

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

----- x
ANDREW M. CUOMO,

Plaintiff-Respondent,

AD Docket #: CV-23-1778

-against-

January 12, 2024

**Moving Affidavit in Support of
Motion for Appeals to be Heard
Together or for Leave to File
Amicus Curiae Submission**

NEW YORK STATE COMMISSION ON ETHICS AND
LOBBYING IN GOVERNMENT,

Defendant-Appellant.
-----x

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss:

ELENA RUTH SASSOWER, being duly sworn, deposes and says:

1. I am the unrepresented individual petitioner-appellant in *Center for Judicial Accountability, et al., v. New York State Joint Commission on Public Ethics, et al.* ([CV-23-0115](#)) – a hybrid Article 78 proceeding, declaratory judgment action, and citizen-taxpayer action expressly brought “on behalf of the People of the State of New York & the Public Interest” against ten respondent-respondents that also include the Legislative Ethics Commission (LEC), the State Inspector General, Governor Hochul, the Senate and Assembly, Attorney General James, and the Comptroller. CJA’s appeal was perfected on August 15, 2023 ([#9](#)), was fully submitted on January 8, 2024, by the filing of appellants’ Reply Brief ([#25](#)), and is presently scheduled for the Court’s April term ([#24](#)).

2. I am fully familiar with all the facts, papers, and proceedings of *CJA v. JCOPE, et al.*, [below](#) and [before this Court](#), and sufficiently familiar, for purposes of this motion, with the facts,

papers and proceedings in the above-captioned appeal ([CV-23-1778](#)) by the Commission on Ethics and Lobbying in Government (COELIG) – the ethics entity that replaced the Joint Commission on Public Ethics (JCOPE) pursuant to the “ethics commission reform act of 2022” [ECRA]. I submit this affidavit in support of the relief sought by my accompanying notice of motion.

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

TABLE OF CONTENTS

The Sole Issue on this Appeal, the Constitutionality of ECRA *as Written*, is Mooted by the Appeal in *CJA v. JCOPE, et al.*, Establishing ECRA to be Unconstitutional *by its Enactment through the Budget and by Fraud* – & it is the FIRST REASON Why these Appeals Must be Heard Together..... 3

The SECOND REASON these Appeals Must be Heard Together:
CJA v. JCOPE, et al. Exposes Material Frauds by COELIG & AG James – & Such is Further Proven by CJA’s Subsequent Interaction with COELIG Based Thereon.....7

The THIRD REASON these Appeals Must be Heard Together:
CJA v. JCOPE, et al. Exposes Material Frauds by *Amici Curiae* New York City Bar Association & the “Good Government” Groups – & Such is Further Proven by CJA’s Subsequent Interaction with COELIG, Known to Them12

The FOURTH REASON These Appeals Must be Heard Together:
CJA v. JCOPE, et al. Exposes Material Fraud by Former Governor Cuomo & his Attorneys, by their Respondents’ Brief and Initiating and Amended Complaints, Verified by Attorney James McGuire, Esq.....21

The Reasons Warranting These Appeals Being Heard Together Also Warrant the Granting of Leave to File an *Amicus Curiae* Submission.....26

* * *

The Sole Issue on this Appeal, the Constitutionality of ECRA as Written, is Mooted by the Appeal in CJA v. JCOPE, et al., Establishing ECRA to be Unconstitutional by its Enactment through the Budget and by Fraud – & it is the FIRST REASON Why these Appeals Must be Heard Together

4. The sole issue on COELIG’s appeal is the constitutionality, *as written*, of the “ethics commission reform act of 2024” – Chapter 56, Part QQ, of the Laws of 2022 – which former Governor Cuomo challenged by his April 25, 2023 verified complaint [[R.39-358](#)] and his July 24, 2023 amended verified complaint [[R.615-936](#)] and which, on September 11, 2023, the lower court struck down [[R.5-30](#)].

5. The sole issue on the CJA v. JCOPE, et al. appeal – aside from the threshold issues pertaining to the integrity of the judicial process below and before this Court involving Attorney General James – is CJA’s¹ entitlement to summary judgment on each of the ten causes of action of its June 6, 2022 verified petition [[R.50-421](#)] and September 1, 2022 verified amendment [[R.651-654](#)], “starting with [the] sixth cause of action, as to which [CJA was] entitled to a TRO/preliminary injunction to prevent the ‘ethics commission reform act of 2022’ from taking effect on July 8, 2022” ([CJA Appellants’ Brief, “Conclusion”, p. 36](#)).

