraph (at p. 7) starts by purporting that there is a "finding that Respondent Hochul and Respondent Delgado are entitled to legislative immunity", to which petitioners have offered "no cognizable argument based on caselaw" that is rebutting. This is false, as there is no such "finding". Nor could there be, as the Governor and Lieutenant Governor are executive officers, charged with "tak[ing] care that the laws are faithfully executed" (New York State Constitution, Article IV, §3), not legislators entitled to legislative immunity.

To overcome this obvious fact, Respondent AG James purports that petitioners "attempt to reframe Respondent Hochul and Respondent Delgado's alleged culpability in terms of their role as a check on the power of the Legislature". Again, false. Petitioners do not contend that Respondents Hochul and Delgado have failed in their role as a "check on the power of the Legislature", but, rather, that they failed to check Respondent Commission's power – beginning with verifying the facially obvious "flagrant violations of Chapter 60, Part E, of the Laws of 2015" by its December 4, 2023

Report, and taking all appropriate steps based thereon to prevent the Commission's "force of law" recommendations from becoming law on April 1, 2024, as they did. The sweeping powers of Respondent Hochul and Respondent Delgado include directing the commissioners for investigation and prosecution, as expressly sought by petitioners' January 18, 2024 Opposition Report (NYSCEF #6, at p. 1). There is nothing legislative about such acts for which legislative immunity would apply.

The second paragraph (at pp. 7-8) pertains to Respondents Stewart-Cousins and Heastie, as to whom Respondent AG James states:

> "Petitioners make no argument as to why the individual legislators named in this case, Respondents Stewart-Cousins or Heastie, should not be entitled to legislative immunity, other than to allege that legislative immunity would not shield them from liability from defrauding the state *See, e.g.*, NYSCEF Dkt. 33, ¶43. There are no facts alleged in the Verified Petition which establish such claims." (underlining added)

This is flagrantly false, as the verified petition (NYSCEF #1) alleges facts and presents proof that Respondents Stewart-Cousins and Heastie are "defrauding the state" by their wilful nonfeasance in face of the "flagrant violations of Chapter 60, Part E of the Laws of 2015" by the Commission's December 4, 2023 Report, of which petitioners gave them the open-and-shut, *prima facie* evidence, repeatedly – and in the case of Respondent Stewart-Cousins, directly – by their January 18, 2024 Opposition Report.

The two-sentence third paragraph (at p. 8) purports, by its first sentence, that there is a "finding that Respondents Wilson and Zayas are entitled to judicial immunity" that petitioners have not rebutted with "argument or caselaw". This is false, as there is no such "finding". Its second sentence then states:

> "As discussed previously, any attempt to reframe Respondent Wilson's or Zayas' alleged culpability in this special proceeding as being based on what Petitioner believes to be insufficient oversight clearly addressed a non-ministerial function and thus is not subject to mandamus relief."

This, too, is false. Petitioners' petition did not allege "insufficient oversight", but "ZERO evidence" of ANY oversight – and, by their March 29th affidavit (NYSCEF #33, at ¶¶35-42), established their entitlement to mandamus as to these respondents, sued for violating mandatory supervisory, oversight duties.

Respondent AG James' Fraudulent Point VIII (at pp. 8-9)
"Petitioners Fail to Establish Entitlement to a Preliminary Injunction"

Respondent AG James' Fraudulent Subsection A: "Likelihood of Success on the Merits"

This single-sentence subsection is fraud, stating (at p. 8):

> "For the above reasons, and as set out in Respondents' opposition to the preliminary injunction and cross-motion to dismiss, Petitioners have failed in their papers and in oral arguments to demonstrate a likelihood of success on the merits."

The "above reasons" are hereinabove shown to be fraud – and, with them, "Respondents' opposition to the preliminary injunction and cross-motion to dismiss" (NYSCEF #30), whose fraud was demonstrated by petitioners' NYSCEF #33 and #48, the accuracy of which, as above stated and shown, has not been denied or disputed.

Respondent AG James' Fraudulent Subsection B: "Irreparable Harm"

This three-sentence subsection is fraud. Citing to "NYSCEF Dkt 33, ¶48", but without quoting ¶48, Respondent AG James states (at pp. 8-9):

> "Petitioners appear to concede the only potential harm in this case is purely financial loss to the state. Such financial harm would not qualify as irreparable harm for the purposes of a preliminary injunction. *See, e.g.*, *Town of Liberty Volunteer Ambulance Corp. v. Catskill Reg'l Med. Ctr.*, 30 A.D.3d 739, 739 (3rd Dep't 2006)." (hyperlink added).

Her stated proposition of law is false and her cited case does not stand for same. The correct proposition is, as reflected by the cited-to NYSCEF #33, ¶48, that Respondent AG James had made:

> "NO assertion that monies paid out, pursuant [to the Commission's "force of law" December 4, 2023 Report] – including from the $34.6M appropriation in Legislative/Judiciary Budget Bill #S.8301/A.8801 – will be fully recompensed to the state. This, notwithstanding the final words of [petitioners'] March 18, 2024 moving affidavit in support of the order to show cause:
>
> > 'injunctive relief is warranted to avoid the slightest possibility of any unrecoverable financial loss to the state resulting from disbursement.' (¶10)."

Where financial loss is unrecoverable, the injury is irreparable.

Respondent AG James' Fraudulent Subsection C: "Balancing of the Equities"

This three-sentence subsection (at p. 9) is fraud, established by the cited-to "NYSCEF Dkt. 33, ¶50", which it falsifies to make it appear that it involves "Petitioners' repeated assertion that the Respondents have conceded the purported 'truth' of their Opposition Report."

¶50 does nothing of the sort – and reads, in full:

> "AAG Engelhart's Point V 'A Balancing of the Equities Does Not Tip in Petitioners' Favor and Injunctive Relief is Not in the Public Interest' (pp. 20-21) is based on the fraud that petitioners are 'attempting to strike down a statute as facially unconstitutional', which they are not – and upon concealing [petitioners'] assertion as to the equities, stated at ¶10 of [their] March 18, 2024 moving affidavit as:

> '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'

and which [petitioners] comparably reiterated at the oral argument:

> 'Now, as far as the equities, the judges, who are the beneficiaries of the pay raises, procured [the December 4, 2023] Report through their fraud and that's been demonstrated by the Opposition Report.' (Exhibit A, p. 23) –

the truth of which AAG Engelhart has not denied."

Respondent AG James' Fraudulent Point IX (at pp. 9-12)
"Petitioners Cross-Motion for Summary Judgment is Premature and Must be Denied"

This six-paragraph section, which concludes with a footnote, is fraudulent throughout.

The section title, which the first sentence of the first paragraph (at p. 9) repeats, *verbatim*, are fraudulent. Petitioners made NO "cross-motion for summary judgment. Rather, as NYSCEF #38, #48 plainly show, they invoked CPLR §3211(c) for summary judgment in their favor as part of their April 3rd opposition to Respondent AG James' March 26th cross-motion to dismiss the verified petition pursuant to CPLR §§3211(a)(2) and (7).

The second sentence of the first paragraph (at p. 9) continues the fraud, stating: "Any party may move for summary judgment in any action, *after issue has been joined*. CPLR 3212(a) (emphasis added)". CPLR §3212(a) is NOT at issue here.

The balance of the first paragraph (at p. 9), and the second, third, and fourth paragraphs (at pp. 9-11), are all fraudulent as they pertain to summary judgment pursuant to CPLR §3212(a) – NOT at issue here. Indeed, among the cited cases (at p. 10) is *Ward v. Guardian Indus. Corp.*, 17 A.D.3d 1100 (4th Dep't 2005), but it is NOT cited for its relevant proposition, which the very next paragraph will falsify:

> "Pursuant to CPLR 3211(c), the court could have treated defendant's motion to dismiss as one for summary judgment and granted relief to either party, but to do so the court was required to give notice to the parties, and it did not give such notice here (*see Pitts* [*v. City of Buffalo*], 298 AD2d at 1004-1005; *Jann v. Cassidy*, 264 AD2d 873, 874)." (underlining added).

The fifth paragraph (at p. 11) is fraudulent, beginning with its first sentence:

> "To the extent Petitioners' cross-motion can be construed as a request for the Court to convert Respondents' motion to dismiss into a motion for summary judgment, there is no basis for such a request."

Three frauds are packed into this one sentence:

- petitioners made no "cross-motion".

- there nothing unclear about petitioners' April 3rd papers, warranting the disingenuous prefatory language "To the extent" they "can be construed".

- that petitioners have "no basis" for requesting conversion to summary judgment – which the balance of the paragraph then expands upon, as follows:

  "CPLR 3211(c) permits, in certain limited circumstances, a court to treat a motion to dismiss 'as a summary judgment motion' whether or not issue has been joined and after adequate notice to the parties. However, such a conversion is not permissible in the present case, where a plaintiff or petitioner is moving for summary judgment on its own complaint prior to joinder of issue. As the Court of Appeals held in City of Rochester, conversion of a motion to dismiss to a motion for summary judgment under CPLR 3211(c) 'is available to a party attacking a pleading who had not pleaded yet, a defendant moving against a complaint before answering . . . but it may not be used by a pleader . . . to foreclose a responsive pleading before an opponent has had a chance to answer the claim.' *City of Rochester v. Chiarella*, 65 N.Y.2d 92, 101 (1985). Here, Petitioners are attempting to do precisely what the Court of Appeals said is forbidden; namely, trying to obtain summary judgment on their own pleading before the Respondents have had an opportunity (or been required to) serve an answer. *Id*." (underlining added).

This is yet more fraud – and this would be clear were the language of CPLR §3211(c) quoted, which it is not, because it states:

> "Upon the hearing of a motion made under subdivision (a) or (b), either party may submit any evidence that could properly be considered on a motion for summary judgment. Whether or not issue has been joined, the court, after adequate notice to the parties, may treat the motion as a motion for summary judgment. The court may, when appropriate for the expeditious disposition of the controversy, order immediate trial of the issues raised on the motion." (underlining added).

Indeed, clear from the "either party" language is that the Court of Appeals' *City of Rochester v. Chiarella* decision is in obvious "error" with respect to CPLR §3211(c), and, tellingly, the decision does NOT quote the language of CPLR §3211(c), nor cite to ANY decision of its own or of lower courts for what is so plainly directly contrary to the statute.

That Respondent AG James does not put this paragraph pertaining to CPLR §3211(c) at the top of her Point IX, but instead goes on for pages with completely inapplicable argument about CPLR §3212, can only be seen as reflecting her knowledge that the *City of Rochester v. Chiarella* decision, which her first paragraph (at p. 9) cites to pertaining to CPLR §3212, is, with respect to CPLR §3211(c), insupportable.

The sixth paragraph (at pp. 11-12) – the last – is rife with fraud:

> "Further, unlike cases in which courts have undertaken to convert motions to dismiss into summary judgment, the Respondents did not 'chart a summary judgment course' through its motion to dismiss. *See Wilt v. Brunswick Plaza, LLC*, 281 A.D.2d 840, 841 (3d Dep't 2001) (holding that the Supreme Court properly refused to convert the defendant's motion to dismiss under CPLR 3211(c) because the defendant 'did not expressly chart a summary judgment course.'). To the contrary, the crux of Respondents' motion to dismiss is that the Court is without jurisdiction to hear this action due to Petitioners claims not yet being ripe, Petitioners' lack of standing, Petitioners' failure to state a cause of action against all Respondents, and certain Respondents immunity. Respondents' motion to dismiss cannot reasonably be interpreted to seek summary judgment when the main contention of that motion is that the Court does not have jurisdiction at this time to render judgment on the merits of the Verified Petition or that Petitioners have failed to state a cause of action upon which the Court can grant relief. Nor does Respondents' motion to dismiss address the underlying merits of Petitioners' own interpretation of the laws and legal rules surrounding the legislative increase in judicial compensation. Respondents are not required to address these arguments where there is no subject matter jurisdiction or when the Verified Petition fails to state a cause of action. There is no basis for conversion of Respondents' motion to dismiss to a motion for summary judgment and, to the extent Petitioners' cross motion can be read to even contemplate such a conversion, it should be denied.[fn3]" (underlining added).

This is fraud. Summary judgment treatment, by the Court, pursuant to CPLR §3211(c), requires nothing more than notice by the Court, as is clear from the decision that *Wilt v. Brunswick Plaza* cites with respect to CPLR §3211(c), *to wit*, *Wadsworth v. Beaudet*, 267 A.D.2d 727 (3rd Dept. 1999), which states:

> "a court entertaining a motion to dismiss for failure to state a cause of action may pursuant to CPLR 3211(c) elect to treat the motion as one for summary judgment so long as the parties have been given prior notice of the court's intention to do so or, absent such notice, when the parties have 'otherwise received 'adequate notice' by expressly seeking summary judgment or submitting facts and arguments clearly indicating that they were 'deliberately charting a summary judgment course'' (*Mihlovan v. Grozavu*, 72 N.Y.2d 506, 508, quoting *Four Seasons Hotels v. Vinnik*, 127 A.D.2d 310, 320)." (underlining added).

As for "deliberately charting a summary judgment course", not required for the Court's CPLR §3211(c) notice, that would amply describe petitioners, from the outset – and the record reveals that Respondent AG James was on notice of petitioners' "summary judgment course", as they *expressly* stated their *matter of law* entitlement to summary judgment, based on the Opposition Report.

Further frauds in this paragraph:

- the five repetitions about respondents' "motion to dismiss" – when it was a cross-motion – and that petitioners had made a "cross motion" for summary judgment, which they had not;

- that "the crux of Respondents' motion to dismiss is that the Court is without jurisdiction"; and "the main contention of that motion is that the Court does not have jurisdiction at this time", when Respondent AG James' March 26th memorandum of law in support of her dismissal cross-motion (NYSCEF #30) presented ZERO briefing as to the basis upon which it was invoking CPLR §3211(a)(2) – and this was pointed out by petitioners' April 3rd opposition memorandum of law (NYSCEF #48, pp. 3-4), without response by Respondent AG James other than the fraud of this sixth paragraph;

- that respondents' "dismissal motion" did not have to "address the underlying merits of Petitioners' own interpretation of the laws and legal rules surrounding the legislative increase in judicial compensation" – presumably meaning Chapter 60, Part E, of the Laws of 2015 and petitioners' January 18, 2024 Opposition Report – because the "motion" was based on "no subject matter jurisdiction" and that "the Verified Petition fails to state a cause of action". This is utter fraud. Petitioners' verified petition rests on the plain language of Chapter 60, Part E, of the Laws of 2015 – and the "flagrant violations" of the statute facially evident from the Commission's December 4, 2023 Report and further demonstrated by petitioners' January 18, 2024 Opposition Report, as to which there is NO defense and as to which petitioners' have a 100% entitlement to summary judgment.

Respondent AG James' footnote 3, which ends this Point IX (at p. 12), is another fraud, in requesting "a reasonable opportunity to make evidentiary submissions consistent with a summary judgment motion", in the event the Court makes a CPLR §3211(c) conversion of "Respondents' motion to dismiss". The Court will assuredly afford such "reasonable opportunity", but, as evident from the verified petition, there are NO "evidentiary submissions" that can counter its "open-and-shut", *prima facie* evidentiary showing – or the further presentation of law pertaining, in particular, to the Court of Appeals' November 17, 2022 opinions in *Delgado v. State of New York*, especially the concurring opinion of Respondent Wilson, furnished and summarized by petitioners' April 3rd opposition memorandum of law in further support of summary judgment (NYSCEF #48, pp. 9-11), uncontested by AG James.

Respondent AG James' "CONCLUSION" is Fraudulent (at p. 12)

The one-sentence "Conclusion" reads:

> "For the reasons discussed above, the preliminary injunctive relief sought by Petitioners should be denied in its entirety, Respondents' cross-motion to dismiss should be granted in its entirety, Petitioners' cross-motion for summary judgment should be denied."

As "the reasons discussed above" are all fraudulent, so is this "Conclusion" – although, notably, it here refers to "Respondents' cross-motion to dismiss", rather than transmogrifying it as their "motion".

s/

ELENA RUTH SASSOWER

April 25, 2024
White Plains, New York

Ex. B-1 to Petitioners' April 25, 2024 Reply Affidavit in Further Support of Sanctions Motion [R.628-629]

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Friday, April 19, 2024 1:07 PM
To: 'soberchambers@nycourts.gov'
Cc: 'Engelhart, Noah'; 'Moore, John'

Subject: **Confirming change of return date for petitioners' April 3rd motion to April 26th -- CJA v. NYS Commission on Legislative, Judicial & Executive Compensation, et al. (Albany #902654-24)**

TO: Justice Sober

On April 12th, at the same time as I was sending my below April 12th e-mail to the Court, the Court was uploading a letter (NYSCEF #53) granting AAG Engelhart's below April 12th e-mail request, "Due to internal review procedures", for a week's extension to respond to petitioners' April 3rd motion, from April 12th to today.

Pursuant thereto, AG James has now opposed petitioners' April 3rd motion by a memorandum of law signed by AAG John Moore (NYSCEF #60). As stated by my below April 12th e-mail, I assume the return date for the April 3rd motion, which was originally today, is now a week from today, April 26th.

Petitioners' expect to file a reply on April 25th.

Thank you.

Elena Sassower

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Friday, April 12, 2024 2:40 PM
To: 'soberchambers@nycourts.gov' <soberchambers@nycourts.gov>
Cc: 'Engelhart, Noah' <Noah.Engelhart@ag.ny.gov>; 'Amy Serson' <aserson@nycourts.gov>; 'Paul J Ruf' <pruf@nycourts.gov>; 'Moore, John' <John.Moore@ag.ny.gov>

Subject: Responding to AAG Engelhart's request -- RE: Center for Judicial Accountability et al. v. NYS Commission on Legislative, Judicial, and Executive Compensation, et al., Albany County Sup. Ct. Ind. No. 902654-24

TO: Judge Sober

I welcome the AG's "internal review procedures" as to how this important lawsuit has been handled -- the subject of my April 3, 2024 motion for "relief against Respondent Attorney General James, including disqualification, upon transfer to federal court".

I assume that the additional week that AAG Engelhart has requested will mean that the return date of my April 3, 2024 motion will be a week later, Friday, April 26th, rather than Friday, April 19th, but this is something that he has not indicated in his request.

Thank you.

Elena Sassower, unrepresented individual petitioner, acting on her own behalf
& on behalf of the People of the State of New York and the Public Interest
914-421-1200

From: Engelhart, Noah <Noah.Engelhart@ag.ny.gov>
Sent: Friday, April 12, 2024 12:14 PM
To: soberchambers@nycourts.gov
Cc: Amy Serson <aserson@nycourts.gov>; Paul J Ruf <pruf@nycourts.gov>; Moore, John <John.Moore@ag.ny.gov>; elena@judgewatch.org

Subject: Center for Judicial Accountability et al. v. NYS Commission on Legislative, Judicial, and Executive Compensation, et al., Albany County Sup. Ct. Ind. No. 902654-24

Good afternoon Judge Sober,

The Office of the Attorney General represents Respondents Hochul, Delgado, Wilson, Zayas, Stewart-Cousins, Heastie, James, DiNapoli, NY Senate, and NY Assembly in the above special proceeding filed in Albany County Supreme Court where Your Honor is the assigned justice. Petitioners filed a motion for sanctions and other relief in this case on April 3, 2024, returnable April 19, 2024 (NYSCEF No. 49-51). Respondents' answering papers are due today, April 12, 2024. Due to internal review procedures, Respondents respectfully request that the Court grant Respondents an additional 7 days to respond to said motion, with responsive papers being due April 19, 2024.

Thank you for your consideration of this request. Should the request be granted, please let me know if a confirming letter should be uploaded to NYSCEF.

All the best,
Noah Engelhart

Noah C. Engelhart
Assistant Attorney General
New York State Office of the Attorney General
Litigation Bureau
The Capitol
Albany, NY 12224
Phone: (518) 776-2701

Ex. B-2 to Petitioners' April 25, 2024 Reply Affidavit in Further Support of Sanctions Motion [R.630]

From: Engelhart, Noah <Noah.Engelhart@ag.ny.gov>
Sent: Friday, April 19, 2024 1:07 PM
To: Center for Judicial Accountability, Inc. (CJA)

Subject: **Automatic reply: Confirming change of return date for petitioners' April 3rd motion to April 26th -- CJA v. NYS Commission on Legislative, Judicial & Executive Compensation, et al. (Albany #902654-24)**

I am out of the office and will not have access to phone messages or email starting at 4PM on 4/18/24 through 4/22/24, returning 4/23/24. In case of time sensitive emergencies, please contact my supervisor John Moore at John.Moore@ag.ny.gov.

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,

NOTICE OF MOTION

Index No. 902654-24

Return Date:
March 29, 2024

PLEASE TAKE NOTICE that, upon the accompanying Affirmation of Mindy Jeng, , dated May 1, 2024; and the Memorandum of Law dated May 3, 2024; and upon all pleadings and proceedings heretofore had herein, Respondent New York State Commission on Legislative, Judicial, and Executive Compensation ("Commission") 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 **May 24, 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 3211(a)(8), CPLR 7804(f) and CPLR 3001 granting Respondent's 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
May 3, 2024

LETITIA JAMES
Attorney General of the State of New York
Attorney for Respondents
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)

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/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.

