

September 2, 2016 verified complaint
2nd citizen-taxpayer action CNA v. Cuomo Albany Co. # 5122-16

- the failure of the Senate and Assembly, by their committees and by their full chambers, to amend and pass the Governor’s appropriation bills and to reconcile them so that they might “become law immediately without further action by the governor”, as mandated by Article VII, §4 of the New York State Constitution;
- the so-called “one-house budget proposals”, emerging from closed-door political conferences of the Senate and Assembly majority party/coalitions;
- the proceedings of the Senate and Assembly Joint Budget Conference Committee and its subcommittees, conducted by staff, behind-closed-doors, based on the “one-house budget proposals”;
- the behind-closed-doors, three-men-in-a-room budget deal-making by the Governor, Temporary Senate President, and Assembly Speaker.

58. The specified violations of Article VII, §4, 5, 6 of the New York State Constitution, particularized by and comprising this separate cause of action, pertaining to the “process” by which the fiscal year 2016-2017 budget was enacted, are accurate, true, and correct.



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

59. Plaintiffs repeat, reiterate, and reallege ¶¶ 1-58 herein with the same force and effect as if more fully set forth.

60. Plaintiffs’ sixth cause of action herein is the thirteenth cause of action of their incorporated March 23, 2016 verified second supplemental complaint in their prior citizen-taxpayer action, Exhibit A: ¶¶385-423. It is accurate, true, and correct in all material respects.

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”

61. Plaintiffs’ showing as to the unconstitutionality of the statute’s delegation of “force of law” legislative power is set forth by the incorporated Exhibit A: ¶¶388-393. It is accurate, true, and correct in all material respects.

62. Also true and correct is the constitutional significance of ¶392. Containing underscoring and capitalization for emphasis, it reads, in full:

“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.” (underlining and capitalization in the original).

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

63. Plaintiffs’ showing as to the unconstitutionality of the statute’s delegation of legislative power without safeguarding provisions is set forth by the incorporated Exhibit A: ¶¶394-402. It is accurate, true, and correct in all material respects.

64. Also accurate, true, and correct is the constitutional significance of ¶¶400-402. Containing underscoring and italics for emphasis, it reads, in full:

“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.”

65. As Judiciary Law §183-a statutorily links district attorney salaries with judicial salaries, the failure of the Commission statute to include an express provision requiring the Commission to take into account such “appropriate factor” means that district attorneys become the beneficiary of judicial salary increase recommendations, without ANY evidence, or even claim, that existing district attorney salaries are inadequate – and, likewise, without ANY evidence, or even claim, that district attorneys are discharging their constitutional and statutory duties to enforce the penal law and that mechanisms to remove them for corruption are functional. Such additionally renders the Commission statute unconstitutional, *as written*.

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

66. Plaintiffs’ showing that the Commission statute violates Article XIII, §7 of the New York State Constitution is set forth by the incorporated Exhibit A: ¶¶403-406. It is accurate, true, and correct in all material respects.

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

67. Plaintiffs’ showing that the Commission statute violates Article VII, §6, 2, 3 of the New York State Constitution is set forth by the incorporated Exhibit A: ¶¶407-412. It is accurate, true, and correct in all material respects.

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

68. Plaintiffs' showing that the Commission statute is unconstitutional because it was procured fraudulently and without legislative due process is set forth by the incorporated Exhibit A: ¶¶413-423. It is accurate, true, and correct in all material respects.

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**

69. Plaintiffs repeat, reiterate, and reallege ¶¶ 1-68 herein with the same force and effect as if more fully set forth.

70. Plaintiffs' seventh cause of action herein is the fourteenth cause of action of their incorporated March 23, 2016 verified second supplemental complaint in their prior citizen-taxpayer action (Exhibit A: ¶¶424-452). It is accurate, true, and correct in all material respects.

71. The first and overarching ground upon which Chapter 60, Part E, of the Laws of 2015 is unconstitutional, *as applied*, was set forth at ¶425. Its importance was such that its pertinent words were capitalized and the whole of it was underscored, as follows:

“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).”

72. Subsequent events reinforce this key ground of unconstitutionality. Thus, even upon being given notice of, and furnished with, plaintiffs' March 23, 2016 verified second supplemental