6. Obviously, if the “ethics commission reform act of 2022” must be struck down because, as stated in the title of the sixth cause of action [[R.81-84](#)], it is “Unconstitutional, Unlawful and Void” because it was “Enacted in Violation of Mandatory Provisions of the New York State Constitution, Statutes and Legislative Rules, and Caselaw”, the question of the statute’s constitutionality, *as written*, becomes academic.

7. The *CJA v. JCOPE, et al.* record is dispositive that ECRA must be declared unconstitutional, *by its enactment* – and its examination is made easy by CJA’s Appellants’ Brief

¹ To avoid confusion between the appellants in *CJA v. JCOPE, et al.* and the appellant in *Cuomo v. COELIG*, the appellants in *CJA v. JCOPE, et al.* are here referred to as CJA.

(#9) and Reply Brief (#25), via the “legal autopsy”²/analyses on which they rest, establishing that Attorney General James, a respondent representing herself and her fellow respondents, had no legitimate defense to CJA’s sixth cause of action, or to the other nine, corrupted the judicial process below, with great success, and has continued to do the same before this Court, with great success.

8. These “legal autopsy”/analyses provide a roadmap of the record of the sixth cause of action [R.81-84]. In chronological order, they are:

- (1) [R.671-699] – CJA’s September 15, 2022 “legal autopsy”/analysis of AG James’ August 18, 2022 cross-motion in opposition to CJA’s July 6, 2022 order to show cause for a TRO/preliminary injunction to prevent ECRA from taking effect on July 8, 2022, based on the sixth cause of action, and to dismiss the petition’s ten causes of action – quoting, in full, AG James’ cross-motion/dismissal response to the sixth cause of action and eviscerating it, totally [at R.693-696]. This “legal autopsy”/analysis was Exhibit A to CJA’s September 15, 2022 motion for sanctions and other relief against AG James and for summary judgment to CJA on its ten causes of action, starting with the sixth [R.741-744];
- (2) [R.856-886] – CJA’s December 16, 2022 “legal autopsy”/analysis of the lower court’s November 23, 2022 decision granting AG James’ August 18, 2022 supposed “motion” and denying CJA’s September 15, 2022 supposed “cross-motion” – quoting, in full, the lower court’s dismissal of the sixth cause of action and eviscerating it, totally [at R.882-884]. This “legal autopsy”/analysis was Exhibit 1 to CJA’s December 16, 2022 motion for reargument/vacatur and for other relief [R.849-851] and is additionally annexed to CJA’s December 16, 2022 notice of appeal of the November 23, 2022 decision to this Court [R.1-43];
- (3) [R.48-49] – CJA’s February 23, 2023 “legal autopsy”/analysis of the lower court’s February 15, 2023 decision denying CJA’s December 16, 2022 reargument/vacatur motion, eviscerating it, totally. It is annexed to CJA’s February 23, 2023 notice of appeal of the February 23, 2023 decision to this Court [R.44-49];
- (4) (#15) – CJA’s November 25, 2023 “legal autopsy”/analysis of AG James’ November 15, 2023 Respondents’ Brief, eviscerating it, totally – including its single sentence for affirmance of the lower court’s dismissal of CJA’s sixth, seventh, eighth and ninth causes of action, annotated by a footnote stating:

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)).

“Unlike *Cuomo v. New York State Commission on Ethics & Lobbying in Government*, currently on appeal in this Court (A.D. No. CV-23-1778), this appeal presents no separation-of-powers issue.”

To this, CJA’s “legal autopsy”/analysis (at p. 16) was:

“This, too, is fraud. Appellants’ sixth and seventh causes of action [[R.81-84](#); [R-84-87](#)] involve a multitude of ‘separation of powers issue[s]’ pertaining to the duties of, and limitations on, the Governor and Legislature in fashioning and enacting the state budget, prescribed by [Article VII of the New York State Constitution](#), ALL eviscerated by their collusion with each other – and with the Judiciary – so-alleged by those two causes of action, without contest from AG James by her Brief, or below.