AFFIRMATION OF MINDY JENG

Index No. 902654-24

Mindy Jeng, an attorney duly admitted to practice in the courts of the State of New York, hereby affirms that the following is true under penalty of perjury pursuant to CPLR 2106:

1. I am employed as Special Counsel to the Executive Director in the Office of Court Administration ("OCA"), the administrative arm of the New York State Unified

Court System ("UCS"). As part of my responsibilities, I am counsel to the Commission on Legislative, Judicial, and Executive Compensation ("Commission"), an independent body tasked with examining, evaluating, and making recommendations with respect to compensation for New York State's judges, members of the state legislature, and state officials named in the section 169 of the Executive Law.

2. Some of my duties as counsel to the Commission include arranging public meetings and public hearings of the Commission, confirming that public meetings and hearings comply with the Open Meetings Law and other relevant requirements, arranging for updates to the Commission's website, receiving and reviewing the mail and e-mail that the Commission receives at its mailbox at 64 Beaver Street and its e-mail address, nyscompensation@gmail.com.

3. The Commission first received notice of the present Article 78 proceeding after receipt of a U.S. Postal Service package of papers from Elena Sassower on April 10, 2024. A scan of the U.S.P.S. postal wrapper is attached as **Exhibit A**. The package included the signed Order to Show Cause, verified petition/complaint, moving affidavit in support of the Order to Show Cause, and exhibits. Some documents had a NYSCEF stamp of March 18, 2024, some were stamped March 19, 2024, and others were stamped March 20, 2024. It was received at our mailbox at 64 Beaver Street, Box 454, New York, NY 10004.

4. The UPS store where the box is located notified the mail room here at 25 Beaver Street that a package was received for Box 454. A staff person from the mail room picked up the package on April 10, 2024 and delivered it to my office. I forwarded the information to the Chair of the Commission, retired Court of Appeals Judge Eugene M. Fahey. At that point, I also checked the Commission's gmail account and saw that there

were different e-mails from Ms. Sassower. I had not checked the gmail address in late March and early April because the Commission had not met since December 2023 and was on hiatus. The next planned meeting of the Commission is not until June 2024. A signed acknowledgement of receipt form for the mailing received on April 10, 2024 was mailed back to Petitioner Sassower on April 29, 2024.

5. Ms. Sassower sent the Commission an e-mail on March 19, 2024 at 11:27 AM (**Exhibit B**). The e-mail stated that the Center for Judicial Accountability commenced an Article 78 proceeding against the Commission and other parties in Albany County. It included a link to a New York State Court Electronic Filing (NYSCEF) Index number but the e-mail did not provide any pdf attachments of documents. The Chair of the Commission was not aware of this e-mail until April 10, 2024.

6. Ms. Sassower sent a second e-mail to the Commission on March 19, 2024 at 7:17 PM (**Exhibit C**). The e-mail stated that there was to be oral argument on the temporary restraining order in the present Article 78 proceeding on March 21, 2024 on Teams. The e-mail also included three different pdf attachments: the amended order to show cause including a preliminary injunction with a temporary restraining order, moving affidavit in support of amended Order to Show Cause, and an email from Cris Puma to the Center for Judicial Accountability (**Exhibit C**). The Chair of the Commission was not aware of this e-mail until April 10, 2024.

7. Ms. Sassower sent an e-mail to the Commission on March 20, 2024 at 1:36 PM (**Exhibit D**). The e-mail was correspondence to Cris Puma regarding oral argument for the temporary restraining order, and the Commission was cc'd on the e-mail. The Chair of the Commission was not aware of this e-mail until April 10, 2024.

8. Ms. Sassower sent an e-mail to the Commission on April 1, 2024 at 1:10 PM (Exhibit E). The e-mail was correspondence to Assistant Attorney General Noah Engelhart. It included various links to e-filed documents on NYSCEF. It did not include any pdf attachments of e-filed documents. Ms. Sassower did include one attachment that was a copy of a letter sent to her by Noah Engelhart on March 26, 2024. (**Exhibit E**). The Chair of the Commission was not aware of this e-mail until April 10, 2024.

9. Ms. Sassower sent an e-mail to the Commission on April 3, 2024 at 3:06 PM (**Exhibit F**). The e-mail was correspondence to Assistant Attorney General Noah Engelhart. It included a link to an e-filed document on NYSCEF. It did not include a pdf attachment of any e-filed documents. The Chair of the Commission was not aware of this e-mail until April 10, 2024.

10. No other service of process on the Commission for the above matter has been received.

11. On April 12, 2024, Judge Fahey confirmed that he would like the New York State Attorney General's Office to represent the Commission in the present proceeding.

Dated: May 1, 2024

Mindy Jeng

CERTIFICATION

I certify that this Affirmation contains 874 words, which complies with the word count limit.

Date: May 3, 2024
Albany, New York

s/ Noah C. Engelhart

Noah C. Engelhart
Assistant Attorney General, of Counsel

Ex A to OCA Counsel Jeng's May 3, 2024 Affirmation [R.638-639]

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FROM:
Elena Sassower
10 Stewart Place
Apt 2D E
White Plains
NY 10603

TO:
Commission on Legislative
Judicial + Executive
Compensation
64 Beaver Street
Box 454
New York,
New York
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Ex. B to OCA Counsel Jeng's May 3, 2024 Affirmation [R.640-643]

Gmail

NYS Salary Commission <nyscompensation@gmail.com>

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

Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org> Tue, Mar 19, 2024 at 11:27 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, jzayas@nycourts.gov, cmartucc@nycourts.gov, NYAG.Pressoffice@ag.ny.gov, mkogut@osc.ny.gov
Cc: Rybachambers@nycourts.gov, aserson@nycourts.gov, pruf@nycourts.gov

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

Ex. B to OCA Counsel Jeng's May 3, 2024 Affirmation [R.640-643]

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

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>

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All Senators: *c/o* Senate Leaders Andrea Stewart-Cousins & Robert Ortt

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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:

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Penal Law §195: "Official misconduct";

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§496.06: "Public corruption";

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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:

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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

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Ex. C to OCA Counsel Jeng's May 3, 2024 Affirmation [R.644-660]

Gmail

NYS Salary Commission <nyscompensation@gmail.com>

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)

Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org> Tue, Mar 19, 2024 at 7:16 PM
To: NYS Salary Commission <nyscompensation@gmail.com>, 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

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 (518-474-8390, 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.

Ex. C to OCA Counsel Jeng's May 3, 2024 Affirmation [R.644-660]

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

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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>

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www.judgewatch.org

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elena@judgewatch.org

Ex. C to OCA Counsel Jeng's May 3, 2024 Affirmation [R.644-660]

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3 attachments

3-19-24-osc-amended.pdf
81K

3-19-24-affidavit-signed.pdf
347K

exA-3-19-24-email-from-puma.pdf
246K

Ex. C to OCA Counsel Jeng's May 3, 2024 Affirmation [R.644-660]

SUPREME COURT OF STATE OF NEW YORK
COUNTY OF ALBANY

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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 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.

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

Ex. C to OCA Counsel Jeng's May 3, 2024 Affirmation [R.644-660]

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,

Petitioners/Plaintiffs,

-against-

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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.

Index #902654-24

Moving Affidavit in Support of Amended OSC

ELENA RUTH SASSOWER, affirms the following to be true under penalties of perjury, pursuant to CPLR §2106:

Ex. C to OCA Counsel Jeng's May 3, 2024 Affirmation [R.644-660]

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. C to OCA Counsel Jeng's May 3, 2024 Affirmation [R.644-660]

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. C to OCA Counsel Jeng's May 3, 2024 Affirmation [R.644-660]

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. C to OCA Counsel Jeng's May 3, 2024 Affirmation [R.644-660]

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
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>

Ex. C to OCA Counsel Jeng's May 3, 2024 Affirmation [R.644-660]

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)
www.judgewatch.org
914-421-1200
elena@judgewatch.org

Ex. D to OCA Counsel Jeng's May 3, 2024 Affirmation [R.661-669]

Gmail

NYS Salary Commission <nyscompensation@gmail.com>

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)

Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org> Wed, Mar 20, 2024 at 1:36 PM
To: rpuma@nycourts.gov, Rybachambers@nycourts.gov
Cc: aserson@nycourts.gov, pruf@nycourts.gov, NYS Salary Commission <nyscompensation@gmail.com>, 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

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 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

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);

Ex. D to OCA Counsel Jeng's May 3, 2024 Affirmation [R.661-669]

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

Ex. D to OCA Counsel Jeng's May 3, 2024 Affirmation [R.661-669]

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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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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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

Ex. D to OCA Counsel Jeng's May 3, 2024 Affirmation [R.661-669]

Hon. Christina L. Ryba, JSC

Albany County Courthouse

16 Eagle Street, Room 401

Albany, NY 12207

(518) 285-8916

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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
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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.

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

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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

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

Ex. D to OCA Counsel Jeng's May 3, 2024 Affirmation [R.661-669]

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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:

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

Virus-free.www.avast.com

Gmail

NYS Salary Commission <nyscompensation@gmail.com>

Your mailed March 26th letter "refusing to accept service on behalf of Respondent Commission" -- CJA, et al. v. Commission on Legislative, Judicial & Executive Compensation, et al. (#902654-24)

Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org> Mon, Apr 1, 2024 at 1:10 PM
To: noah.engelhart@ag.ny.gov
Cc: NYS Salary Commission <nyscompensation@gmail.com>

TO: Assistant Attorney General Noah Engelhart

On Friday, March 29th, more than eight hours after I had uploaded to NYSCEF my reply affidavit (NYSCEF #33), as required by Justice Ryba's March 19th signed OSC (NYSCEF #17), I discovered, in my home mailbox, the above-attached March 26th letter you had sent me by postal mail, with no indicated *cc* to the Clerk's Office and with a "Re" clause identifying "Return Date: March 29, 2024".

Please advise why you did not simply e-mail me your March 26th letter – especially as you were not enclosing the verified petition and OSC papers that your letter informed me were being "formally refus[ed]" by the AG as "service on behalf of Respondent Commission".

Your letter also misrepresented what had taken place at the March 21st oral argument on the TRO in purporting that you had said that the AG "would [not] be waiving any service requirements under the CPLR". In fact, the transcript reflects (NYSCEF #34, at pp. 27-28) that you stated, with respect to service on the Commission:

> "I don't know where they need to be served. I don't believe there is anything – I don't know where they would need to be served, that's a service issue; it's a plaintiff's issue".

Upon receiving your mailed March 26th letter, I examined the CPLR for the answer as to how to effect personal service on Respondent Commission, which has only a post box address.

According to CPLR §312 entitled "Personal service on a court, board, or commission", I can serve Commission Chair Fahey, who lives in Buffalo or thereabouts, at an address I do not have. Alternatively, CPLR §312-a provides for "Personal service by mail".

Unless the Commission, to which I e-mailed notice of this lawsuit on March 19th (NYSCEF #24) and then again on March 20th (NYSCEF #21), is willing to waive "Personal service by mail" – and I am *cc*'ing the Commission on this e-mail so that it can so-apprise you – please promptly return to me the verified petition and OSC papers that AG office staff receipted at 4:43 pm on March 21st (NYSCEF #23), as recited by my affidavit of service (NYSCEF #22), so

that, immediately upon my receipt, I can mail them, as prescribed by CPLR §312-a, to the Commission's address: 64 Beaver Street, Box 454, New York, NY 10004.

As you are presumed to know – as likewise the Commission – pursuant to Public Officer Law §17, entitled "Defense and indemnification of state officers and employees", the AG's "duty to defend or indemnify and save harmless" is "conditioned", in the first instance, upon:

> "delivery to the attorney general or an assistant attorney general at an office of the department of law in the state by the employee of the original or a copy of any summons, complaint, process, notice, demand or pleading within five days after he is served with such document". (§17.4)

In other words, "Personal service by mail" upon the Commission is completely superfluous as the Commission would then be returning to you the same verified petition and OSC papers, as you would be returning to me, for mailing to the Commission.

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

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3-26-24-ltr-from-engelhart.pdf
971K

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

DIVISION OF STATE COUNSEL
LITIGATION BUREAU

March 26, 2024

Elena Sassower
10 Stewart Place, Apt. 2d-e
White Plains, NY 10603

Re: Center for Judicial Accountability, Inc., et al. v. NYS Commission on Legislative, Judicial, and Executive Compensation, et al.
Index # 902654-24
Return Date: March 29, 2024

Dear Ms. Sassower:

As you are aware, this office represents Respondents Hochul, Delgado, Wilson, Zayas, Stewart-Cousins, N.Y. Senate, Heastie, N.Y. Assembly, James, and DiNapoli in the above referenced matter (hereinafter "Respondents"). As of the time of this letter, the Office of the Attorney General does *not* represent Respondent New York State Commission on Legislative, Judicial, and Executive Compensation (hereinafter "Commission").

On the record during oral arguments on March 21, 2024, the undersigned clearly indicated to you and the Court that the Office of the Attorney General did not represent Respondent Commission. The undersigned also clearly stated to you that the Office of the Attorney General could not and would not accept service on behalf of an entity which it did not represent, nor would it be waiving any service requirements under the CPLR.

Despite this, and subsequent to the oral arguments, you attempted to effect service on Respondent Commission a second time by delivering papers to the Office of the Attorney General instead, as indicated in your Affidavit of Service and exhibits filed via NYSCEF. *See* NYSCEF Dkts. 22, 23.

The Office of the Attorney General is once again formally refusing to accept service on behalf of Respondent Commission. Again, as of the time of Petitioners' second attempt at service on Respondent Commission on March 21, 2024 at 4:48 PM and as of the time of the writing of this letter, the Office of the Attorney General does not represent Respondent Commission and cannot accept service on its behalf.

Very truly yours,

s/ Noah C. Engelhart

Noah C. Engelhart
Assistant Attorney General

cc: Elena Ruth Sassower
Petitioner Pro Se
(Via U.S. Mail)

Center for Judicial Accountability, Inc.
Petitioner
(Via U.S. Mail)

Ex. E to OCA Counsel Jeng's May 3, 2024 Affirmation [R.670-674]

State of New York
Office of the Attorney General
The Capitol
Albany, NY 12224-0341

FIRST-CLASS

US POSTAGE PITNEY BOWES
ZIP 12223 $ 000.64⁰
02 7W
0008027933 MAR 26 2024

Elena Sassower
10 Stewart Place, Apt. 2G-E
White Plains, NY 10603

1060338874 C005

Ex. F to OCA Counsel Jeng's May 3, 2024 Affirmation [R.675-678]

Gmail **NYS Salary Commission <nyscompensation@gmail.com>**

Thank you. However, for the record, PLUS request for confirmation from the Commission -- CJA, et al. v. Commission on Legislative, Judicial & Executive Compensation, et al. (#902654-24)

Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org> Wed, Apr 3, 2024 at 3:06 PM
To: "Engelhart, Noah" <Noah.Engelhart@ag.ny.gov>
Cc: NYS Salary Commission <nyscompensation@gmail.com>

TO: Assistant Attorney General Noah Engelhart

Thank you for your below e-mail, responding to mine – and for advising that the verified petition and OSC papers that I had served upon the AG, at 4:43 pm on March 21st, for the Commission, were being returned to me, as requested, so that, absent waiver by the Commission, I could make "Personal service by mail" upon it, pursuant to CPLR §312-a.

However, for the record, your answer at "NYSCEF Dkt. 34, p. 31, l. 5-7" that "I'm not waiving any service requirements as required by statute" – did not identify the CPLR, nor pertain to the Commission. Rather, it was your response to my separate question regarding personal service on Chief Administrative Judge Zayas, for whom you had already appeared – and the colloquy on that subject begins at p. 28, line 16, with Justice Ryba saying "You can ask me your second question", ending at p. 31, lines 8-9, with Justice Ryba's words, "All right. Oral argument is complete".

As you have not *cc*'d the Commission on your e-mail, nor indicated that it had declined to waive service – and the Commission did not e-mail me directly as to same – I am *cc*'ing the Commission on this e-mail, with a request that it confirm that, in fact, it declined to waive service and so-informed you – and that it identify whether the decision not to waive service was made collectively and, if not, by which members.

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: Engelhart, Noah <Noah.Engelhart@ag.ny.gov>
Sent: Wednesday, April 3, 2024 1:27 PM
To: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>

Subject: RE: Your mailed March 26th letter "refusing to accept service on behalf of Respondent Commission" -- CJA, et al. v. Commission on Legislative, Judicial & Executive Compensation, et al. (#902654-24)

Good afternoon Ms. Sassower,

I have placed the original papers you attempted to serve on Respondent Commission in the mail to be returned to you. I cannot otherwise provide you legal advice as to your obligation to serve all named Respondents as required by New York law.

No misrepresentation was made in my March 26, 2024 letter regarding a waiver of service requirements (or lack thereof), or indeed any other topic. At oral arguments, I did in fact directly state, on the record, that I would not be waiving service requirements required by statute. See NYSCEF Dkt. 34, p. 31, l. 5-7.

Sincerely,

Noah C. Engelhart

Assistant Attorney General

New York State Office of the Attorney General

Litigation Bureau

The Capitol

Albany, NY 12224

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Monday, April 1, 2024 1:11 PM
To: Engelhart, Noah <Noah.Engelhart@ag.ny.gov>
Cc: 'NYS Salary Commission' <nyscompensation@gmail.com>

Subject: Your mailed March 26th letter "refusing to accept service on behalf of Respondent Commission" -- CJA, et al. v. Commission on Legislative, Judicial & Executive Compensation, et al. (#902654-24)

TO: Assistant Attorney General Noah Engelhart

On Friday, March 29th, more than eight hours after I had uploaded to NYSCEF my reply affidavit (NYSCEF #33), as required by Justice Ryba's March 19th signed OSC (NYSCEF #17), I discovered, in my home mailbox, the above-

attached March 26th letter you had sent me by postal mail with no indication to the Clerk's Office and with a "Re" clause identifying "Return Date: March 29, 2024".

Please advise why you did not simply e-mail me your March 26th letter – especially as you were not enclosing the verified petition and OSC papers that your letter informed me were being "formally refus[ed]" by the AG as "service on behalf of Respondent Commission".

Your letter also misrepresented what had taken place at the March 21st oral argument on the TRO in purporting that you had said that the AG "would [not] be waiving any service requirements under the CPLR". In fact, the transcript reflects (NYSCEF #34, at pp. 27-28) that you stated, with respect to service on the Commission:

> "I don't know where they need to be served. I don't believe there is anything – I don't know where they would need to be served, that's a service issue; it's a plaintiff's issue".

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According to CPLR §312 entitled "Personal service on a court, board, or commission", I can serve Commission Chair Fahey, who lives in Buffalo or thereabouts, at an address I do not have. Alternatively, CPLR §312-a provides for "Personal service by mail".

Unless the Commission, to which I e-mailed notice of this lawsuit on March 19th (NYSCEF #24) and then again on March 20th (NYSCEF #21), is willing to waive "Personal service by mail" – and I am *cc*'ing the Commission on this e-mail so that it can so-apprise you – please promptly return to me the verified petition and OSC papers that AG office staff receipted at 4:43 pm on March 21st (NYSCEF #23), as recited by my affidavit of service (NYSCEF #22), so that, immediately upon my receipt, I can mail them, as prescribed by CPLR §312-a, to the Commission's address: 64 Beaver Street, Box 454, New York, NY 10004.

As you are presumed to know – as likewise the Commission – pursuant to Public Officer Law §17, entitled "Defense and indemnification of state officers and employees", the AG's "duty to defend or indemnify and save harmless" is "conditioned", in the first instance, upon:

> "delivery to the attorney general or an assistant attorney general at an office of the department of law in the state by the employee of the original or a copy of any summons, complaint, process, notice, demand or pleading within five days after he is served with such document". (§17.4)

In other words, "Personal service by mail" upon the Commission is completely superfluous as the Commission would then be returning to you the same verified petition and OSC papers, as you would be returning to me, for mailing to the Commission.

Ex. F to OCA Counsel Jeng's May 3, 2024 Affirmation [R.675-678]

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

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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/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.

Index No. 902654-24

MEMORANDUM OF LAW IN SUPPORT OF RESPONDENT COMMISSION'S MOTION TO DISMISS AND IN OPPOSITION TO PETITIONERS' REQUEST FOR A PRELIMINARY INJUNCTION

LETITIA JAMES
Attorney General
State of New York
Attorney for Respondents

The Capitol
Albany, New York 12224-0341
Telephone: (518) 776-2701

Noah C. Engelhart
Assistant Attorney General, of Counsel

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Respondent New York State Commission on Legislative, Executive, and Judicial Compensation (hereinafter "Commission"), respectfully submits this Memorandum of Law in support of Respondent's motion to dismiss pursuant to CPLR § 3211(a)(2), CPLR 3211(a)(7), CPLR 3211(a)(8), CPLR 7804(f), and CPLR 3001, and 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.

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").

STANDARD FOR REVIEW

On a motion to dismiss pursuant to CPLR 3211, the law is well settled that "the Complaint must be liberally construed, the allegations therein must be deemed true, the Plaintiffs must be afforded every favorable inference which may be drawn therefrom, and the court must determine only whether the facts as alleged fit within any cognizable legal theory." *See Lodichand v. Kogut*, 30 Misc. 3d 891, 894 (Nassau County Sup. Ct. 2011), citing *Leon v. Martinez*, 84 N.Y.2d 83, 88 (1994). However, "bare legal conclusions and factual claims [that] are flatly contradicted by the

evidence are not presumed to be true on a motion to dismiss.'" *Gerrish v. State University of New York at Buffalo*, 129 A.D.3d 1611 (4th Dep't 2015) (quoting *Olszewski v. Waters of Orchard Park*, 303 A.D.2d 995, 995 (2003)). "The court need not, and should not, accept legal conclusions, unwarranted inferences, unwarranted deductions, baseless conclusions of law, or sweeping legal conclusions cast in the form of factual allegations." *Goode v. Charter Oak Fire Ins. Co.*, 8 Misc. 3d 1023[A] (Nassau County Sup. Ct. 2005).

ARGUMENT

POINT I

PETITIONERS HAVE FAILED TO ESTABLISH THIS COURT'S JURISDICTION OVER RESPONDENT COMMISSION BY PROPER AND TIMELY SERVICE

Petitioners' attempt to serve Respondent Commission was both untimely and improper. After commencing this special proceeding via an Order to Show Cause ("OTSC"), Petitioners were required to serve all Respondents with the signed OTSC as per the terms of said OTSC. The OTSC signed by Judge Ryba on March 19, 2024, required Petitioners to serve the OTSC, moving affidavit, and verified petition/complaint, with exhibits "upon respondents/defendants on or before the 21st day of March 2024 in a manner authorized by the CPLR." NYSCEF No. 17, p. 2. Failure to serve an OTSC in lieu of a notice of petition on a respondent precludes the Court from having jurisdiction over said respondent and necessitates dismissal. *Schenck v. State Tax Com.*, 112 A.D.2d 517, 517 (3d Dep't 1985) ("[P]etitioner's failure to serve a notice of petition or an order to show cause in lieu thereof together with the petition precludes jurisdiction over respondent."). A petitioner's failure to serve the "documents as directed in the order to show cause, however, deprived the court of personal jurisdiction over the parties, and this fatal jurisdictional defect requires dismissal of the proceeding." *People ex rel. Planter v. McCoy*, 1 A.D.3d 1012 (4th Dept. 2003). CPLR §3211(a)(8) provides that a party may move for judgment dismissing one or more

causes of action asserted against him based on the failure to obtain personal jurisdiction over him. Additionally, a petitioner cannot attempt to cure such improper service by later sending a notice of petition and petition via mail to the respondent. *Id.* ("Likewise, petitioner's attempt to cure the improper service by sending, through ordinary mail, a notice of petition and petition was ineffective.").

Here, following Judge Ryba's signing of the OTSC on March 19, 2024, Petitioners repeatedly attempted to serve Respondent Commission via service upon the Office of the Attorney General. *See* NYSCEF Nos. 22, 23, 39. Those attempts of service were made on or about March 21, 2024. *Id.* At that time, Respondent Commission was not represented by the Office of the Attorney General. Affirmation of Mindy Jeng ("Jeng Aff."), ¶ 11. As such, the Office of the Attorney General was not authorized to accept service on behalf of the Commission. *See* NYSCEF No. 39; NYSCEF No. 52, Point II. Those attempts at service must be deemed insufficient.

Petitioners' email communications with Respondent Commission are also ineffective service. *See* Jeng Aff., ¶¶ 5-9. First, several of those emails were after the required service date of March 21, 2024 as set by the OTSC. *Id.* at ¶¶ 8-9. Second, those emails to Respondent Commission did not contain all of the required documents as specified in the OTSC, namely the signed OTSC, moving affidavit(s), and verified petition/complaint with exhibits. *Id.* at ¶ 5-9. The only documents Respondent Commission appears to have received via email attachment were the unsigned amended OTSC and a moving affidavit in support of that amended OTSC. *Id.* at ¶ 6. Third, even if all of the required documents were included in those emails, email is not a permissible method of service upon a commission pursuant to the CPLR. *See* CPLR § 312; 312-a. No alternative means of service pursuant to CPLR § 308(5) have been authorized by the Court

nor can the requirements for any such alternatives be established by Petitioners. *See* CPLR § 308(5).

Finally, Petitioners' eventual mailing of documents to Respondent Commission was also ineffective service. In a package post marked April 8, 2024, and received by Respondent Commission on April 10, 2024, Petitioners mailed a copy of the OTSC, Verified Petition/Complaint, moving affidavit, and exhibits. Jeng Aff., ¶ 3. That attempt at service by mail was untimely, coming long after the required service date of March 21, 2024 and the return date for the Verified Petition/Complaint of March 29, 2024, both as set by the OTSC. NYSCEF No. 17. In fact, service by mail is not complete until the date the defendant or respondent mails a signed acknowledgment of receipt back to the sender. CPLR§ 312-a(b). Therefore, service by mail upon Respondent Commission was not complete until April 29, 2024. Jeng Aff., ¶ 4. Such untimely service requires dismissal of the claims against Respondent Commission. *See, e.g.*, *People ex rel. Planter*, 1 A.D.3d 1012. The Commission was not served until well after the appearance regarding the Temporary Restraining Order ("TRO") requested by Petitioners, and was not served until after the return date of the petition, at which time the other Respondents were required to provide formal opposition to the Verified Petition/Complaint and Petitioners' requested Preliminary Injunction ("PI").

For this reason, Petitioners' claims against Respondent Commission should be dismissed for improper and untimely service.

POINT II

THE VERIFIED PETITION/COMPLAINT MUST BE DISMISSED FOR THE REASONS SET FORTH BY CO-RESPONDENTS IN THEIR CROSS-MOTION TO DISMISS

Even assuming *arguendo* the Court does not dismiss the claims against Respondent Commission for failure to timely and properly serve, in the alternative, the Petition/Complaint

should be dismissed as against Respondent Commission nonetheless. Respondent Commission hereby adopts and incorporates by reference all arguments made in all prior filings by the other Respondents in this case. For the reasons set forth in the other Respondents' cross-motion to dismiss and reply in support of Respondents' cross-motion to dismiss, the Verified Petition/Complaint must also be dismissed as against Respondent Commission. *See* NYSCEF Nos. 30, 52. These arguments include, but are not limited to, that Petitioners have failed to plead sufficient facts to state a cause of action against Respondents, now including Respondent Commission, that Petitioners lack standing, and that Petitioner Sassower cannot raise claims on behalf of Petitioner CJA. *Id.*

As with the other Respondents, the Verified Petition/Complaint and all subsequent filings by the Petitioners allege, without factual basis, a broad conspiracy between the Respondents, across all branches of state government, to engage in fraudulent and unlawful increases to judicial salaries as a result, at least in part, due to a report generated by Respondent Commission. *See generally* Verified Petition/Complaint, NYSCEF No. 1. As noted by the other Respondents, Petitioners' "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), 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. *See, e.g.*, NYSCEF No. 30, pp. 15-16. Instead, Petitioners assert the legal conclusion that the report drafted by Respondent Commission is a "false instrument" and that Petitioners are therefore entitled to relief. *See, e.g.*, NYSCEF No. 1, ¶ 19. However, "bare legal conclusions and factual claims [that] are flatly contradicted by the evidence are not presumed to be true on a motion to dismiss.'" *Gerrish v. State University of New York at*

Buffalo, 129 A.D.3d 1611 (4th Dep't 2015) (quoting *Olszewski v. Waters of Orchard Park*, 303 A.D.2d 995, 995 (2003)). "The court need not, and should not, accept legal conclusions, unwarranted inferences, unwarranted deductions, baseless conclusions of law, or sweeping legal conclusions cast in the form of factual allegations." *Goode v. Charter Oak Fire Ins. Co.*, 8 Misc. 3d 1023[A] (Nassau County Sup. Ct. 2005). As such, the Verified Petition/Complaint fails to state a cause of action against any of the Respondents, including Respondent Commission, and should be dismissed in its entirety.

POINT III

PETITIONERS HAVE FAILED TO MEET THE BURDEN FOR A PRELIMINARY INJUNCTION

Additionally, Respondent Commission also adopts and incorporates by reference all arguments made in the prior filings by the other Respondents in this case as it relates to Petitioners' request for a preliminary injunction. For the reasons set forth in the other Respondents' opposition to Petitioners' request for a preliminary injunction, that request for relief must be denied. *See* NYSCEF Nos. 30.

CONCLUSION

For the reasons discussed above, Respondent Commission's motion to dismiss should be granted, and the preliminary injunctive relief sought by Petitioners should be denied in its entirety.

Dated: May 3, 2024

LETITIA JAMES
Attorney General
State of New York
Attorney for Respondents
The Capitol
Albany, New York 12224

By: s/ Noah C. Engelhart

Noah C. Engelhart
Assistant Attorney General, of Counsel
Telephone: 518-776-2701
Email: Noah.Engelhart@ag.ny.gov

TO: Elena Ruth Sassower
Petitioner Pro Se
(Via NYSCEF)

Center for Judicial Accountability, Inc.
Petitioner
(Via NYSCEF)

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 1,717. 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

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,

NO FEE AUTHORIZATION

Index No. 902654-24

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

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)

Petitioners' May 6, 2024 Letter to Judge Sober [R.692-698]

CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101 *Tel. (914)421-1200* *E-Mail: mail@judgewatch.org*
White Plains, New York 10602 *Website: www.judgewatch.org*

Elena Sassower, Director

May 6, 2024

TO: Supreme Court Justice Jennifer Sober

FROM: Elena Sassower, unrepresented individual petitioner/plaintiff
CJA, et al. v. Commission on Legislative, Judicial & Executive Compensation, et al.
Albany County #902654-24

RE: Will the Court be deeming Respondent AG James' unauthorized May 3rd motion to dismiss the verified petition a nullity – and, if not, when will the Court be ruling on petitioners' threshold April 17th affidavit?

The NYSCEF docket for this case contains no determination by the Court of Respondent AG James' April 16th letter, by "of counsel" AAG Engelhart, requesting, for Respondent Commission, "an extension until May 3, 2024 to answer or otherwise file moving papers with respect to the Verified Petition" (NYSCEF #54), whose fraud was exposed by petitioners' April 17th responding affidavit (NYSCEF #55), stating in its two concluding paragraphs:

> "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).

Nevertheless, on May 3rd, Respondent AG James, by "of counsel" AAG Engelhart, filed a motion, on behalf of Respondent Commission, to dismiss the verified petition (NYSCEF #65), accompanied by a memorandum of law (NYSCEF #73) that additionally opposes the preliminary injunction sought by petitioners' March 19th OSC and bearing its March 29th return date. Wholly omitted by the motion is any reference to Respondent AG James' April 16th letter and petitioners' April 17th responding affidavit and that the Court had made no determination as to them.

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?

Were answering papers to be required, they would show what is easy to here summarize, *to wit*, that the ONLY difference between Respondent AG James' May 3rd dismissal motion for Respondent Commission (NYSCEF #65) and her March 26th dismissal cross-motion for herself and the other respondents (NYSCEF #28) – both signed by "of counsel" AAG Engelhart" – is that the May 3rd dismissal motion is additionally based on CPLR §3211(a)(8): "the court has not jurisdiction of the person of the defendant". Other than that, they are identically frivolous and fraudulent.

Indeed, Point II of Respondent AG James' three-point May 3rd memorandum of law (NYSCEF #73, entitled "The Verified Petition/Complaint Must be Dismissed for the Reasons Set Forth by Co-Respondents in their Cross-Motion to Dismiss" (at pp. 4-6) rests, in its entirety, and as reflected by its title, on Respondent AG James' March 26th cross-motion to dismiss the verified petition – and, specifically, NYSCEF #30 and NYSCEF #52.

Comparably, Respondent AG James' two-sentence Point III entitled "Petitioners Have Failed to Meet the Burden for a Preliminary Injunction" (at p. 6) expressly "adopts and incorporates by reference all arguments made in the prior filings by the other Respondents in this case as it relates to Petitioners' request for a preliminary injunction" – specifically citing to NYSCEF #30.

That the May 3rd motion rests on NYSCEF #30 and NYSCEF #52 is itself a contempt and fraud on this Court, as each is "frivolous" and a "fraud on the court" – and so-demonstrated by petitioners in motions before the Court, *sub judice* – specifically:

- NYSCEF #30 – Respondent AG James' March 26th memorandum of law in support of her March 26th dismissal cross-motion and in opposition to

petitioners' March 19th OSC – "blown to smithereens" by: (1) petitioners' March 29th reply affidavit in further support of their March 19th OSC (NYSCEF #33) and; (2) petitioners' April 3rd memorandum of law in opposition to Respondent AG James' March 26th dismissal cross-motion and in support of summary judgment to petitioners (NYSCEF #48), with their further substantiating April 3rd affirmation (NYSCEF #38);

- NYSCEF #52 – Respondent AG James' April 11th reply memorandum of law to petitioners' April 3rd opposition to her dismissal cross-motion and in opposition to summary judgment to petitioners – "blown to smithereens" by petitioners' "legal autopsy"/analysis of it (NYSCEF #62).

As for Respondent AG James' Point I entitled "Petitioners Have Failed to Establish this Court's Jurisdiction Over Respondent Commission by Proper and Timely Service" (pp. 2-4), it is fashioned on falsely making it appear as if petitioners are to blame for not being able to effect personal service on Respondent Commission, when it was Respondent Commission that had no phone number, did not respond to e-mails, and had no physical address or designated agent for personal service. Neither of the two cited cases, *Schenck v. State Tax Com.*, 112 AD2d 517, 517 (3rd Dept 1985) and *People ex rel. Planter v. McCoy*, 1 AD3d 1012 (4th Dept. 2003), are remotely applicable to the situation at bar where petitioners did everything in their power to try to effect personal service on Respondent Commission by March 21st, without the most reasonable assistance of respondents and Justice Ryba – and where, as conceded by Point I (at p. 4), service by mail, pursuant to CPLR §312-A(b), even if mailed to Respondent Commission on March 21st or on the very March 19th date of Justice Ryba's OSC, would not have been timely.[1]

[1] Especially is this so, as CPLR §312-A(b), entitled "Completion of service and time to answer", reads:

> "The defendant, an authorized employee of the defendant, defendant's attorney or an employee of the attorney must complete the acknowledgement of receipt and mail or deliver one copy of it within thirty (30) days from the date of receipt. Service is complete on the date the signed acknowledgement of receipt is mailed or delivered to the sender. The signed acknowledgement of receipt shall constitute proof of service." (underlining added).

At bar, although the May 1st affirmation of Respondent Commission's counsel, Mindy Jeng (NYSCEF #66), acknowledges receipt of petitioners' mailed service on April 10th, she waited 19 days before signing the acknowledgment of receipt – and the envelope returning it to petitioners was postmarked the following day, April 30th (Exhibit A). Her affirmation, which does not annex this "proof of service", also does not explain the 19-day delay, even while stating, in her last paragraph "On April 12, 2024, Judge Fahey confirmed that he would like the New York State Attorney General's Office to represent the Commission in the present proceeding."

Obvious, too, from the May 1st affirmation of Mindy Jeng, "Special Counsel in the Executive Office of Court Administration" (NYSCEF #66) who identifies that she also functions as "counsel to the Commission", is that petitioners' March 19th and March 20th e-mails to Respondent Commission (NYSCEF #68, #69, #70), which she claims not to have then seen because she wasn't checking Respondent Commission's e-mails "in late March and early April" because it was on "hiatus",[2] were simultaneously e-mailed to the Executive Office for Chief Administrative Judge Zayas – and, reasonably, would have been brought to her attention, being in the Executive Office.

Although Ms. Jeng claims (at ¶¶3-9) that the Commission had no notice of the lawsuit until the April 10th delivery of the papers I had sent by U.S. mail, at which point she "forwarded the information" to Chair Fahey and that Chair Fahey was "not aware" of my two March 19th e-mails, my March 20th e-mail, my April 1st e-mail, and my April 3rd e-mail[3] until April 10th, she does not state the basis of what her affirmation does not even purport as "upon information and belief", let alone that Chair Fahey stated this to her in oral communication or in writing.

Tellingly and without explanation, Respondent AG James' May 3rd motion is unsupported by any affirmation from Chair Fahey as to when he learned of the lawsuit and, frankly, it defies belief that in response to my March 19th and March 20th telephone calls to the offices of Chief Administrative Judge Zayas and Chief Judge Wilson and e-mails sent to Chief Administrative Judge Zayas, they did not communicate with him – and that he did not communicate with the AG's office.

Conspicuously, the motion is also unsupported by an affirmation from AAG Engelhart as to when the AG and Commission first communicated about the lawsuit. In any event, Ms. Jeng's affirmation, which does not purport to dispute any of petitioners' affidavits/affirmations on the subject, does not state that Respondent Commission did not endeavor to evade service and intentionally default in appearing for the March 21st oral argument on the TRO to further accomplish same, and that the other respondents did not abet Respondent Commission in so doing.

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.

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

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[2] To bolster her "hiatus" excuse for allegedly not checking Respondent Commission's e-mails "in late March and early April", she conceals that the "hiatus" had been scheduled to end on April 17th (*See* transcript of Commission's December 4, 2023 meeting, at pp. 8-9, 13).

[3] These five e-mails are all exhibits to Ms. Jeng's affirmation: NYSCEF #68, #69, #70, #71, #72.

Ex A to Petitioners' May 6, 2024 Letter to Judge Sober [R.696-698]

SUPREME COURT OF STATE OF NEW YORK
COUNTY OF ALBANY

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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

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.

Ex A to Petitioners' May 6, 2024 Letter to Judge Sober [R.696-698]

STATEMENT OF SERVICE BY MAIL & ACKNOWLEDGMENT OF RECEIPT BY MAIL OF VERIFIED PETITION & SIGNED ORDER TO SHOW CAUSE WITH MOVING AFFIDAVIT

A. STATEMENT OF SERVICE BY MAIL TO: Respondent/Defendant Commission on Legislative, Judicial and Executive Compensation

The enclosed March 18, 2024 verified petition/complaint and March 19, 2024 signed order to show cause with moving affidavit are served pursuant to CPLR §312-a. To avoid being charged with the expense of service upon you, you must sign, date, and complete the acknowledgment part of this form and mail or deliver one copy of the completed form to the sender within thirty (30) days from the date you receive it. You should keep a copy for your records or for your attorney. If you wish to consult an attorney, you should do so as soon as possible before the thirty (30) days expire. If you do not complete and return the form to the sender within thirty (30) days, you (or the party on whose behalf you are being served) will be required to pay expenses incurred in serving the verified petition/complaint and signed order to show cause with moving affidavit in any other manner permitted by law, and the cost of such service as permitted by law will be entered as a judgment against you. If you have received the aforesaid documents with this statement, the return of this statement and acknowledgment does not relieve you of the necessity to answer the verified petition/complaint. The time to answer expires twenty (20) days after the day you mail or deliver this form to the sender. If you wish to consult with an attorney, you should do so as soon as possible before the twenty (20) days expire. If you are served on behalf of an entity, you must indicate under your signature your relationship to the entity. If you are served on behalf of another person and you are authorized to receive process, you must indicate under your signature your authority. It is a crime to forge a signature or to make a false entry on this statement or on the acknowledgment.

B. ACKNOWLEDGMENT OF RECEIPT OF VERIFIED PETITION AND SIGNED ORDER TO SHOW CAUSE, WITH MOVING AFFIDAVIT.

I received a verified petition/complaint and signed order to show cause with moving affidavit in the above-captioned matter at 64 Beaver Street, Box 454, New York, New York 10004.

Please check one of the following:

1. I am not in military service X
2. I am in military service _____

TO BE COMPLETED REGARDLESS OF MILITARY STATUS:

Date: April 29, 2024 (Date this Acknowledgment is executed)

I affirm the above as true under penalty of perjury.

Mindy Feng
_____ Signature

Mindy Feng
_____ Print Name

Position with Respondent/Defendant for which you are acting Counsel to Commission on Legislative, Judicial, Exec. Comp

Ex A to Petitioners' May 6, 2024 Letter to Judge Sober [R.696-698]

Commission on Legislative, Judicial, Exec. Compensation
64 Beaver St.
Box 454
New York, NY 10004

NEW YORK NY 100
30 APR 2024 PM 7 L

Hon. Sabrina Sober
10 Stewart Place, Apt 2D-E
White Plains, New York 10603

Petitioners' June 17, 2024 Letter to Judge Sober [R.699-701]

CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101 ***Tel. (914)421-1200*** ***E-Mail: mail@judgewatch.org***
White Plains, New York 10602 ***Website: www.judgewatch.org***

Elena Sassower, Director

June 17, 2024

TO: Supreme Court Justice Jennifer Sober

FROM: Elena Sassower, unrepresented individual petitioner/plaintiff
CJA, et al. v. Commission on Legislative, Judicial & Executive Compensation, et al.
Albany County #902654-24

RE: When does the Court anticipate issuing its decision/order on the first threshold issue of petitioners' March 19th order to show cause – or certifying the question, if, in fact, there is any.