As to the purpose of this fraudulent footnote, it presumably is to perpetrate further fraud, namely:

(1) to mislead the Court into believing that Appellants’ sixth and seventh causes of action do not – as they do – moot *Cuomo v. COELIG*; and

(2) to mislead the Court into believing that the two appeals should not be heard together, as they plainly should.^{fn1}”

9. CJA’s “legal autopsy”/analysis of AG James’ Respondents’ Brief ([#15](#)) was Exhibit A to CJA’s November 25, 2023 motion to strike it as a “fraud on the court” and for other relief ([#13](#)). AG James’ scant December 11, 2023 opposition ([#18](#)) did not deny or dispute the above-quoted assertion as to the purpose of the footnote – and was so “frivolous” that CJA’s December 13, 2023 reply affidavit ([#19](#)) sought additional maximum sanctions and costs against her pursuant to 22 NYCRR §130-1.1. *et seq.*

10. On December 28, 2023, without reasons, this Court, by an order unsigned by any of the four justices constituting the purported motion panel ([#22](#)), denied CJA’s November 25, 2023 motion. Three of these justices – this Court’s Presiding Justice Garry, Associate Justice Clark, and Associate Justice Pritzker – were on the purported motion panel that issued the October 10, 2023 scheduling order for this appeal ([#8](#)), unsigned by any of them.

11. Later that day, in this appeal, Assistant Solicitor General Dustin Brockner made a motion ([#23](#)) for a two-week extension to file COELIG’s reply brief to former Governor Cuomo’s December 27, 2023 Respondent’s Brief ([#22](#)), stating, in pertinent part:

“a short extension will ensure there is enough time to prepare a brief that is sufficiently comprehensive and has been reviewed by office supervisors as well as the client.” (¶8, underlining added).

12. On January 2, 2024, I telephoned the Clerk’s Office to verify that CJA had until January 8, 2024 to file its reply brief and inquired whether the fully submitted appeal would then be assigned to the same panel as this appeal, noting that pursuant to the Court’s October 10, 2023 order herein, COELIG’s reply brief was also due on January 8, 2024, but that AG James’ office had made a motion for a two-week extension.³ I was told that it would not be so-assigned because the October 10, 2023 order gave this appeal an accelerated schedule, including in setting it down for the February term, that appeals are otherwise not heard for two or three months after they are fully submitted, that CJA’s appeal would not be heard until probably the April term,⁴ and that if I wanted it heard together with this appeal I needed to make a motion for such relief, setting forth the reasons.

13. This I here do and, simultaneously, in *CJA v. JCOPE, et al.* (##26-33), resting on this affidavit and its below four exhibits.

14. The FIRST REASON these appeals must be heard together is, as above-recited, because the record before this Court on the sixth and seventh causes of action of the *CJA v. JCOPE, et al.* appeal [[R.81-84](#); [R-84-87](#)], separately and together, are dispositive that ECRA must be

³ ASG Brockner’s motion for an extension was essentially denied by this Court’s order by “Egan Jr., J.P., Aarons, Reynold Fitzgerald and Fisher, JJ., concur”, though purporting to be granting same. Though also purporting to be “Decided and Entered: January 4, 2024”, it was not posted on NYSCEF until 4:26 pm on January 10, 2024 ([#28](#)). It also disposed of the two motions made by would-be *amici*: granting the December 15, 2023 motion of the New York City Bar Association, *et al.*, to file an *amicus curiae* brief ([#17](#), [#18](#)) and denying the November 30, 2023 motion of Gary Lavine, Esq. to file an *amicus curiae* brief ([#15](#)).

⁴ Indeed, on January 8, 2024, even before I filed Appellants’ Reply Brief ([#25](#)), the Court had issued a “Scheduling Memorandum” ([#24](#)) that “This appeal has now been fully perfected and the matter has been scheduled for the **April 2024** Term.”

declared unconstitutional, *by its enactment through the budget and by fraud*. This moots AG James’ appeal as to ECRA’s constitutionality, *as written*, absent invocation of exceptions to mootness.