As reflected by the NYSCEF docket herein, there has been no response from the Court to petitioners' May 6th letter (NYSCEF #75), whose RE: clause asked:

> "Will the Court be deeming Respondent AG James' unauthorized May 3rd motion to dismiss the verified petition a nullity – and, if not, when will the Court be ruling on petitioners' threshold April 17th affidavit?"

Nor has there been any ruling, still, on petitioners' threshold April 17th affidavit (NYSCEF #55). Likewise, no decision, still, on the three threshold issues that the Court has had before it since the March 29th return date of petitioners' March 19th order to show cause (NYSCEF #17), *to wit*:

> "1. 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;
>
> 2. 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;
>
> 3. 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".

Is there any explanation for this other than the Court's actual bias arising from its direct financial interest in this lawsuit wherein, as is obvious from petitioners' January 18, 2024 Opposition Report (NYSCEF #6), petitioners have an open-and-shut, *prima facie* summary judgment entitlement to the VOIDING of the December 4, 2023 Report of the Commission on Legislative, Judicial and Executive Compensation that, on April 1, 2024, by "force of law", gave this Court a $21,700 salary jump from $210,900 to $232,600 (NYSCEF #47) that it has been collecting on ever since?

Pursuant to State Finance Law §123-c(4), this citizen-taxpayer action is required to be "promptly determined" and "have preference over all other causes in all courts". In an ordinary case – which this hybrid Article 78 proceeding/declaratory judgment action/citizen-taxpayer action is not – motions are to be decided within 60 days (22 NYCRR §202.8(h); Unified Court System's webpage for unrepresented litigants "*How to Ask the Court for Something (motions and orders to show cause)*". It is now 87 days since the March 29th return date of petitioners' March 19th order to show cause[1] – and tomorrow will be 60 days from the original April 19th return date of petitioners' April 3rd motion to sanction and disqualify Respondent AG James and for summary judgment,[2] whose notice of motion (NYSCEF #49) stated, in bold:

> **"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 §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."**

When does the Court anticipate issuing its decision/order on the first threshold issue of petitioners' March 19th order to show cause – or certifying the question, if, in fact, there is any.

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[1] Though indicating a March 29th return date, Respondent AG James' March 26th notice of cross-motion (NYSCEF #28) was improperly made returnable on April 12th – and petitioners alerted the Court to this by their March 29th reply affidavit in further support of their order to show cause & for oral argument & an evidentiary hearing (NYSCEF #33). *See*, also, pertaining to cross-motions, the Unified Court System's above-entitled motions and orders to show cause webpage and, additionally, CPLR §406: "Motions in a special proceeding, made before the time at which the petition is noticed to be heard, shall be noticed to be heard at that time." An Article 78 proceeding, such as this, is "a special proceeding" (CPLR §7804(a)).

[2] Impliedly, the April 19th return date was adjourned to April 26th by the Court's so-ordered April 12th letter (NYSCEF #53) granting AG James' April 12th e-mail request for "an additional 7 days to respond" to the April 3rd motion (NYSCEF #58). However, the Court never responded to petitioners' April 12th e-mail, responding to the request (NYSCEF #59).

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

cc: Respondents *via* NYSCEF

CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101 ***Tel. (914)421-1200*** ***E-Mail: mail@judgewatch.org***
White Plains, New York 10602 ***Website: www.judgewatch.org***

Elena Sassower, Director

July 30, 2024

TO: Acting Supreme Court Justice Jennifer Sober

FROM: Elena Sassower, unrepresented individual petitioner/plaintiff
CJA, et al. v. Commission on Legislative, Judicial & Executive Compensation, et al.
Albany County #902654-24

RE: Transferring this case to federal court – or certifying the question, if there is one.

Six weeks ago, by my June 17th letter (NYSCEF #77), I asked the Court whether there was any explanation for its failure to respond to petitioners' May 6th letter (NYSCEF #75) and April 17th affidavit (NYSCEF #55) and to render a decision on petitioners' March 19th order to show cause, returnable March 29th, for determination of three threshold issues (NYSCEF #17):

> "other than the Court's actual bias arising from its direct financial interest in this lawsuit wherein, as is obvious from petitioners' January 18, 2024 Opposition Report (NYSCEF #6), petitioners have an open-and-shut, *prima facie* summary judgment entitlement to the VOIDING of the December 4, 2023 Report of the [3rd] Commission on Legislative, Judicial and Executive Compensation that, on April 1, 2024, by 'force of law', gave this Court a $21,700 salary jump from $210,900 to $232,600 (NYSCEF #47) that it has been collecting on ever since?"

As reflected by the NYSCEF docket, the Court did not respond.

Meantime, since April 1, 2024, as a result of the Court's wilful and deliberate nonfeasance, approximately $11.5 million in statutorily-violative, fraudulent, and unconstitutional judicial salary increases have been paid out based on the December 4, 2023 Report – adding to the ongoing larceny of the August 29, 2011 Report of the Commission on Judicial Compensation and the December 24, 2015 Report of the (1st) Commission on Legislative, Judicial and Executive Compensation, whose pay-outs for identically statutorily-violative, fraudulent, and unconstitutional judicial salary increases are in the range of three quarters of a billion dollars.

The first and foremost threshold issue before the Court is transferring this case to federal court, inasmuch as Judiciary Law §14 divests every New York State justice and acting justice of jurisdiction because of direct financial and other interests – as to which, in the absence of jurisdiction and because of the availability of federal judges, the judge-made "rule of necessity" cannot be invoked.

Please confirm, without further delay, that the Court will be transferring this case to federal court, pursuant to Article IV, §4 of the United States Constitution, etc. – or certifying the question, if there is one, to the Appellate Division, Third Department, including so that it can add it to its own certification of questions to the Court of Appeals in the underlying *CJA v. JCOPE, et al.*– the case which CJA's January 18, 2024 Opposition Report identifies (at p. 2) as Exhibit B establishing "how the judiciary comports itself when the issue is its self-interest in pay raises and what has been going on" – Exhibit A being the underlying *CJA v. Cuomo…DiFiore*. The record of *CJA v. JCOPE, et al.* at the Appellate Division, Third Department, culminating in petitioners' *sub judice* final July 4, 2024 motion (NYSCEF #52), reinforces the availability of transfer, in the circumstances at bar, not confronted by that Court or this.

Should the Court wish to schedule a preliminary conference, pursuant §202.12 of the Uniform Civil Rules for the Supreme and County Courts, identified on the Unified Court System's 3rd Judicial District website, I request same as immediately as possible.

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

cc: Respondents *via* NYSCEF

Judge Sober's August 14, 2024 "Decision, Order, and Judgment (Motion Sequence 1&2)" R.3

Judge Sober's August 14, 2024 "Decision, Order, and Judgment (Motion Sequence 3)" R.6

Judge Sober's August 14, 2024 "Decision, Order, and Judgment (Motion Sequence 4)" R.8

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/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.

NOTICE OF ENTRY OF DECISION AND ORDER

Index No. 902654-24

PLEASE TAKE NOTICE that the annexed order is a true copy of a Decision and Order (NYSCEF Dkt. No. 79) duly entered in the above-entitled action and filed in the office of the Clerk of Albany County on the 14th day of August, 2024. The annexed Decision and Order addressed pending Motion Sequence 1 & 2.

PLEASE TAKE FURTHER NOTICE that the additional annexed order is a true copy of a Decision and Order (NYSCEF Dkt. No. 80) duly entered in the above-entitled action and filed in the office of the Clerk of Albany County on the 14th day of August, 2024. The annexed Decision and Order addressed pending Motion Sequence 3.

PLEASE TAKE FURTHER NOTICE that the additional annexed order is a true copy of a Decision and Order (NYSCEF Dkt. No. 81) duly entered in the above-entitled action and filed in the office of the Clerk of Albany County on the 14th day of August, 2024. The annexed Decision and Order addressed pending Motion Sequence 4.

Dated: Albany, New York
August 14, 2024

LETITIA JAMES
Attorney General of the State of New York
Attorney for Respondents/Defendants
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
P.O Box 8101
White Plains, NY 10602
(Via NYSCEF and U.S. Mail)

Center for Judicial Accountability, Inc.
Petitioner
P.O Box 8101
White Plains, NY 10602
(Via NYSCEF and U.S. Mail)

SUPREME COURT OF STATE OF NEW YORK
COUNTY OF ALBANY

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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 MOTION

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.

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S I R S :

PLEASE TAKE NOTICE that upon the September 12, 2024 affirmation of the unrepresented individual petitioner/plaintiff Elena Ruth Sassower (NYSCEF #84), its exhibits, and upon all papers

and proceedings heretofore had, a motion will be made at the Rensselaer County Courthouse, 80 Second Street, Troy, New York 12180, on Friday, October 4, 2024, at 9:30 a.m., for an order with respect to the August 14, 2024 "Decision, Order, and Judgment (Motions Sequence 1&2)" (NYSCEF #79), August 14, 2024 "Decision, Order, and Judgment (Motion Sequence 3)" (NYSCEF #80), and August 14, 2024 "Decision, Order, and Judgment (Motion Sequence 4)" (NYSCEF #81):

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

   (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 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.

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR §2214(b), answering papers, if any, are to be served on petitioners seven days before the return date, *to wit*, Friday, September 27, 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

10 Stewart Place, Apartment 2D-E
White Plains, New York 10603
914-421-1200
elena@judgewatch.org

Dated: White Plains, New York
September 12, 2024

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

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

SUPREME COURT OF STATE OF NEW YORK
COUNTY OF ALBANY

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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/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

Index #902654-24

September 12, 2024

MOVING AFFIRMATION

ELENA RUTH SASSOWER, affirms the following to be true under penalties of perjury, pursuant to CPLR §2106:

1. I am the unrepresented individual petitioner/plaintiff,[1] fully familiar with all the facts, papers, and proceedings heretofore had and submit this affirmation (NYSCEF #84) in support of the relief sought by petitioners' accompanying notice of motion (NYSCEF #83) and substantiating Exhibits A-D (NYSCEF #85, #86, #87, #88).

2. The purpose of this affirmation is, most importantly, to attest to the truth of Exhibit A (NYSCEF #85): petitioners' 27-page, single-spaced "legal autopsy"/analysis of the Court's three August 14, 2024 decisions, which I wrote. It is dispositive of every branch, but the first, for renewal based on newly-discovered evidence.

3. As to that first branch, I added it a few days ago when I discovered that, apparently, this Court is not, as its August 14, 2024 decisions purport, an "Acting Supreme Court Justice". Indeed, as reflected by my May 6, 2024 and June 17, 2024 letters to the Court (NYSCEF #75, NYSCEF #77), I had believed the Court was a Supreme Court justice. That changed only upon my writing my final July 30, 2024 letter to the Court (NYSCEF #78), which is when I saw that the Court is identified on the Third Judicial District's website for the "Rensselaer Supreme and County Courts" as one of three "Acting Supreme Court Justices".

4. Only on Sunday, September 8, 2024, as I was finalizing this motion and trying to discern the length of time the Court has been on the bench and in what capacities so as to calculate the salaries it has been receiving, did I discover, from the judicial profiles accessible from the Unified Court System website, but not linked by the Third Judicial District website, that the Court is not indicated as having been designated as an acting Supreme Court justice, in

[1] For simplicity, petitioners/plaintiffs are hereinafter referred to as petitioners; their verified petition/complaint is referred to as the verified petition; and respondents/defendants are referred to as respondents.

contrast to the other two "Acting Supreme Court Justices" identified by the Third Judicial District website.

5. On Monday, September 9, 2024, I endeavored to clarify the situation by calling Court Clerk Amy Serson at the Albany Supreme Court Clerk's Office. She suggested I call the Third Judicial District office, which I promptly did, speaking twice with Paula Barna, Senior Management Analyst. Upon further research based thereon, I filed a September 10, 2024 FOIL request – Exhibit B (NYSCEF #86). This is now the basis for the first branch of this motion, for the granting of renewal so that the Court can clarify what is potentially a yet further ground for vacatur.

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 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, 2018, 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, 2024 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, 2024 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 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.

12. The ONLY reason that petitioners do not seek, upon the granting of reargument, the Court's vacatur of the August 14, 2024 decisions/orders/judgments is because a judge disqualified by Judiciary Law §14, as this Court is, "is without jurisdiction, and all proceedings had before such a judge…are void…A disqualified judge is even incompetent to make an order in the case setting aside his own void proceedings." (28 New York Jurisprudence 2nd §403 (2018).

13. This is also the reason why petitioners do not seek this Court's vacatur of the August 14, 2024 decisions/orders/judgments pursuant to CPLR §5015(a)(3) ("fraud, misrepresentation, or other misconduct of an adverse party") and CPLR §5015(a)(4) ("lack of jurisdiction"), but only the determinations that would enable a jurisdictionally-empowered tribunal to vacate them.

14. New York's federal district courts are the jurisdictionally-empowered tribunal for that to happen, for which this Court must belatedly do what was its duty to have done, from the outset: transferring this lawsuit to federal court – or certifying the question to the Appellate Division, Third

Department or the Court of Appeals, whose judges, likewise, by reason of their financial and other interests, are divested of jurisdiction by Judiciary Law §14 to vacate the August 14, 2024 decisions/orders/judgments.

15. Finally, upon the granting of reargument, it is this Court's duty to confront the constitutional issues its decisions have created. Among these, the unconstitutionality of Chapter 60, Part E, of the Laws of 2015 (NYSCEF #2), *as applied*, reflected by the first cause of action of the verified petition (NYSCEF #1) in stating:

> "39. 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)

and, as to which the Court made no determination and declaration. Likewise, its unconstitutionality, *as applied*, by the Court's willful failure to accord ANY "review" to the Commission's "force of law" December 4, 2023 Report, let alone the "searching review", "heightened judicial review"; "heightened scrutiny", "heightened judicial standard of review" 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 which petitioners alerted the Court by their April 3, 2024 memorandum of law in support of summary judgment on their two causes of action (NYSCEF #48, pp. 9-13) and, prior thereto, alerted Justice Ryba at the March 21, 2024 oral argument of their requested TRO (NYSCEF #34, pp. 21-22).

16. In the event the Court does not dispose of this motion by transferring the case to federal court – or certifying the question to the Appellate Division, Third Department or the Court of Appeals – petitioners are simultaneously filing a notice of appeal to the Appellate Division (NYSCEF #89), which seemingly will be mooted by the transfer.

s/

ELENA RUTH SASSOWER

Dated: White Plains, New York
September 12, 2024

Petitioners' "Legal Autopsy"/Analysis of Judge Sober's Three August 14, 2024 Decisions, Orders, and Judgments……...…..……..**R.11**

Ex. B: Petitioners' September 10, 2024 FOIL Request to OCA [R.718-720]

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Tuesday, September 10, 2024 12:42 PM

To: 'foil@nycourts.gov'
Cc: '3rdjdadministration@nycourts.gov'; 'Amy Serson'

Subject: **FOIL/Records Request: Rensselaer County Court Judge Jennifer Sober, Compliance with Court Rules -- & CJA v. NYS Commission on Legislative, Judicial & Executive Compensation (Albany Supreme Court #902654-24)**

TO: Unified Court System FOIL Officer/Assistant Deputy Counsel Diane Turo

The Unified Court System's website has a "Courts" webpage linking to a webpage for "County Court", whose link for Rensselaer County combines Supreme and County Courts. It does not indicate who the Rensselaer County Court judges are – or that, pursuant to Judiciary Law §182, there would be two. It does list three "Acting Supreme Court Justices": Adam W. Silverman, Debra J. Young, and Jennifer Sober, whose profiles are not linked. The profiles are, however, accessible from the Unified Court System website. They reflect:

- that Adam Silverman was appointed to the Court of Claims in 2020 by Governor Andrew Cuomo, and, from 2020-2022, was designated an acting Supreme Court justice by Chief Administrative Judge Lawrence Marks and, from 2023 to the present, so-designated by Acting Chief Administrative Judge Tamiko Amiker;

- that Debra Young was elected to Rensselaer County Court in 2013 and re-elected in 2023, and, from 2015 to the present, was designated to be an acting Supreme Court justice by Chief Administrative Judge Gail Prudenti, who also appointed her, in 2015 to the present, to be supervising judge for the 3rd Judicial District of the criminal term of the Rensselaer County Court; and

- that Jennifer Sober was elected to Rensselaer County Court in 2017.

Although the Third Judicial District's website has not posted its 2024 Judicial Assignment Book, it does post its 2023 Judicial Assignment Book. It identifies (at its unmarked page 12) Judge Sober as "designated pursuant to article VI, section 26 of the New York State Constitution and 22 NYCRR Parts 22 and 121, as eligible for being selected by the District Administrative Judge for temporary assignments to Supreme Court during the calendar year 2023", but states "These assignments are not to exceed 20 days without the approval of the Deputy Chief Administrative Judge and Presiding Justice of the Appellate Division."

Pursuant to Public Officers Law Article VI ("Freedom of Information Law") and Part 124 of the Chief Administrator's Rules ("Public Access to Records"), this is to request:

(1) the 2024 Judicial Assignment Book for the 3rd Judicial District;

(2) records pertaining to what 22 NYCRR Part 22 was – or where it now is – as the Chief Judge's Rules on the Unified Court System's website skips Part 22.

(3) records reflecting the designation, if any, of Rensselaer County Court Judge Sober to be an acting Supreme Court justice and of her redesignation(s), pursuant to Part 121 of the Chief

Administrative Judge's Rules entitled "Temporary Assignment Of Judges To The Supreme Court" and Part 33 of the Chief Judge's Rules entitled "Temporary Assignment Of Justices And Judges".

(4) records reflecting that Judge Sober's salary is that of a Rensselaer County Court judge, not a Supreme Court justice, and that she receives and has received no additional compensation for work connected with Supreme Court assignments;

(5) records of the "approval of the Deputy Chief Administrative Judge and Presiding Justice of the Appellate Division" of Judge Sober's assignment to the hybrid Article 78 proceeding/declaratory judgment action/citizen-taxpayer action *Center for Judicial Accountability, Inc., et al. v. New York State Commission on Legislative, Judicial and Executive Compensation, et al.* (Albany County Supreme Court, #902654-24) – an assignment that spanned 138 days from the March 29, 2024 return date of petitioners' March 19, 2024 order to show cause (NYSCEF #17) to the three decisions/orders/judgments she rendered on August 14, 2024 and signed as "Acting Supreme Court Justice" (NYSCEF #79, NYSCEF #80, NYSCEF #81);

(6) records of Judge Sober's compliance with Part 04 of the Rules of the Chief Judge entitled "Reports Of Pending Matters", whose Section 4.1 requires "a statement from every judge and justice of every court indicating the matters which have been pending undecided before such judge or justice for a period of 60 days after final submission and the reasons therefor", and, specifically, of Judge Sober's compliance with respect to *CJA v. Commission on Legislative, Judicial and Executive Compensation*, wherein, by June 17, 2024 and July 30, 2024 letters (NYSCEF #77), (NYSCEF #78), to which Judge Sober did not respond, petitioners asserted that the only reason for her violation of the 60-day time frame for determining motions pursuant to 22 NYCRR §202.8(h) and violation of State Finance Law §123-c(4), requiring citizen-taxpayer actions to be "promptly determined" and "have preference over all other causes in all courts", was her "actual bias arising from [her] direct financial interest in this lawsuit", proscribed by Judiciary Law §14 and divesting her of jurisdiction "as to which, in the absence of jurisdiction and because of the availability of federal judges, the judge-made 'rule of necessity' cannot be invoked";

(7) records of Judge Sober's requests, if any, pursuant to 22 NYCRR §202.8(h)(1), for an "automated open motion report of all motions pending before [her] which appeare[d] undecided 60 days after final submission", to "assist [her] in preparing the quarterly report of pending civil matters required by section 4.1 of the Rules of the Chief Judge" for any portion of the period from May 29, 2024 to August 14, 2024 – this being "her official quarterly report";

(8) records of actions taken by supervising judges with respect to Judge Sober's "official quarterly report" and Section 4.1 statement for any portion of the period from May 29, 2024 to August 14, 2024;

(9) the Chief Administrative Judge's written instructions and blank forms for Section 4.1 statements, pursuant to Part 04 of the Chief Judge's Rules, and for "official quarterly report(s)".

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org
914-421-1200
elena@judgewatch.org

"Salary Chart prepared by the Office of Court Administration" appearing at pages 9-10 of the August 29, 2011 Report of the Commission on Judicial Compensation

Court	April 1, 2012	April 1, 2013	April 1, 2014
Court of Appeals			
Chief Judge:	$182,600	$190,600	$198,600
Associate Judge:	$177,000	$184,800	$192,500
Appellate Division			
Presiding Justice:	$172,800	$180,400	$187,900
Associate Justice:	$168,600	$176,000	$183,300
Appellate Term			
Presiding Justice:	$167,100	$174,400	$181,700
Associate Justice:	$163,600	$170,700	$177,900
Administrative Judges			
Dep. CAJ (NYC):	$168,600	$176,000	$183,300
Dep. CAJ (outside NYC):	$168,600	$176,000	$183,300
AJ (in NYC; Jud. Dist.; county):	$165,700	$172,900	$180,200
Supreme Court			
Justice:	$160,000	$167,000	$174,000
Court of Claims			
Presiding Judge:	$168,600	$176,000	$183,300
Judge:	$160,000	$167,000	$174,000
County Court			
Earning $136,700 on 3/31/12:	$160,000	$167,000	$174,000
Earning $131,400 on 3/31/12:	$153,800	$160,600	$167,300
Earning $127,000 on 3/31/12:	$148,700	$155,200	$161,700
Earning $125,600 on 3/31/12:	$147,100	$153,500	$159,900
Earning $122,700 on 3/31/12:	$143,700	$149,900	$156,200
Earning $121,200 on 3/31/12:	$141,900	$148,100	$154,300
Earning $119,800 on 3/31/12:	$140,300	$146,400	$152,500
Family Court			
Earning $136,700 on 3/31/12:	$160,000	$167,000	$174,000
Earning $127,000 on 3/31/12:	$148,700	$155,200	$161,700
Earning $125,600 on 3/31/12:	$147,100	$153,500	$159,900
Earning $119,800 on 3/31/12:	$140,300	$146,400	$152,500
Surrogate's Court			
Earning $136,700 on 3/31/12:	$160,000	$167,000	$174,000
Earning $135,800 on 3/31/12:	$159,000	$166,000	$172,900
Earning $129,900 on 3/31/12:	$152,100	$158,700	$165,400
Earning $125,600 on 3/31/12:	$147,100	$153,500	$159,900
Earning $121,200 on 3/31/12:	$141,900	$148,100	$154,300
Earning $119,800 on 3/31/12:	$140,300	$146,400	$152,500
Civil Court of NYC and Criminal Court of NYC			
Judge of the Civil Court:	$147,100	$153,500	$159,900
Housing Judge of the Civil Court:	$135,100	$141,000	$146,900
Judge of the Criminal Court:	$147,100	$153,500	$159,900

District Court			
Pres., Bd. Of Judges (Nassau):	$148,600	$155,100	$161,600
Judge (Nassau):	$143,700	$149,900	$156,200
Pres., Bd. Of Judges (Suffolk):	$148,600	$155,100	$161,600
Judge (Suffolk):	$143,700	$149,900	$156,200
City Courts outside NYC			
Earning $119,500 on 3/31/12:	$139,900	$146,000	$152,200
Earning $118,300 on 3/31/12:	$138,500	$144,600	$150,600
Earning $116,800 on 3/31/12:	$136,800	$142,700	$148,700
Earning $115,100 on 3/31/12:	$134,800	$140,700	$146,600
Earning $113,900 on 3/31/12:	$133,400	$139,200	$145,000
Earning $108,800 on 3/31/12:	$127,400	$133,000	$138,500
Earning $81,600 on 3/31/12:	$95,600	$99,700	$103,900
Earning $54,400 on 3/31/12:	$63,700	$66,500	$69,300
Earning $27,200 on 3/31/12:	$31,900	$33,300	$34,700

Ex. D: OCA FOIL Response -- Judicial Salary Increases Pursuant to Dec. 24, 2015 Report [R.722-738]

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Monday, November 29, 2021 4:29 PM
To: 'Nadine Kearney'
Cc: 'Maureen A. Rossi'; FOIL@nycourts.gov; skerby@nycourts.gov

Subject: **Thank you: NOW RESOLVED May 15, 2020 FOIL/Records Request: Judicial salaries resulting from the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation**

Dear Ms. Kearney,

Thank you for your response – which now resolves my May 15, 2020 FOIL request, whose unresolved status I alerted you to by my **November 26, 2021 e-mail**. Thank you for your efficiency.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org
914-421-1200
elena@judgewatch.org

From: Nadine Kearney <nkearney@nycourts.gov>
Sent: Monday, November 29, 2021 12:02 PM
To: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>; FOIL <FOIL@nycourts.gov>; Shawn Kerby <skerby@nycourts.gov>
Cc: Maureen A. Rossi <mrossi@nycourts.gov>

Subject: RE: AGAIN --STATUS? --May 15, 2020 FOIL/Records Request: Judicial salaries resulting from the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation

Good Morning,
I apologize for the delay I believe there was some miscommunication on who would supply the information. I have attached the Salary charts for you, please let me know if you require anything else.

Regards

Nadine Kearney
Principal Management Analyst
OCA, Payroll Office
(518)453-8634

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Monday, February 1, 2021 4:44 PM
To: FOIL <FOIL@nycourts.gov>; Shawn Kerby <skerby@nycourts.gov>
Cc: Maureen A. Rossi <mrossi@nycourts.gov>; Nadine Kearney <nkearney@nycourts.gov>; Susan

Amodeo <samodeo@nycourts.gov>

Subject: AGAIN --STATUS? --May 15, 2020 FOIL/Records Request: Judicial salaries resulting from the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation

TO: OCA FOIL-Records Access Officer/Assistant Deputy Counsel Shawn Kerby

I have received no response from you to my below July 15, 2020 e-mail inquiring as to the status of my May 15, 2020 FOIL/records request entitled "Judicial salaries resulting from the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation", with its above attachment.

Did you respond? Please advise.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org
914-421-1200

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Wednesday, July 15, 2020 8:57 AM
To: 'skerby@nycourts.gov' <skerby@nycourts.gov>; 'foil@nycourts.gov' <foil@nycourts.gov>

Subject: STATUS? --May 15, 2020 FOIL/Records Request: Judicial salaries resulting from the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation

TO: Shawn Kerby/Office of Court Administration Records Access Officer-Assistant Deputy Counsel

I have received no response to my below May 15, 2020 FOIL/records, with its accompanying above-attached chart from the Commission on Judicial Compensation's August 29, 2011 Report – other than your below May 18, 2020 acknowledgment and advice that you expected to respond "within 20 business days".

More than twice that amount of time has now passed. Please advise, promptly.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org
914-421-1200

From: FOIL <FOIL@nycourts.gov>
Sent: Monday, May 18, 2020 6:00 PM
To: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>

Subject: RE: FOIL/Records Request: Judicial salaries resulting from the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation

Dear Ms. Sassower:

We will process the request and expect to respond within 20 business days.

Very truly yours,
Shawn Kerby
Assistant Deputy Counsel

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Friday, May 15, 2020 3:47 PM
To: FOIL <FOIL@nycourts.gov>; Shawn Kerby <skerby@nycourts.gov>
Cc: Maureen A. Rossi <mrossi@nycourts.gov>; Nadine Kearney <nkearney@nycourts.gov>; Susan Amodeo <samodeo@nycourts.gov>

Subject: FOIL/Records Request: Judicial salaries resulting from the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation

TO: Shawn Kerby/Office of Court Administration Records Access Officer-Assistant Deputy Counsel

Judiciary Law Article 7-B (§§220-224) has yet to be amended to reflect the increase in judicial salaries resulting from the August 29, 2011 Report of the Commission on Judicial Compensation and the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation.

The August 29, 2011 Report of the Commission on Judicial Compensation included a salary chart (at pp. 9-10), "prepared by the Office of Court Administration" (fn. 19), specifying the increased salaries for the different classifications of judges – and, for your convenience, a copy is annexed. However, there was no comparable chart in the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation, even with respect to the judicial salaries for the first year of increase.

Consequently, pursuant to Public Officers Law VI and §124 of the Chief Administrator's Rules [FOIL], this is to request public records reflecting the increased judicial salaries resulting from the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation for the different classifications of judges in each of the four years of increases: 2016, 2017, 2018, and 2019.

Most immediately, please furnish me with the 2016, 2017, 2018, and 2019 salaries of county court judges for each of the 57 counties listed in Judiciary Law §221-d. The currently listed salaries – which ceased to be correct as of April 1, 2012 – are as follows:

Albany	131,400
Allegany	119,800
Broome	119,800

Cattaraugus	119,800
Cayuga	122,700
Chautauqua	119,800
Chemung	119,800
Chenango	119,800
Clinton	121,200
Columbia	119,800
Cortland	119,800
Delaware	119,800
Dutchess	125,600
Erie	125,600
Essex	119,800
Franklin	119,800
Fulton	119,800
Genesee	119,800
Greene	119,800
Hamilton	119,800
Herkimer	119,800
Jefferson	119,800
Lewis	119,800
Livingston	119,800
Madison	119,800
Monroe	125,600
Montgomery	119,800
Nassau	136,700
Niagara	119,800
Oneida	119,800
Onondaga	125,600
Ontario	119,800
Orange	125,600
Orleans	119,800
Oswego	119,800
Otsego	119,800
Putnam	131,400
Rensselaer	119,800
Rockland	125,600
St. Lawrence	119,800
Saratoga	119,800
Schenectady	119,800
Schoharie	119,800
Schuyler	119,800
Seneca	119,800
Steuben	119,800
Suffolk	136,700
Sullivan	127,000
Tioga	119,800
Tompkins	122,700
Ulster	131,400
Warren	119,800
Washington	119,800
Wayne	119,800
Westchester	136,700
Wyoming	119,800
Yates	119,800

Please prioritize and furnish me the requested records as to the salaries for judges of the above 57 county courts as soon as possible, leaving the balance for your subsequent response.

Finally, please confirm that the 2020 salaries for all the different classifications of judges are unchanged from what they were in 2019.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org
914-421-1200

From: Maureen A. Rossi <mrossi@nycourts.gov>
Sent: Wednesday, May 13, 2020 6:44 PM
To: Elena@judgewatch.org
Cc: Nadine Kearney <nkearney@nycourts.gov>; Susan Amodeo <samodeo@nycourts.gov>

Subject: Requesting information regarding judicial salaries

Good evening,

All requests for such information must go through our FOIL officer. Please send a completed FOIL Request Form (available by clicking here FOIL REQUEST FORM) to our FOIL Officer:

Shawn Kerby, Assistant Deputy Counsel
FOIL Officer
Office of Court Administration
25 Beaver Street, Room 1170
New York, NY 10004

Or email foil@nycourts.gov

Thank you,
Maureen Rossi
OCA Payroll Manager

Ex. D: OCA FOIL Response -- Judicial Salary Increases Pursuant to Dec. 24, 2015 Report [R.722-738]

Supreme Court	04/07/2016 - 04/05/2017	04/06/2017 - 04/04/2018	04/05/2018 - 04/03/2019	04/04/19 - 04/01/2020
Supreme Court Judge	193,000	194,900	208,000	210,900
Chief Judge	220,300	222,500	237,500	240,800
Associate Judge	213,600	215,700	230,200	233,400
Appellate Division				
Presiding Justice	208,500	210,500	224,700	227,800
Associate Justice	203,400	205,400	219,200	222,200
Appellate Term				
Presiding Justice	201,600	203,600	217,300	220,300
Associate Justice	197,400	199,300	212,700	215,700
Chief Administrative Judge	208,500	210,500	224,700	227,800
DCAJ(NYC)	203,400	205,400	219,200	222,200
DCAJ(Outside NYC)	203,400	205,400	219,200	222,200
AJ(In NYC, Judicial District;County)	199,900	201,900	215,500	218,500
COC Presiding Judge	203,400	205,400	219,200	222,200
COC Judge	193,000	194,900	208,000	210,900

Ex. D: OCA FOIL Response -- Judicial Salary Increases Pursuant to Dec. 24, 2015 Report [R.722-738]

County Court	04/07/2016 - 04/05/2017	04/06/2017 - 04/04/2018	04/05/2018 - 04/03/2019	04/04/19 - 04/01/2020
Albany	185,600	187,400	200,000	202,800
Allegany	183,400	185,200	197,600	200,400
Broome	183,400	185,200	197,600	200,400
Cattaraugus	183,400	185,200	197,600	200,400
Cayuga	183,400	185,200	197,600	200,400
Chautauqua	183,400	185,200	197,600	200,400
Chemung	183,400	185,200	197,600	200,400
Chenango	183,400	185,200	197,600	200,400
Clinton	183,400	185,200	197,600	200,400
Columbia	183,400	185,200	197,600	200,400
Cortland	183,400	185,200	197,600	200,400
Delaware	183,400	185,200	197,600	200,400
Dutchess	183,400	185,200	197,600	200,400
Erie	183,400	185,200	197,600	200,400
Essex	183,400	185,200	197,600	200,400
Franklin	183,400	185,200	197,600	200,400
Fulton	183,400	185,200	197,600	200,400
Genesee	183,400	185,200	197,600	200,400
Greene	183,400	185,200	197,600	200,400
Hamilton	183,400	185,200	197,600	200,400
Herkimer	183,400	185,200	197,600	200,400
Jefferson	183,400	185,200	197,600	200,400
Lewis	183,400	185,200	197,600	200,400
Livingston	183,400	185,200	197,600	200,400
Madison	183,400	185,200	197,600	200,400
Monroe	183,400	185,200	197,600	200,400
Montgomery	183,400	185,200	197,600	200,400
Nassau	193,000	194,900	208,000	210,900
Niagara	183,400	185,200	197,600	200,400
Oneida	183,400	185,200	197,600	200,400
Onondaga	183,400	185,200	197,600	200,400
Ontario	183,400	185,200	197,600	200,400
Orange	183,400	185,200	197,600	200,400
Orleans	183,400	185,200	197,600	200,400
Oswego	183,400	185,200	197,600	200,400
Ostego	183,400	185,200	197,600	200,400
Putnam	185,600	187,400	200,000	202,800
Rensselaer	183,400	185,200	197,600	200,400
Rockland	183,400	185,200	197,600	200,400
St. Lawrence	183,400	185,200	197,600	200,400
Saratoga	183,400	185,200	197,600	200,400

Ex. D: OCA FOIL Response -- Judicial Salary Increases Pursuant to Dec. 24, 2015 Report [R.722-738]

County Court	04/07/2016 - 04/05/2017	04/06/2017 - 04/04/2018	04/05/2018 - 04/03/2019	04/04/19 - 04/01/2020
Schenectady	183,400	185,200	197,600	200,400
Schoharie	183,400	185,200	197,600	200,400
Schuyler	183,400	185,200	197,600	200,400
Seneca	183,400	185,200	197,600	200,400
Steuben	183,400	185,200	197,600	200,400
Suffolk	193,000	194,900	208,000	210,900
Sullivan	183,400	185,200	197,600	200,400
Tioga	183,400	185,200	197,600	200,400
Tompkins	183,400	185,200	197,600	200,400
Ulster	185,600	187,400	200,000	202,800
Warren	183,400	185,200	197,600	200,400
Washington	183,400	185,200	197,600	200,400
Wayne	183,400	185,200	197,600	200,400
Westchester	193,000	194,900	208,000	210,900
Wyoming	183,400	185,200	197,600	200,400
Yates	183,400	185,200	197,600	200,400

Ex. D: OCA FOIL Response -- Judicial Salary Increases Pursuant to Dec. 24, 2015 Report [R.722-738]

Court	Title	04/07/2016 - 04/05/2017	04/06/2017 - 04/04/2018	04/05/2018 - 04/03/2019	04/04/19 - 04/01/20
Nassau	District Court Judge	179,500	181,300	193,500	196,200
Suffolk	District Court Judge	179,500	181,300	193,500	196,200

Ex. D: OCA FOIL Response -- Judicial Salary Increases Pursuant to Dec. 24, 2015 Report [R.722-738]

Surrogate Court	04/07/2016 - 04/05/2017	04/06/2017 - 04/04/2018	04/05/2018 - 04/03/2019	04/04/19 - 04/01/20
Albany	183,400	185,200	197,600	200,400
Broome	183,400	185,200	197,600	200,400
Bronx	193,000	194,900	208,000	210,900
Cayuga	183,400	185,200	197,600	200,400
Chautauqua	183,400	185,200	197,600	200,400
Clinton	183,400	185,200	197,600	200,400
Dutchess	191,800	193,700	206,700	209,600
Erie	183,500	185,300	197,800	200,500
Jefferson	183,400	185,200	197,600	200,400
Kings	193,000	194,900	208,000	210,900
Monroe	191,800	193,700	206,700	209,600
Montgomery	183,400	185,200	197,600	200,400
Nassau	193,000	194,900	208,000	210,900
New York	193,000	194,900	208,000	210,900
Oneida	183,400	185,200	197,600	200,400
Onondaga	191,800	193,700	206,700	209,600
Ontario	183,400	185,200	197,600	200,400
Orange	183,400	185,200	197,600	200,400
Oswego	183,400	185,200	197,600	200,400
Queens	193,000	194,900	208,000	210,900
Rensselaer	183,400	185,200	197,600	200,400
Richmond	193,000	194,900	208,000	210,900
Rockland	183,400	185,200	197,600	200,400
St. Lawrence	183,400	185,200	197,600	200,400
Saratoga	183,400	185,200	197,600	200,400
Schenectady	183,400	185,200	197,600	200,400
Steuben	183,400	185,200	197,600	200,400
Suffolk	193,000	194,900	208,000	210,900
Ulster	183,400	185,200	197,600	200,400
Westchester	193,000	194,900	208,000	210,900

Ex. D: OCA FOIL Response -- Judicial Salary Increases Pursuant to Dec. 24, 2015 Report [R.722-738]

Family Court	04/07/2016 - 04/05/2017	04/06/2017 - 04/04/2018	04/05/2018 - 04/03/2019	04/04/19 - 04/01/20
Albany	183,400	185,200	197,600	200,400
Broome	183,400	185,200	197,600	200,400
Bronx	193,000	194,900	208,000	210,900
Chautauq	183,400	185,200	197,600	200,400
Chemung	183,400	185,200	197,600	200,400
Clinton	183,400	185,200	197,600	200,400
Dutchess	183,400	185,200	197,600	200,400
Erie	183,400	185,200	197,600	200,400
Fulton	183,400	185,200	197,600	200,400
Genesee	183,400	185,200	197,600	200,400
Herkimer	183,400	185,200	197,600	200,400
Jefferson	183,400	185,200	197,600	200,400
Kings	193,000	194,900	208,000	210,900
Monroe	183,400	185,200	197,600	200,400
Montgom	183,400	185,200	197,600	200,400
Nassau	193,000	194,900	208,000	210,900
New York	193,000	194,900	208,000	210,900
Niagara	183,400	185,200	197,600	200,400
Oneida	183,400	185,200	197,600	200,400
Onondaga	183,400	185,200	197,600	200,400
Orange	183,400	185,200	197,600	200,400
Oswego	183,400	185,200	197,600	200,400
Queens	193,000	194,900	208,000	210,900
Rensselae	183,400	185,200	197,600	200,400
Richmond	193,000	194,900	208,000	210,900
Rockland	183,400	185,200	197,600	200,400
St. Lawrer	183,400	185,200	197,600	200,400
Saratoga	183,400	185,200	197,600	200,400
Schenecta	183,400	185,200	197,600	200,400
Suffolk	193,000	194,900	208,000	210,900
Sullivan	183,400	185,200	197,600	200,400
Ulster	183,400	185,200	197,600	200,400
Warren	183,400	185,200	197,600	200,400
Westches	193,000	194,900	208,000	210,900

Ex. D: OCA FOIL Response -- Judicial Salary Increases Pursuant to Dec. 24, 2015 Report [R.722-738]

Court	04/07/2016 - 04/05/2017	04/06/2017 - 04/04/2018	04/05/2018 - 04/03/2019	04/04/19 - 04/01/20
Housing Judge	173,700	175,500	187,200	189,900
Judge of the Civil Court	179,500	181,300	193,500	196,200
Judge of the Criminal Court	179,500	181,300	193,500	196,200

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City Court	04/07/2016 - 04/05/2017	04/06/2017 - 04/04/2018	04/05/2018 - 04/03/2019	04/04/19 - 04/01/2020
Albany - FT	173,700	175,500	187,200	189,900
Albany - HT				
Amsterdam - FT	173,700	175,500	187,200	189,900
Amsterdam - QT	43,500	43,900	46,800	47,500
Auburn - Acting				
Auburn - FT	173,700	175,500	187,200	189,900
Auburn - HT	86,900	87,800	93,600	95,000
Auburn - QT				
Batavia - FT	173,700	175,500	187,200	189,900
Batavia - HT				
Batavia - QT	43,500	43,900	46,800	47,500
Beacon - Acting				
Beacon - FT	173,700	175,500	187,200	189,900
Beacon - HT				
Beacon - QT	43,500	43,900	46,800	47,500
Binghamton - FT	173,700	175,500	187,200	189,900
Binghamton - HT				
Binghamton - QT				
Buffalo - FT	173,700	175,500	187,200	189,900
Canandaigua - Acting				
Canandaigua - FT	173,700	175,500	187,200	189,900
Canandaigua - HT				
Canandaigua - QT	43,500	43,900	46,800	47,500
Cohoes - HT	86,900	87,800	93,600	95,000
Cohoes - QT				
Corning - Acting				
Corning - FT	173,700	175,500	187,200	189,900
Corning - HT				
Corning - QT	43,500	43,900	46,800	47,500
Cortland - FT	173,700	175,500	187,200	189,900
Cortland - HT	86,900	87,800	93,600	95,000
Cortland - QT				
Dunkirk - Acting				
Dunkirk - FT	173,700	175,500	187,200	189,900
Dunkirk - HT				
Dunkirk - QT	43,500	43,900	46,800	47,500
Elmira - FT	173,700	175,500	187,200	189,900
Elmira - HT				
Fulton - Acting				
Fulton - FT	173,700	175,500	187,200	189,900

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City Court	04/07/2016 - 04/05/2017	04/06/2017 - 04/04/2018	04/05/2018 - 04/03/2019	04/04/19 - 04/01/2020
Fulton - HT				
Fulton - QT	43,500	43,900	46,800	47,500
Geneva - Acting				
Geneva - HT	86,900	87,800	93,600	95,000
Geneva - QT	43,500	43,900	46,800	47,500
Glen Cove - HT	86,900	87,800	93,600	95,000
Glen Cove - QT				
Glens Falls - Acting				
Glens Falls - FT	173,700	175,500	187,200	189,900
Glens Falls - QT	43,500	43,900	46,800	47,500
Gloversville - Acting				
Gloversville - FT	173,700	175,500	187,200	189,900
Gloversville - HT				
Gloversville - QT	43,500	43,900	46,800	47,500
Hornell - HT	86,900	87,800	93,600	95,000
Hornell - QT	43,500	43,900	46,800	47,500
Hudson - Acting				
Hudson - HT	86,900	87,800	93,600	95,000
Hudson - QT	43,500	43,900	46,800	47,500
Ithaca - Acting				
Ithaca - FT	173,700	175,500	187,200	189,900
Ithaca - HT				
Jamestown - Acting				
Jamestown - FT	173,700	175,500	187,200	189,900
Jamestown - HT				
Johnstown - Acting				
Johnstown - HT	86,900	87,800	93,600	95,000
Johnstown - QT	43,500	43,900	46,800	47,500
Kingston - FT	173,700	175,500	187,200	189,900
Kingston - HT				
Kingston - QT				
Lackawanna - Acting				
Lackawanna - FT	173,700	175,500	187,200	189,900
Lackawanna - HT	86,900	87,800	93,600	95,000
Lackawanna - QT				
Little Falls - Acting				
Little Falls - QT	43,500	43,900	46,800	47,500
Lockport - FT	173,700	175,500	187,200	189,900
Lockport - HT				
Lockport - QT				

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City Court	04/07/2016 - 04/05/2017	04/06/2017 - 04/04/2018	04/05/2018 - 04/03/2019	04/04/19 - 04/01/2020
Long Beach - FT	173,700	175,500	187,200	189,900
Long Beach - HT				
Long Beach - QT				
Mechanicville - Acting				
Mechanicville - QT	43,500	43,900	46,800	47,500
Middletown - FT	173,700	175,500	187,200	189,900
Middletown - HT				
Middletown - QT				
Mount Vernon - FT	173,700	175,500	187,200	189,900
Mount Vernon - HT	86,900	87,800	93,600	95,000
New Rochelle - FT	173,700	175,500	187,200	189,900
New Rochelle - HT				
Newburgh - FT	173,700	175,500	187,200	189,900
Newburgh - HT				
Niagara Falls - FT	173,700	175,500	187,200	189,900
Niagara Falls -HT				
North Tonawanda - FT	173,700	175,500	187,200	189,900
North Tonawanda - HT	86,900	87,800	93,600	95,000
North Tonawanda - QT				
Norwich - Acting				
Norwich - FT	173,700	175,500	187,200	189,900
Norwich - HT				
Norwich - QT	43,500	43,900	46,800	47,500
Ogdensburg - FT	173,700	175,500	187,200	189,900
Ogdensburg - QT	43,500	43,900	46,800	47,500
Olean - Acting				
Olean - FT	173,700	175,500	187,200	189,900
Olean - QT	43,500	43,900	46,800	47,500
Olean -HT				
Oneida - Acting				
Oneida - FT	173,700	175,500	187,200	189,900
Oneida - HT				
Oneida - QT	43,500	43,900	46,800	47,500
Oneonta - Acting				
Oneonta - HT	86,900	87,800	93,600	95,000
Oneonta - QT	43,500	43,900	46,800	47,500
Oswego - Acting				
Oswego - FT	173,700	175,500	187,200	189,900
Oswego - HT				
Oswego - QT	43,500	43,900	46,800	47,500

Ex. D: OCA FOIL Response -- Judicial Salary Increases Pursuant to Dec. 24, 2015 Report [R.722-738]

City Court	04/07/2016 - 04/05/2017	04/06/2017 - 04/04/2018	04/05/2018 - 04/03/2019	04/04/19 - 04/01/2020
Peekskill - Acting				
Peekskill - FT	173,700	175,500	187,200	189,900
Peekskill - HT	86,900	87,800	93,600	95,000
Peekskill - QT				
Plattsburgh - Acting				
Plattsburgh - FT	173,700	175,500	187,200	189,900
Plattsburgh - HT				
Plattsburgh - QT	43,500	43,900	46,800	47,500
Port Jervis - Acting				
Port Jervis - HT	86,900	87,800	93,600	95,000
Port Jervis - QT				
Poughkeepsie - FT	173,700	175,500	187,200	189,900
Poughkeepsie - HT				
Rensselaer - Acting				
Rensselaer - HT	86,900	87,800	93,600	95,000
Rensselaer - QT	43,500	43,900	46,800	47,500
Rochester - FT	173,700	175,500	187,200	189,900
Rome - FT	173,700	175,500	187,200	189,900
Rome - HT				
Rome - QT				
Rye - Acting				
Rye - FT	173,700	175,500	187,200	189,900
Rye - HT	86,900	87,800	93,600	95,000
Rye - QT				
Salamanca - Acting				
Salamanca - HT	86,900	87,800	93,600	95,000
Salamanca - QT	43,500	43,900	46,800	47,500
Saratoga Springs - Acting				
Saratoga Springs - FT	173,700	175,500	187,200	189,900
Saratoga Springs - HT				
Saratoga Springs - QT				
Schenectady - FT	173,700	175,500	187,200	189,900
Schenectady - HT				
Schenectady - QT				
Sherrill - QT	43,500	43,900	46,800	47,500
Syracuse - FT	173,700	175,500	187,200	189,900
Syracuse - HT				
Tonawanda - Acting				
Tonawanda - FT	173,700	175,500	187,200	189,900
Tonawanda - HT	86,900	87,800	93,600	95,000

Ex. D: OCA FOIL Response -- Judicial Salary Increases Pursuant to Dec. 24, 2015 Report [R.722-738]

City Court	04/07/2016 - 04/05/2017	04/06/2017 - 04/04/2018	04/05/2018 - 04/03/2019	04/04/19 - 04/01/2020
Tonawanda - QT				
Troy - 3Q	130,300	131,600	140,400	142,400
Troy - FT	173,700	175,500	187,200	189,900
Troy - HT				
Utica - FT	173,700	175,500	187,200	189,900
Watertown - FT	173,700	175,500	187,200	189,900
Watertown - QT				
Watervliet - Acting				
Watervliet - HT	86,900	87,800	93,600	95,000
Watervliet - QT				
White Plains - Acting				
White Plains - FT	173,700	175,500	187,200	189,900
White Plains - HT				
White Plains - QT				
Yonkers - FT	173,700	175,500	187,200	189,900

Appellants' September 12, 2024 Notice of Appeal 1
Judge Sober's Aug 14, 2024 "Decision, Order, and Judgment (Motion Sequence 1&2)" 3
Judge Sober's Aug 14, 2024 "Decision, Order, and Judgment (Motion Sequence 3)" 6
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Appellants' attached "Legal Autopsy"/Analysis 11

Albany County Supreme/County Court Clerk Office's September 16, 2024 Memo to Judge McGinty [R.740]

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M E M O R A N D U M

TO: Hon. Sara W. McGinty

FROM: Amy Serson

RE: Center for Judicial Accountability, et al v. NYS Commission of Legislative, Judicial and Executive Compensation

INDEX: 902654-24

DATE: September 16, 2024

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 have any questions, please feel free to contact me.

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-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.

Index No. 902654-24

MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS' MOTION TO RENEW, MOTION TO REARGUE, MOTION FOR RELIEF FROM JUDGMENT, AND MOTION TO TRANSFER

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PRELIMINARY STATEMENT

This memorandum of law is submitted on behalf of Respondents-Defendants in opposition to Petitioners-Plaintiffs' hybrid motion to renew, motion to reargue, motion for relief from judgment, and motion to transfer. *See* NYSCEF No. 83. Petitioners-Plaintiffs challenge this Court's Decisions and Orders dated August 14, 2024, which, *inter alia*, dismissed the Verified Petition/Complaint and denied all relief requested by Petitioners-Plaintiffs. *See* NYSCEF Nos. 78-81.[1] Petitioners-Plaintiffs also filed a Notice of Appeal regarding said Decisions and Orders. *See* NYSCEF No. 89. For the reasons stated below, Petitioners-Plaintiffs' motions should be denied.

STANDARD OF REVIEW

A. Motion to Renew pursuant to CPLR § 2221(e)

A motion for leave to renew is made pursuant to CPLR § 2221(e) and must be based on "*new facts* not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a *change in the law* that would change the prior determination; and shall contain reasonable justification for the failure to present such facts on the prior motion." CPLR § 2221(e)(2), (3) (emphasis added). "A renewal motion is not a second chance to remedy inadequacies that occurred in failing to exercise due diligence in the first instance, and the denial of a motion to renew will be disturbed only where it constituted an abuse of the trial court's

[1] Decision and Order dated August 14, 2024, entered as NYSCEF No. 79, denied Petitioners-Plaintiffs request for a preliminary injunction, granted Respondents-Defendants' motion to dismiss, and dismissed the Verified Petition/Complaint. NYSCEF No. 79. The second Decision and Order dated August 14, 2024, entered as NYSCEF No. 80, denied Petitioners-Plaintiffs motion for sanctions against the Office of the Attorney General and Attorney General James. NYSCEF No. 80. The third and final Decision and Order dated August 14, 2024, entered as NYSCEF No. 81, granted Respondent-Defendant Commission's motion to dismiss for lack of service and similarly dismissed the Verified Petition/Complaint as it relates to Respondent-Defendant Commission. NYSCEF No. 82.

discretion." *Matter of Vaughan v. N.Y. State Dep't of Transp.*, 223 A.D.3d 1010, 1012 (3d Dept. 2024) (quoting *Wright v. State of New York,* 192 A.D.3d 1277, 1278 (3d Dept. 2021) (internal citations omitted).

B. Motion to Reargue pursuant to CPLR § 2221(d)

A motion to reargue is made pursuant to CPLR § 2221(d) and must be based on "matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion." CPLR § 2221(d)(2). "A motion for leave to reargue is addressed to the sound discretion of the court and is properly granted upon a showing that the facts and/or law were overlooked or misapprehended by the court in determining the prior motion." *Cascade Builders Corp. v. Rugar*, 154 A.D.3d 1152, 1154 (3d Dept. 2017) (citing CPLR 2221(d)(2)) (internal citations removed).

C. Motion to Vacate / Relief from Judgment pursuant to CPLR § 5015

A motion to vacate is made pursuant to CPLR § 5015. A court may vacate judgment on motion on the grounds of:

> 1) excusable default, if such motion is made within one year after service of a copy of the judgment or order with written notice of its entry upon the moving party, or, if the moving party has entered the judgment or order, within one year after such entry; or 2) newly-discovered evidence which, if introduced at the trial, would probably have produced a different result and which could not have been discovered in time to move for a new trial under section 4404; or 3) fraud, misrepresentation, or other misconduct of an adverse party; or 4) lack of jurisdiction to render the judgment or order; or 5) reversal, modification or vacatur of a prior judgment or order upon which it is based.

CPLR § 5015(a). "A motion to vacate a prior judgment . . . is addressed to the court's sound discretion, subject to reversal only where there has been a clear abuse of that discretion." *Luderowski v. Sexton*, 152 A.D.3d 918, 920 (3d Dept. 2017) (internal quotations omitted).

ARGUMENT

POINT I

PETITIONER-PLAINTIFFS' MOTION FOR LEAVE TO RENEW SHOULD BE DENIED

Petitioner-Plaintiffs' motion for leave to renew pursuant to CPLR § 2221(e) is expressly based on the "newly-discovered evidence that the Court is not an 'Acting Supreme Court Justice.'" *See, e.g.*, NYSCEF No. 83, p. 2;[2] NYSCEF No. 84, p. 2. Petitioner-Plaintiffs' own confusion regarding the exact title of the Court (*see* NYSCEF No. 84, p. 2) is neither new facts nor a change in the law which is the required basis for a motion for leave to renew pursuant to CPLR § 2221(e).[3] CPLR § 2221(e). Petitioners-Plaintiffs cite no case law requiring the Court to "clarify" Petitioners-Plaintiffs' own understanding of the Court's judicial title, etc. *See* NYSCEF No. 84, p. 3. Petitioners-Plaintiffs otherwise provide no relevant new facts or changes in the law to warrant leave to renew. As such, Petitioners-Plaintiffs' motion for leave to renew pursuant to CPLR § 2221(e) should be denied.

POINT II

PETITIONER-PLAINTIFFS' MOTION TO REARGUE SHOULD BE DENIED

Petitioners-Plaintiffs also move to reargue pursuant to CPLR § 2221(d) based on the alleged overlooking or misapprehension of certain facts or law by the Court. Construed liberally, Petitioners-Plaintiffs allege three categories of overlooked or misapprehended items, namely "ALL dispositive facts and law," the Court's own alleged interests in the outcome of this case, and Petitioners-Plaintiffs' constitutional arguments regarding the December 4, 2023 Report by

[2] Pagination in this document refers to the page numbers created by NYSCEF.
[3] Petitioner-Plaintiff Sassower's Affirmation contains several paragraphs devoted to her "investigation" into various aspects of the Court, including the Court's title, time on the bench, and salary, all of which are irrelevant to both legal basis of the August 14, 2024 Decisions and Orders by the Court and the present motion for leave to renew. *See* NYSCEF No. 84, p. 2-3.

Respondent-Defendant Commission on Legislative, Judicial, and Executive Compensation (hereinafter "Respondent-Defendant Commission). *See* NYSCEF No. 83, p. 2.

Regarding Petitioners-Plaintiffs' claim that the Court overlooked or misapprehended "ALL dispositive facts and law," Petitioners-Plaintiffs skirt the Court's word count limit for memoranda of law by placing the entirety of their legal argument on that subject in an exhibit to an affirmation. *See id.*; *see also* NYSCEF No. 85. While this document extensively documents Petitioners-Plaintiffs' various grievances and objections to the Court's August 14, 2024 Decisions and Orders, it fails to raise any relevant facts or law that were allegedly overlooked or misapprehended by the Court. *See generally* NYSCEF No. 85. As best as can be determined, the arguments raised in Petitioners-Plaintiffs' motion and accompanying exhibits either raise issues that were not raised by Petitioners-Plaintiffs in their submissions prior to the August 14, 2024 Decisions and Orders, or raise issues that are either entirely irrelevant or which were already considered by the Court and found unavailing. *See generally id.* Instead, Petitioners-Plaintiffs continue to make unsubstantiated accusations of fraud against Respondents-Defendants, the Office of the Attorney General, and now the Court itself, simply for not reaching the same legal conclusions as Petitioners-Plaintiffs. *See generally id.*

In Petitioner-Plaintiff Sassower's affirmation, supplies no further basis for her motion to reargue beyond alleging that the Court's "salary interest as a Rensselaer County Court judge" has lead to "pervasive actual bias demonstrated by its decisions" despite no evidence to support that claim beyond the mere fact that judges do, in fact, receive salaries. *See* NYSCEF No. 84, ¶¶ 6-12. As discussed *infra* and at length in Respondents-Defendants' prior submissions (*see, e.g.,* NYSCEF No. 30, pp. 8), the mere fact that the Court's salary may be increased allegedly as a result of the report of Respondent-Defendant Commission does not preclude the Court's hearing of the

present matter. *See Ctr. for Judicial Accountability, Inc. v. Cuomo*, 167 A.D.3d 1406, 1407-08 (3d Dept. 2018).

Finally, Petitioners-Plaintiffs assert that the Court failed to consider their constitutional arguments regarding the December 4, 2023 Report by Respondent-Defendant Commission. Given the extensive briefings that Petitioners-Plaintiffs have filed in this matter, there is no indication that the Court failed to consider, overlooked, or misapprehended such arguments. More importantly, those arguments are not properly addressed in the Court's August 14, 2024 Decisions and Orders which, *inter alia*, ruled on Respondents-Defendants' pre-answer motions to dismiss, where such arguments beyond objections in point of law and instead on the merits would be improper to consider. *See, e.g.*, NYSCEF No. 52, p. 7.

As such, Petitioners-Plaintiffs have failed to establish that the Court overlooked or misapprehended relevant facts or law in deciding the August 14, 2024 Decisions and Orders, and therefore Petitioners-Plaintiffs' motion to reargue should be dismissed.

POINT III

PETITIONERS-PLAINTIFFS' MOTION TO VACATE / RELIEF FROM JUDGMENT SHOULD BE DENIED

A. Petitioners-Plaintiffs' motion to vacate is procedurally improper

A motion to vacate pursuant to CPLR § 5015(a) must be brought "with such notice as the court may direct." CPLR § 5015(a); *see also* 2023 Prac. Comm. C5015:2 ("The statute requires that there be 'such notice as the court may direct,' which means that the motion should not be brought by the usual notice of motion, but by an order to show cause by which the court can prescribe timing and method of service."). Courts have held that the failure to move for relief pursuant to CPLR § 5015(a) by order to show cause is a jurisdictional defect warranting the vacatur of any order issued on an application not compliant with these requirements. *See, e.g., Smith v.*

Smith, 291 A.D.2d 828 (4th Dept. 2002); *Bank of N.Y. Mellon v. Piercey*, 2013 NY Slip Op 51232(U) (Sup. Ct., Suffolk Cnty. July 29, 2013). The Third Department, when analyzing a similar requirement under Election Law 16-116, required the petitioners "to seek and obtain a directive from a justice or the court as to how respondents were to be notified of such proceeding" by means of an order to show cause. *Wallace v. Bujanow*, 176 A.D.3d 1307, 1308-09 (3d Dept. 2019).

Here, Petitioners-Plaintiffs have not sought an order to show cause seeking direction by the Court as to the notice required for their motion to vacate (or any other of Petitioners-Plaintiffs' present post-decision motions for relief) and instead have improperly proceeded by means of notice of motion and supporting documents. *See* NYSCEF Nos. 83-88. As such, Petitioners-Plaintiffs' motion should be denied as procedurally improper.

B. Motion to vacate pursuant to CPLR § 5015(a)(3)

Petitioners-Plaintiffs also file a motion to vacate pursuant to CPLR § 5015(a)(3) based on alleged "fraud, misrepresentation, or other misconduct of an adverse party," namely the Office of the Attorney General. *See* NYSCEF No. 83, p. 2. In their most recent moving papers, Petitioners-Plaintiffs continue their wholly baseless and free-wheeling accusations of fraud against nearly every party, attorney, and judge who comes into contact with the present case (or indeed, any of Petitioners-Plaintiffs prior cases[4]), including attorneys from the Office of the Attorney General and New York Attorney General Letitia James. Petitioners-Plaintiffs' rampant accusations of

[4] *See, e.g.*, NYSCEF No. 31, *CJA v. Cuomo*, Index No. 1788-14, at p. 5 (Albany County Sup. Ct. Oct. 9, 2014) ("Also, the Court has searched the records and found absolutely no basis to award sanctions in this matter or to take any type of disciplinary action against the AAG or any other lawyers affiliated with defendants."); NYSCEF No. 31, *Sassower v. NYS Joint Commission on Public Ethics*, Index No. 904235-22, at p. 32 (Albany County Sup. Ct. Nov. 23, 2022); *Sassower v. Gannett Co., Inc.*, 2011 NY Slip Op 32872(U), at *13 (Suffolk County Sup. Ct. Sept. 22, 2011), *aff'd Sassower v. Gannett Co., Inc.*, 109 A.D.3d 607 (2d Dept. 2013).

fraud, misrepresentation, and other misconduct were addressed at length in Respondents-Defendants' prior submissions in this case, most specifically in Respondents-Defendants' opposition to Petitioners-Plaintiffs' motion for sanctions. *See* NYSCEF No. 60. Petitioners-Plaintiffs' *modus operandi* continues to be to allege fraud whenever an opposing party disagrees with Petitioners-Plaintiffs' legal conclusions or requests for relief. Petitioners-Plaintiffs now extend those accusations to the Court itself, alleging without basis that since the Court has issued a determination(s) in Respondents-Defendants' favor, the Court by necessity has committed fraud.[5] *See, e.g.,* NYSCEF No. 85, pp. 1, 2, 11, 12, 15. Petitioners-Plaintiffs accusations of fraud, misrepresentation, misconduct, etc., against any of the parties in this matter or the Court remain at best utterly baseless and at worst completely contradicted by the record in this case.[6]

For these reasons, the reasons set forth in Respondents-Defendants' prior submissions in this matter, including but not limited to their response to Petitioners-Plaintiffs' motion for sanctions, and for the reasons relied upon by the Court in the August 14, 2024 Decisions and Orders, Petitioners-Plaintiffs' motion to vacate pursuant to CPLR § 5015(a)(3) should be denied.

C. Motion to vacate pursuant to CPLR § 5015(a)(4)

Petitioners-Plaintiffs file a separate motion to vacate pursuant to CPLR § 5015(a)(4) on the basis that the Court lacked jurisdiction to issue the August 14, 2024 Decisions and Orders. *See,*

[5] Petitioners-Plaintiffs even go as far to accuse the Court of criminal activity. *See, e.g.,* NYSCEF No. 85, pp. 1-2.

[6] For example, in Petitioners-Plaintiffs' most recent moving papers, they spend nearly three pages arguing that it was "fraud" for the Defendants-Respondents, the Office of the Attorney General, and the Court, to state that Petitioners-Plaintiffs' cross-moved for summary judgment in this matter. *See* NYSCEF No. 85, pp. 8-11 ("This is fraud … Petitioners never 'cross-moved for summary judgment.'"). This allegation is readily contradicted by Petitioners-Plaintiffs' own prior submissions in this case. *See* NYSCEF No. 49, p. 3 (Notice of Motion seeking, *inter alia*, "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.") (emphasis added).

e.g., NYSCEF No. 83, p. 2; NYSCEF No. 84, pp. 5-6; NYSCEF No. 85, pp. 1, 4. Petitioners-Plaintiffs base this motion on the argument that the Court lacked jurisdiction because the Court was disqualified pursuant to Judiciary Law § 14. However, as discussed below, the Third Department has already held that New York State courts can hear identical claims by Petitioners-Plaintiffs and that New York judges are not disqualified under Judiciary Law § 14 on such matters. *Ctr. for Judicial Accountability, Inc. v. Cuomo*, 167 A.D.3d 1406, 1407-08 (3d Dept. 2018). For this reason, as well as those provided by Respondents-Defendants in their prior submissions in this case, and for the reasons relied upon by the Court in the August 14, 2024 Decisions and Orders, Petitioners-Plaintiffs' motion to vacate for lack of jurisdiction should be denied.

POINT IV

PETITIONER-PLAINTIFFS' MOTION TO TRANSFER SHOULD BE DENIED

As was argued by Respondent-Defendant in their motion in opposition to Petitioners-Plaintiffs' request for a preliminary injunction and Respondent-Defendant's cross-motion to dismiss, a federal court lacks jurisdiction over this special proceeding and any attempt to transfer this case to a federal court would thus be futile. *See* NYSCEF No. 30, p. 7. Petitioners-Plaintiffs also chose Albany County Supreme Court as the venue of this matter but now seeks to transfer venue, a right which they have forfeited by selecting Albany Supreme Court in the first place. *See, e.g., Papadakis v. Command Bus Co.*, 91 A.D.2d 657, 658 (2d Dept. 1982). Petitioners-Plaintiffs' continued argument that Judiciary Law § 14 compels such a transfer remains unavailing, again in light of the recent Third Department ruling involving this very same issue and very same Petitioners-Plaintiffs. *Ctr. for Judicial Accountability, Inc. v. Cuomo*, 167 A.D.3d at 1407-08. As such, and for the reasons set forth by the Court in the August 14, 2024 Decisions and Orders, Petitioners-Plaintiffs' motion to transfer must be denied.

POINT V

PETITIONER-PLAINTIFF'S MOTION FOR COSTS SHOULD BE DENIED

For the above reasons, Petitioner-Plaintiff's various motions should be denied and as such Petitioner-Plaintiff is not entitled to any costs associated with the filing of said motion(s), and therefore Petitioner-Plaintiff's motion for costs and other miscellaneous relief should be denied.

CONCLUSION

For the reasons discussed above, and in Respondents-Defendant's previously-submitted papers filed in this matter, and for the reasons relied upon by the Court in the August 14, 2024 Decisions and Orders, Petitioners-Plaintiffs' motions to renew, reargue, vacate, and transfer should be denied.

Dated: September 27, 2024

LETITIA JAMES
Attorney General
State of New York
Attorney for Respondents-Defendants
The Capitol
Albany, New York 12224

By: s/ Noah C. Engelhart

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TO: Elena Ruth Sassower
Petitioner Pro Se
(Via NYSCEF and U.S. Mail)

Center for Judicial Accountability, Inc.
Petitioner
(Via NYSCEF and U.S. Mail)

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 2,720. 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

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

Petitioners/Plaintiffs,

Petitioners' October 2, 2024 Reply Affirmation in Further Support of September 12, 2024 Motion

-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

ELENA RUTH SASSOWER, affirms the following to be true under penalties of perjury, pursuant to CPLR §2106:

1. I am the unrepresented individual petitioner/plaintiff,[1] fully familiar with all the facts, papers, and proceedings heretofore had.

2. This affirmation is submitted in reply to Respondent Attorney General Letitia James' September 27, 2024 memorandum of law in opposition to petitioners' September 12, 2024 motion for renewal, reargument, and relief from judgment upon transfer of this case to federal court – and in further support of the motion.

3. Such September 27, 2024 opposition by Respondent AG James' "of counsel" Noah Engelhart (NYSCEF #92) reinforces petitioners' entitlement to ALL the relief their September 12, 2024 notice of motion seeks (NYSCEF #83). As with AAG Engelhart's prior submissions, it is a flagrant "fraud on the court", fashioned on conclusory falsehoods, in the absence of ANY defense. Just as those prior submissions met the definition of "frivolous conduct" pursuant to NYCRR §130-1.1(c), so too this instant opposition, mandating maximum $10,000 sanctions, with an award of costs to petitioners, here requested.

4. The particulars of this latest fraud are hereinafter set forth by a "legal autopsy"[2]/analysis of AAG Engelhart's five-point "Argument" and "Conclusion", preceded by a Table of Contents.

[1] For simplicity, petitioners/plaintiffs are hereinafter referred to as petitioners and respondents/defendants are referred to as respondents.

[2] 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 "…Performance assessment cannot occur without close examination of the trial record, briefs, oral argument and the like…" (p. 53)).

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* * *

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).[3] He 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.

AAG Engelhart's Fraudulent Point II:
"Petitioner-Plaintiffs' Motion to Reargue Should be Denied (at pp. 3-5)

The facts and law entitling petitioners' to the granting of the second branch of their motion, for reargument (NYSCEF #83), are set forth by ¶¶2, 6-12, 15 of their moving affirmation (NYSCEF #84) – and, most importantly, by its Exhibit A "27-page, single-spaced 'legal autopsy'/analysis of [Judge Sober's] three August 14, 2024 decisions".

AAG Engelhardt does not contest the accuracy of ¶¶2, 6-12, 15 – and, with one fraudulent exception,[4] does not contest the accuracy of the Exhibit A "legal autopsy"/analysis. Instead, he offers up five paragraphs, each fraudulent:

The first paragraph (at pp. 3-4) – citing to petitioners' September 12, 2024 notice of motion (NYSCEF #83) – purports that its requested reargument relief has to be "Construed liberally" in order to ascertain what it seeks. This is false, as the reargument branch is clear as a bell as to its requested relief – and why:

> "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
>
> (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

[3] 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).

[4] *See* p. 10, *infra*.

> 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".

AAG Engelhart's first paragraph conceals the above subparagraphs (a) and (b) by transmogrifying them as:

> "the Court's own alleged interests in the outcome of this case, and Petitioners-Plaintiffs' constitutional arguments regarding the December 4, 2023 Report by Respondent-Defendant Commission on Legislative, Judicial and Executive Compensation".

This concealment of the actual subparagraphs (a) and (b) is replicated in his corresponding third and fourth paragraphs of his Point II.

The second paragraph (at p. 4) disposes of petitioners' dispositive "legal autopsy"/analysis of Judge Sober's three decisions by its first two sentences, as follows:

> "Regarding Petitioners-Plaintiffs' claim that the Court overlooked or misapprehended 'ALL dispositive facts and law,' Petitioners-Plaintiffs skirt the Court's word count limit for memoranda of law by placing the entirety of their legal argument on that subject in an exhibit to an affirmation. *See id.*; *see also* NYSCEF No. 85. While this document extensively documents Petitioners-Plaintiffs' various grievances and objections to the Court's August 14, 2024 Decisions and Orders, it fails to raise any relevant facts and law that were allegedly overlooked or misapprehended by the Court. *See* generally NYSCEF No. 85." (underlining added).

This is fraud, instantaneously verifiable from the most cursory examination of the "legal autopsy"/analysis (NYSCEF #85) – all of whose facts and law are "relevant" to petitioners' entitlement to reargument, which is why AAG Engelhart furnishes no example of any that are not "relevant".

AAG Engelhart then continues with two last sentences extending to the whole of the motion stating:

> "As best can be determined, the arguments raised in Petitioners-Plaintiffs' motion and accompanying exhibits either raise issues that were not raised by Petitioners-Plaintiffs in their submissions prior to the August 14, 2024 Decisions and Orders, or raise issues that are either entirely irrelevant or which were already considered by the Court and found unavailing. *See generally id.* Instead, Petitioners-Plaintiffs continue to make unsubstantiated accusations of fraud against Respondents-Defendants, the Office of the Attorney General, and now the Court itself, simply for not reaching the same legal conclusions as Petitioners-Plaintiffs. *See generally id*." (underlining added).

This is multitudinously fraudulent:

(1) There is nothing unclear about petitioners' motion papers – and AAG Engelhardt furnishes no example of what he is talking about;

(2) petitioners could not raise issues pertaining to the August 14, 2024 decision/orders prior to them being rendered – and AAG Engelhardt furnishes no example of what he is talking about;

(3) petitioners have not raised issues that are "irrelevant", let alone "entirely irrelevant" – and AAG Engelhardt furnishes no example of what he is talking about;

(4) petitioners have not raised issues "already considered by the Court and found unavailing" – and AAG Engelhardt furnishes no example of what he is talking about;

(5) petitioners had not made "unsubstantiated accusations of fraud" – and AAG Engelhardt furnishes no example of what he is talking about.

The third paragraph (at pp. 4-5) then further obliterates the "legal autopsy"/analysis on which the reargument branch rests and conceals its request that Judge Sober disclose her "financial and other interests", stating:

"In Petitioner-Plaintiff Sassower's affirmation, (sic) supplies no further basis for her motion to reargue beyond alleging that the Court's 'salary interest as a Rensselaer County Court judge' has lead to 'pervasive actual bias demonstrated by its decisions' despite no evidence to support that claim beyond the mere fact that judges do, in fact, receive salaries. *See* NYSCEF No. 84, ¶¶ 6-12. As discussed *infra* and at length in Respondents-Defendants' prior submissions (*see, e.g.*, NYSCEF No. 30, pp. 8), the mere fact that the Court's salary may be increased allegedly as a result of the report of Respondent-Defendant Commission does not preclude the Court's hearing of the present matter. *See Ctr. for Judicial Accountability, Inc. v. Cuomo*, 167 A.D.3d 1406, 1407-08 (3d Dept. 2018)."

Again, this is multitudinously fraudulent:

(1) petitioners' "claim" of Judge Sober's "pervasive actual bias" is fully substantiated by their Exhibit A "legal autopsy"/analysis of her August 14, 2024 decisions;

(2) the motivation for Judge Sober's "pervasive actual bias" was her "financial and other interests" in the judicial salary increases at issue in this case – detailed by petitioners' moving affirmation's ¶¶6-10 in support of disclosure (NYSCEF #84);

(3) there is nothing "allegedly" about the increase to Judge Sober's salary resulting from Respondent Commission's report, which she benefitted from, effective April 1, 2024 (NYSCEF #47), (NYSCEF #85, pp. 6-7); and

(4) the 2018 decision in *CJA v. Cuomo…DiFiore* is a judicial fraud, starting with its cover-up of the jurisdictional bar of Judiciary Law §14, precluding invocation of "rule of necessity" – fully substantiated by the record before Judge Sober on

> petitioners' March 19, 2024 order to show cause to determine threshold issues, and reiterated repeatedly by petitioners, in response to Respondent AG James' continued urging of *CJA v. Cuomo…DiFiore* as authority (NYSCEF #85, pp. 11-12) .

The fourth paragraph (at p. 5) then conceals the constitutional issue sought to be determined upon reargument, stating:

> "Finally, Petitioners-Plaintiffs assert that the Court failed to consider their constitutional arguments regarding the December 4, 2023 Report by Respondent-Defendant Commission. Given the extensive briefings that Petitioners-Plaintiffs have filed in this matter, there is no indication that the Court failed to consider, overlooked, or misapprehended such arguments. More importantly, those arguments are not properly addressed in the Court's August 14, 2024 Decisions and Orders which, *inter alia*, ruled on Respondents-Defendants' pre-answer motions to dismiss, where such arguments beyond objections in point of law and instead on the merits would be improper to consider. *See, e.g.*, NYSCEF No. 52, p. 7."

This is fraud, concealing the unconstitutionality of Chapter 60, Part E, of the Laws of 2015 that the motion identifies[5] as created by the Judge Sober's decisions/orders/judgments, let alone denying or disputing it. As for the "More importantly" pretense that Judge Sober did not have to address such constitutional issue in ruling on Respondent AG James' "pre-answer motions to dismiss", because such would be "beyond objections in law", this is fraud – already exposed as such.

Thus, AAG Engelhart's cited-to NYSCEF #52 "p. 7" is his April 11, 2024 memorandum of law in reply to petitioners' April 3, 2024 opposition to his dismissal cross-motion, stating:

> "It would be inappropriate for Respondents to have addressed Petitioners' factual claims in a motion to dismiss, as such a motion is limited to objections in point of law. CPLR §7804(f); see also CPLR §3211(a)."

This is fraud -- and petitioners set this forth by their April 25, 2024 reply affidavit in further support of their April 3, 2024 motion for sanctions and other relief against Respondent AG James and her "of counsel" accomplices, by its Exhibit A (NYSCEF #62), which stated (at p. 12):

- "CPLR §7804(f) and CPLR §3211(a) do not permit concealment and falsification of the 'factual claims' of a pleading, all of which are required to be 'deemed true'; and

- "objections in point of law" – for which Respondent AG James furnishes no definition – does not mean that 'It would be inappropriate' to address 'Petitioners' factual claims'. To the contrary, it means 'threshold objections of the kind listed in CPLR 3211(a)', *Matter of Hull-Hazard, Inc. v. Roberts*, 129 AD2d 348 (3d Dept 1987) – and those require the pleaded 'factual claims' be 'deemed true".

[5] In addition to the identification of the constitutional issue in the notice of motion (NYSCEF #83) and at ¶15 of petitioners' moving affirmation (NYSCEF #84), *see* pp.9-10 of the "legal autopsy"/analysis (NYSCEF #85).

The fifth paragraph, of one-sentence (at p. 5), states:

> "As such, Petitioners-Plaintiffs have failed to establish that the Court overlooked or misapprehended relevant facts and law in deciding the August 14, 2024 Decisions and Orders, and therefore Petitioners-Plaintiffs' motion to reargue should be dismissed." (underlining added).

This is fraud – AAG Engelhart's four preceding paragraphs having totally failed to establish anything other than petitioners' absolute entitlement to the reargument branch of their motion.

AAG Engelhart's Fraudulent Point III:
"Petitioners-Plaintiffs' Motion to Vacate/Relief from Judgment Should be Denied" (at pp. 5-8)

The facts and law entitling petitioners to the third branch of their motion, for vacatur/relief from judgment, by a jurisdictionally-empowered tribunal (NYSCEF #83), are set forth by ¶¶2, 13-14 of their moving affirmation (NYSCEF #84).

In the complete absence of any merits defense, AAG Engelhart argues (at pp. 5-6), under the heading "**A. Petitioners-Plaintiffs' motion to vacate is procedurally improper**", that CPLR §5015 requires that motions pursuant thereto be brought on by order to show cause, and cites to caselaw for the proposition that failure to do so is "a jurisdictional defect warranting the vacatur of any order issued on an application not compliant with those requirements".

It is incongruous, in the extreme, for AAG Engelhart to so-argue, inasmuch as he defied all procedural and legal requirements by his March 26, 2024 "cross-motion" and May 3, 2024 motion -- which Judge Sober rewarded – and has steadfastly refused to confront the jurisdictional issues pertaining to Judiciary Law §14 and "rule of necessity", also rewarded and copied by Judge Sober. In any event, AAG Engelhart makes no claim that petitioners' notice of motion (NYSCEF #83), giving respondents 17 days within which to interpose their answering papers, disadvantaged them in any way – and, indeed, they were not.

Contrary to AAG Engelhart's title heading, petitioners do not seek vacatur but, as stated by their notice of motion and moving affirmation (at ¶¶12-13), "only the determinations that would enable a jurisdictionally-empowered tribunal to vacate [Judge Sober's three August 14, 2024 decisions/orders/judgments]". As these are essentially the same determinations as the motion seeks in connection with its reargument branch, denial of the branches pertaining to CPLR §§5015(a)(3) and (a)(4), on procedural grounds, would have no practical effect.

AAG Englehart's "**B. Motion to vacate pursuant to CPLR §5015(a)(3)**" (at pp. 6-7) is, by its title and two paragraphs, fraudulent.

The first paragraph, consisting of six sentences, begins:

> "Petitioners-Plaintiffs also file a motion to vacate pursuant to CPLR §5015(a)(3) based on alleged "fraud, misrepresentation, or other misconduct of an adverse party," namely the Office of the Attorney General. *See* NYSCEF No. 83, p. 2."

This is fraud. No separate "motion" has been filed – and the relief sought pursuant to CPLR §5015(a)(3) is, as stated by the third branch of petitioners' notice of motion:

> "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".

The second sentence reads:

> "In their most recent moving papers, Petitioners-Plaintiffs continue their wholly baseless and free-wheeling accusations of fraud against nearly every party, attorney, and judge who comes into contact with the present case (or indeed, any of Petitioners-Plaintiffs prior cases[fn4]), including attorneys from the Office of the Attorney General and New York Attorney General Letitia James. (underlining added).

This is fraud. Petitioners have NEVER made "baseless" "free-wheeling accusations of fraud" – and AAG Engelhart's annotating footnote 4 with three "prior cases" does not establish the contrary. Indeed, the footnote itself indicates that two of the four cited decisions[6] are part of NYSCEF #31, not identifying this as AAG Engelhart's "Appendix of Unreported Decisions" that accompanied his March 26, 2024 opposition/dismissal "cross-motion" – or that their fraudulence was already proven by petitioners' March 29, 2024 reply affidavit whose Exhibit C furnished a "legal autopsy"/analyses of each (NYSCEF #37). As for the two other decisions of his footnote 4, they are also fraudulent – as examination of the record of the single case from which they emerge readily proves.[7] It is accessible from CJA's website, here.

Having detoured to other cases, as to which AAG Engelhart has no personal knowledge and claims no familiarity with the record, he then continues with this case, stating, by his third sentence:

> "Petitioners-Plaintiffs' rampant accusations of fraud, misrepresentation, and other misconduct were addressed at length in Respondents Defendants' prior submissions in this case, most specifically in Respondents-Defendants' opposition to Petitioners-Plaintiffs' motion for sanctions. *See* NYSCEF No. 60." (underlining added).

Again, fraud. The referred-to NYSCEF #60 is the April 19, 2024 memorandum of law of AAG Englehart's supervisor, AAG John Moore, in opposition to petitioners' April 3, 2024 motion for sanctions and other relief against Respondent AG James and her complicit attorney staff and her co-respondents (NYSCEF #49). The fraudulence of AAG Moore's memorandum was detailed, with

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[6] These two decisions are the October 9, 2014 decision in *CJA v. Cuomo, et al*. (Albany #1788-14) and the November 23, 2022 decision in *CJA v. JCOPE, et al*. (Albany #904235-22).

[7] The case is *CJA v. Gannett* – and the decisions are Suffolk County Supreme Court's September 22, 2011 decision (NY Slip Op 32872(U), and the Appellate Division, Second Department's 2013 affirmance, 109 A.D.3d 607.

.

line-by-line precision, by petitioners' April 25, 2024 reply affidavit (NYSCEF #62), whose ¶3 described it as "an additional flagrant act of 'frivolous conduct' as defined by NYCRR §130-1.1(c)[fn] – indeed is far more serious than that, being yet further 'fraud on the court'", with the balance of the reply affidavit demonstrating this.

This April 3, 2024 motion was NOT determined by Judge Sober. Rather, her August 14, 2024 decision/order/judgment on "Motion Sequence 3" dismissed it as "rendered moot" by her August 14, 2024 decision/order/judgment on "Motion Sequence 1&2" (NYSCEF #80, NYSCEF #79). This judicial fraud, covering up Respondent AG James' litigation fraud, is particularized throughout petitioners' Exhibit A "legal autopsy"/analysis (NYSCEF #85, including pp. 2, 20-24, pertaining to the "Motion Sequence 3" decision/order/judgment), but AAG Engelhart addresses none of it.

The fourth, fifth, and sixth sentences then reprises the fraud of AAG Engelhart's prior sentences:

> "Petitioners Plaintiffs' *modus operandi* continues to be to allege fraud whenever an opposing party disagrees with Petitioners-Plaintiffs' legal conclusions or requests for relief. Petitioners-Plaintiffs now extend those accusations to the Court itself, alleging without basis that since the Court has issued a determination(s) in Respondents-Defendants' favor, the Court by necessity has committed fraud.[fn5] *See, e.g.,* NYSCEF No. 85, pp. 1, 2, 11, 12, 15. Petitioners-Plaintiffs accusations of fraud, misrepresentation, misconduct, etc., against any of the parties in this matter or the Court remain at best utterly baseless and at worst completely contradicted by the record in this case.[fn6] (underlining added).

This is fraud – including by its citation to "NYCEF No. 85, pp. 1, 2, 11, 12, 15", which is petitioners' "legal autopsy"/analysis of Judge Sober's decisions, rebutting these very sentences. As for AAG Engelhart's annotating footnotes 5 and 6, each cite to pages of "NYSCEF No. 85", likewise, rebutting these three sentences. Suffice to say that as to footnote 6, AAG Engelhart purports to give an example of how petitioners allegations are "completely contradicted by the record in this case", stating:

> "For example, in Petitioners-Plaintiffs' most recent moving papers, they spend nearly three pages arguing that it was 'fraud' for the Defendants-Respondents, the Office of the Attorney General, and the Court, to state that Petitioners-Plaintiffs' cross-moved for summary judgment in this matter. See NYSCEF No. 85, pp. 8-11 ('This is fraud … Petitioners never 'cross-moved for summary judgment.''). **This allegation is readily contradicted by Petitioners-Plaintiffs' own prior submissions in this case**. *See* NYSCEF No. 49, p. 3 (Notice of Motion seeking, *inter alia*, '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.') ([underlining] added)." (bold added).

This is fraud. Petitioners never "cross-moved for summary judgment" – and this is summarized by the cited "NYSCEF No. 85, pp. 8-11" and NOT contradicted by the cited-to and quoted-from "NYSCEF No. 49, p. 3".

The second paragraph, consisting of a single sentence, reads:

> "For these reasons, the reasons set forth in Respondents-Defendants' prior submissions in this matter, including but not limited to their response to Petitioners-Plaintiffs' motion for sanctions, and for the reasons relied upon by the Court in the August 14, 2024 Decisions and Orders, Petitioners-Plaintiffs' motion to vacate pursuant to CPLR §5015(a)(3) should be denied."

This is fraud upon fraud. The "reasons" presented by AAG Engelhart's six-sentence previous paragraph are frauds, as hereinabove demonstrated. As for the "reasons" from respondents' "prior submissions in this matter", including as adopted by Judge Sober's August 14, 2024 decisions/orders/judgments, their fraudulence is the subject of petitioners' Exhibit A "legal autopsy"/analysis of the August 14, 2024 decisions/orders/judgments (NYSCEF #85), the accuracy of which AAG Engelhart does not contest, other than by his footnote 6, which is fraudulent.

AAG Englehart's "**C. Motion to vacate pursuant to CPLR §5015(a)(4)**" (at pp. 7-8) is, by its title and its single paragraph, repetitively fraudulent.

The first sentence reads:

> "Petitioners-Plaintiffs file a separate motion to vacate pursuant to CPLR § 5015(a)(4) on the basis that the Court lacked jurisdiction to issue the August 14, 2024 Decisions and Orders. *See, e.g.*, NYSCEF No. 83, p. 2; NYSCEF No. 84, pp. 5-6; NYSCEF No. 85, pp. 1, 4."

This is fraud. Petitioners have filed no "separate motion", but rather seek relief pursuant to CPLR §5015(a)(4) by the fourth branch of a combined motion (NYSCEF #83), not for vacatur, but:

> "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 before the Court".

The remaining three sentences read:

> "Petitioners Plaintiffs base this motion on the argument that the Court lacked jurisdiction because the Court was disqualified pursuant to Judiciary Law §14. However, as discussed below, the Third Department has already held that New York State courts can hear identical claims by Petitioners Plaintiffs and that New York judges are not disqualified under Judiciary Law §14 on such matters. *Ctr. for Judicial Accountability, Inc. v. Cuomo,* 167 A.D.3d 1406, 1407-08 (3d Dept. 2018). For this reason, as well as those provided by Respondents-Defendants in their prior submissions in this case, and for the reasons relied upon by the Court in the August 14, 2024 Decisions and Orders, Petitioners-Plaintiffs' motion to vacate for lack of jurisdiction should be denied."

This is fraud, replicating the frauds of Respondent AG James' prior submissions, already exposed by petitioners' responding submissions. Judiciary Law §14 is more than a disqualification statute, it divests jurisdiction from an interested judge and the Third Department's 2018 decision in *CJA v. Cuomo…DiFiore* – which entirely conceals any jurisdictional issue – is a fraud. As for the "reasons relied upon by [Judge Sober]", whose August 14, 2024 decision on "Motion Sequence 1&2" (NYSCEF #79) make no mention of Judiciary Law §14, let alone any jurisdictional issue pertaining thereto, its fraudulence with respect to same is particularized by petitioners' Exhibit A "legal autopsy"/analysis (NYSCEF #85, at pp. 11-12) – without contest from AAG Engelhart.

AAG Engelhart's Fraudulent Point IV
"Petitioner-Plaintiffs' Motion to Transfer Should be Denied" (at p 8)

The facts and law entitling petitioners' to the fifth branch of their motion, transferring this case to federal court (NYSCEF #83), are set forth by the fifth branch itself:

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

In lieu of response, AAG Engelhart spews out a four-sentence paragraph whose first three sentences reprise, in summary, Point I of his March 26, 2024 memorandum of law in opposition to petitioners' March 19, 2024 order to show cause and in support of his dismissal cross-motion (NYSCEF #30, at pp. 7-8), whose fraudulence was detailed by petitioners' March 29, 2024 reply affidavit (NYCEF #33, at pp. 3-5).

The "guarantee clause" of Article IV §4 of the United States Constitution, which Respondent AG James has never addressed, notwithstanding petitioners highlighted it, from the outset (NYSCEF #85, p. 5), is dispositive – and certification of the question, arising from the jurisdictional bar of Judiciary Law §14, would clearly remove any doubt.

AAG Engelhart's Fraudulent Point V:
"Petitioner-Plaintiffs' Motion for Costs Should be Denied" (at p 9)

The facts and law entitling petitioners to the sixth branch of their motion, for "such other and further relief as may be just and proper, including $100 motion costs pursuant to pursuant to CPLR §8202", are established by AAG Engelhart's fraudulent opposition, as hereinabove demonstrated.

The entirety of AAG Engelhart's response to this branch is a single sentence:

> "For the above reasons, Petitioner-Plaintiffs' various motions should be denied and as such Petitioner-Plaintiff is not entitled to any costs associated with the filing of said motion(s), and therefore Petitioner-Plaintiff's motion for costs and other miscellaneous relief should be denied." (underlining added).

As AAG Engelhart's "above reasons" are a succession of flagrant frauds, the "further relief" that is "just and proper" would necessarily include referring him and supervising attorneys, including Respondent AG James, and her co-respondents, to disciplinary and criminal authorities – consistent with the mandatory "shall" language of §100.3(D)(2) of the Chief Administrator's Rules Governing Judicial Conduct, "Disciplinary Responsibilities":

> "A judge who receives information indicating a substantial likelihood that a lawyer has committed a substantial violation of the Rules of Professional Conduct (22 NYCRR Part 1200) shall take appropriate action."

Such is now expressly sought.

AAG Engelhard's Fraudulent "Conclusion" (at p. 9)

> AAG Engelhart's one-sentence "Conclusion" reads:
>
> "For the reasons discussed above, and in Respondents-Defendant's previously-submitted papers filed in this matter, and for the reasons relied upon by the Court in the August 14, 2024 Decisions and Orders, Petitioners-Plaintiffs' motions to renew, reargue, vacate, and transfer should be denied."

In other words, AAG Englehart urges upon the Court "reasons" he knows to be frauds, as hereinabove demonstrated and by petitioners' Exhibit A "legal autopsy"/analysis (NYSCEF #85).

s/

_____

ELENA RUTH SASSOWER

Dated: White Plains, New York
October 2, 2024

STATEMENT PURSUANT TO 22 NYCRR §202.8-b

I, Elena Ruth Sassower, affirm under penalty of perjury pursuant to CPLR §2106 that the total number of words in the foregoing reply affirmation, excluding the first page caption and CPLR §2106 attestation, the page 3 table of contents, and the final page signature block and dating, is 4,408. This exceeds by 208 words the 4,200 word count of 22 NYCRR 202.8-b(a), but such overage was necessary to deal with the magnitude of the fraud committed by AAG Engelhart, infecting virtually every sentence of his "Argument" and his single-sentence "Conclusion. In determining the number of words, I relied upon the word count of the computer on which I prepared the reply affirmation.

s/

_____

ELENA RUTH SASSOWER

Ex A: OCA's September 16, 2024 FOIL acknowledgment [R.768-771]

From: FOIL <FOIL@nycourts.gov>
Sent: Monday, September 16, 2024 9:42 AM
To: Center for Judicial Accountability, Inc. (CJA); FOIL
Cc: 3rd JD Administration; Amy Serson

Subject: **RE: FOIL/Records Request: Rensselaer County Court Judge Jennifer Sober, Compliance with Court Rules -- & CJA v. NYS Commission on Legislative, Judicial & Executive Compensation (Albany Supreme Court #902654-24)**

The Office of Court Administration acknowledges receipt of your FOIL request dated 9/10/2024, seeking:

(1) the 2024 Judicial Assignment Book for the 3rd Judicial District;

(2) records pertaining to what 22 NYCRR Part 22 was – or where it now is – as the Chief Judge's Rules on the Unified Court System's website skips Part 22.

(3) records reflecting the designation, if any, of Rensselaer County Court Judge Sober to be an acting Supreme Court justice and of her redesignation(s), pursuant to Part 121 of the Chief Administrative Judge's Rules entitled "Temporary Assignment Of Judges To The Supreme Court" and Part 33 of the Chief Judge's Rules entitled "Temporary Assignment Of Justices And Judges".

(4) records reflecting that Judge Sober's salary is that of a Rensselaer County Court judge, not a Supreme Court justice, and that she receives and has received no additional compensation for work connected with Supreme Court assignments;

(5) records of the "approval of the Deputy Chief Administrative Judge and Presiding Justice of the Appellate Division" of Judge Sober's assignment to the hybrid Article 78 proceeding/declaratory judgment action/citizen-taxpayer action *Center for Judicial Accountability, Inc., et al. v. New York State Commission on Legislative, Judicial and Executive Compensation, et al.* (Albany County Supreme Court, #902654-24) – an assignment that spanned 138 days from the March 29, 2024 return date of petitioners' March 19, 2024 order to show cause (NYSCEF #17) to the three decisions/orders/judgments she rendered on August 14, 2024 and signed as "Acting Supreme Court Justice" (NYSCEF #79, NYSCEF #80, NYSCEF #81);

(6) records of Judge Sober's compliance with Part 04 of the Rules of the Chief Judge entitled "Reports Of Pending Matters", whose Section 4.1 requires "a statement from every judge and justice of every court indicating the matters which have been pending undecided before such judge or justice for a period of 60 days after final submission and the reasons therefor", and, specifically, of Judge Sober's compliance with respect to *CJA v. Commission on Legislative, Judicial and Executive Compensation*, wherein, by June 17, 2024 and July 30, 2024 letters (NYSCEF #77), (NYSCEF #78), to which Judge Sober did not respond, petitioners asserted that the only reason for her violation of the 60-day time frame for determining motions pursuant to 22 NYCRR §202.8(h) and violation of State Finance Law §123-c(4), requiring citizen-taxpayer actions to be "promptly determined" and "have preference over all other causes in all courts", was her "actual bias arising from [her] direct financial interest in this lawsuit", proscribed by Judiciary Law §14 and divesting her of jurisdiction "as to which, in the absence of jurisdiction and because of the availability of federal judges, the judge-made 'rule of necessity' cannot be invoked";

(7) records of Judge Sober's requests, if any, pursuant to 22 NYCRR §202.8(h)(1), for an "automated open motion report of all motions pending before [her] which appeare[d] undecided 60 days after final submission", to "assist [her] in preparing the quarterly report of pending civil matters required by section 4.1 of the Rules of the Chief Judge" for any portion of the period from May 29, 2024 to August 14, 2024 – this being "her official quarterly report";

(8) records of actions taken by supervising judges with respect to Judge Sober's "official quarterly report" and Section 4.1 statement for any portion of the period from May 29, 2024 to August 14, 2024;

(9) the Chief Administrative Judge's written instructions and blank forms for Section 4.1 statements, pursuant to Part 04 of the Chief Judge's Rules, and for "official quarterly report(s)".

We have begun to process your request and we will provide you with a status update on or before October 15, 2024.

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Tuesday, September 10, 2024 12:28 PM
To: FOIL <FOIL@nycourts.gov>
Cc: 3rd JD Administration <3rdjdadministration@nycourts.gov>; Amy Serson <aserson@nycourts.gov>

Subject: FOIL/Records Request: Rensselaer County Court Judge Jennifer Sober, Compliance with Court Rules -- & CJA v. NYS Commission on Legislative, Judicial & Executive Compensation (Albany Supreme Court #902654-24)

TO: Unified Court System FOIL Officer/Assistant Deputy Counsel Diane Turo

The Unified Court System's website has a "Courts" webpage linking to a webpage for "County Court", whose link for Rensselaer County combines Supreme and County Courts. It does not indicate who the Rensselaer County Court judges are – or that, pursuant to Judiciary Law §182, there would be two. It does list three "Acting Supreme Court Justices": Adam W. Silverman, Debra J. Young, and Jennifer Sober, whose profiles are not linked. The profiles are, however, accessible from the Unified Court System website. They reflect:

- that Adam Silverman was appointed to the Court of Claims in 2020 by Governor Andrew Cuomo, and, from 2020-2022, was designated an acting Supreme Court justice by Chief Administrative Judge Lawrence Marks and, from 2023 to the present, so-designated by Acting Chief Administrative Judge Tamiko Amiker;

- that Debra Young was elected to Rensselaer County Court in 2013 and re-elected in 2023, and, from 2015 to the present, was designated to be an acting Supreme Court justice by Chief Administrative Judge Gail Prudenti, who also appointed her, in 2015 to the present, to be supervising judge for the 3rd Judicial District of the criminal term of the Rensselaer County Court;

- Jennifer Sober was elected to Rensselaer County Court in 2017.

Although the Third Judicial District's website has not posted its 2024 Judicial Assignment Book, it does post its 2023 Judicial Assignment Book. It identifies (at its unmarked page 12) Judge Sober as "designated pursuant to article VI, section 26 of the New York State Constitution and 22 NYCRR Parts 22 and 121, as eligible for being selected by the District Administrative Judge for temporary assignments to Supreme Court during the calendar year 2023", but states "These assignments are not to exceed 20 days without the approval of the Deputy Chief Administrative Judge and Presiding Justice of the Appellate Division."

Pursuant to Public Officers Law Article VI ("Freedom of Information Law") and Part 124 of the Chief Administrator's Rules ("Public Access to Records"), this is to request:

(1) the 2024 Judicial Assignment Book for the 3rd Judicial District;

(2) records pertaining to what 22 NYCRR Part 22 was – or where it now is – as the Chief Judge's Rules on the Unified Court System's website skips Part 22.

(3) records reflecting the designation, if any, of Rensselaer County Court Judge Sober to be an acting Supreme Court justice and of her redesignation(s), pursuant to Part 121 of the Chief Administrative Judge's Rules entitled "Temporary Assignment Of Judges To The Supreme Court" and Part 33 of the Chief Judge's Rules entitled "Temporary Assignment Of Justices And Judges".

(4) records reflecting that Judge Sober's salary is that of a Rensselaer County Court judge, not a Supreme Court justice, and that she receives and has received no additional compensation for work connected with Supreme Court assignments;

(5) records of the "approval of the Deputy Chief Administrative Judge and Presiding Justice of the Appellate Division" of Judge Sober's assignment to the hybrid Article 78 proceeding/declaratory judgment action/citizen-taxpayer action *Center for Judicial Accountability, Inc., et al. v. New York State Commission on Legislative, Judicial and Executive Compensation, et al.* (Albany County Supreme Court, #902654-24) – an assignment that spanned 138 days from the March 29, 2024 return date of petitioners' March 19, 2024 order to show cause (NYSCEF #17) to the three decisions/orders/judgments she rendered on August 14, 2024 and signed as "Acting Supreme Court Justice" (NYSCEF #79, NYSCEF #80, NYSCEF #81);

(6) records of Judge Sober's compliance with Part 04 of the Rules of the Chief Judge entitled "Reports Of Pending Matters", whose Section 4.1 requires "a statement from every judge and justice of every court indicating the matters which have been pending undecided before such judge or justice for a period of 60 days after final submission and the reasons therefor", and, specifically, of Judge Sober's compliance with respect to *CJA v. Commission on Legislative, Judicial and Executive Compensation*, wherein, by June 17, 2024 and July 30, 2024 letters (NYSCEF #77), (NYSCEF #78), to which Judge Sober did not respond, petitioners asserted that the only reason for her violation of the 60-day time frame for determining motions pursuant to 22 NYCRR §202.8(h) and violation of State Finance Law §123-c(4), requiring citizen-taxpayer actions to be "promptly determined" and "have preference over all other causes in all courts", was her "actual bias arising from [her] direct financial interest in this lawsuit", proscribed by Judiciary Law §14 and divesting her of jurisdiction "as to which, in the absence of jurisdiction and because of the availability of federal judges, the judge-made 'rule of necessity' cannot be invoked";

(7) records of Judge Sober's requests, if any, pursuant to 22 NYCRR §202.8(h)(1), for an "automated open motion report of all motions pending before [her] which appeare[d] undecided 60 days after final submission", to "assist [her] in preparing the quarterly report of pending civil matters required by section 4.1 of the Rules of the Chief Judge" for any portion of the period from May 29, 2024 to August 14, 2024 – this being "her official quarterly report";

(8) records of actions taken by supervising judges with respect to Judge Sober's "official quarterly report" and Section 4.1 statement for any portion of the period from May 29, 2024 to August 14, 2024;

(9) the Chief Administrative Judge's written instructions and blank forms for Section 4.1 statements, pursuant to Part 04 of the Chief Judge's Rules, and for "official quarterly report(s)".

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
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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/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.

NOTICE OF ENTRY OF DECISION AND ORDER

Index No. 902654-24

PLEASE TAKE NOTICE that the annexed order is a true copy of a Decision and Order duly entered in the above-entitled action and filed in the office of the Clerk of Albany County on the 14th day of November, 2024.

Dated: Albany, New York
November 25, 2024

LETITIA JAMES
Attorney General of the State of New York
Attorney for Respondents/Defendants
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
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P.O Box 8101
White Plains, NY 10602
(Via NYSCEF and U.S. Mail)

Center for Judicial Accountability, Inc.
Petitioner
P.O Box 8101
White Plains, NY 10602
(Via NYSCEF and U.S. Mail)

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

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,

3rd Dept Docket #CV-24-1608

Appellants,

-against-

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

Respondents.

Stipulation in Lieu of Certification Pursuant to CPLR §5532

IT IS HEREBY STIPULATED that the foregoing constitutes the record on appeal, being true copies of the documents constituting the record of this hybrid CPLR Article 78 proceeding, CPLR §3001 declaratory judgment action, and State Finance Law Article 7-A citizen-taxpayer action on the NYSCEF docket for Albany County/Supreme Court #902654-24.

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

Dated: December 11, 2025

LETITIA JAMES, Attorney General of the State of New York,
Respondent and Counsel for Respondents
BY: Assistant Solicitor General Beezly J. Kiernan

Dated: December 12, 2025