**The SECOND REASON these Appeals Must be Heard Together:
CJA v. JCOPE, et al. Exposes Material Frauds by COELIG & AG James – & Such is
Further Proven by CJA’s Subsequent Interaction with COELIG Based Thereon**

15. The SECOND REASON these appeals must be heard together is that the *CJA v. JCOPE, et al.* appeal enables this Court to discern the material frauds of AG James’ November 27, 2023 Appellant’s Brief ([#12](#)), largely exported from her September 21, 2023 order to show cause, signed by Associate Justice Clark on September 22, 2023 ([#3](#)). Thus:

- both make it appear that there is nothing noteworthy about the ECRA statute’s enactment through the budget^{en1} and, in fact that it was “Duly enacted”, thereby boosting its constitutionality. As stated by the very first sentence of the Brief’s “Argument” (at p. 18):

“Duly enacted statutes enjoy an exceedingly strong presumption of constitutionality and must be upheld unless shown to be unconstitutional beyond a reasonable doubt, *White v. Cuomo*, 38 N.Y.3d 209, 216-17 (2022)” – repeating, but more emphatically, the same from ASG Brockner’s OSC/aff: ¶33: “The Commission is also likely to prevail on appeal. Duly enacted statutes enjoy an ‘exceedingly strong presumption of constitutionality’ and should be upheld unless shown to be unconstitutional beyond a reasonable doubt. *White v. Cuomo*, 38 N.Y.3d 209, 216-17 (2022) (internal quotation marks omitted)”.

Yet, as above stated, the record before this Court on the sixth and seventh causes of action of *CJA v. JCOPE, et al.* [[R.81-84](#); [R-84-87](#)] establish that ECRA was not “Duly enacted” and must be declared unconstitutional, *by its enactment through the budget and by fraud*.

- both purport that the ECRA statute arose from the highest motives grounded in “New York State[’s]...compelling interest in the fair and impartial enforcement of its ethics and lobbying laws” and the “State’s public policy to ‘prevent even the appearance of the slightest taint of impropriety from infecting the decision-making process in our government’^{en2}, lending to its constitutionality. As stated by the very first sentence of the Brief’s “Argument”, at its Point A (at p. 23):

“When analyzing a separation-of-powers claim, courts consider the ‘motive behind the legislation.’ *Cohen v. State*, 94 N.Y.2d 1, 14 (1999)” – repeating, but more emphatically, the same from ASG Brockner’s OSC/aff: ¶37

“...courts may consider the ‘motive[s] behind the legislation’ when analyzing a separation-of-powers claim. 94 N.Y.2d 1.”

Yet, the “motives” behind ECRA are directly challenged by the *CJA v. JCOPE, et al.* verified petition, expressly asserting that its motive was to insulate complained-against public officers from accountability by removing key provisions of the JCOPE statute, stripping complainants of rights available through mandamus (§§6(a)(b)(c), 17, 80), and stripping the Inspector General of jurisdiction.

- both purport that the ECRA statute “was carefully tailored to remedy JCOPE’s perceived flaws”^{en3} – hedging that these, in fact, were JCOPE’s actual problems, while, at the same time giving them credence by referencing a “December 2021 New York Senate Report” of a Senate Ethics Committee hearing at which witnesses testified against JCOPE’s “special voting requirement” and how its commissioners were appointed,^{en4} thereafter changed by ECRA.

Yet, the *CJA v. JCOPE, et al.* verified petition expressly asserts that JCOPE’s actual problem was not a deficiency in its statute, but in its enforcement (§§5, 100) – and that the Senate Ethics Committee’s two hearings in 2021 were rigged to prevent an evidentiary presentation on the subject (§104, & its Exhibits [L-1](#), [L-2](#), [L-3](#), [L-4](#), [L-5](#), [L-6](#)) and, on top of this, that:

“[the Committee’s [December 17, 2021 report](#) on the first hearing, thus far its only report, omitted petitioners’ written statement in support of testimony ([Exhibit L-1](#)) and written testimony ([Exhibit L-2](#)), because, as evident therefrom, they were dispositive and devastating.”

Additionally, and requiring expansion of the record for purposes of factual rebuttal:

- both give the appearance that ECRA, as applied, has been successful,^{en5} most importantly, the procedure for appointing commissioners, utilizing an Independent Review Committee (IRC) of law school deans,^{en6} and COELIG’s investigations and enforcement functions.^{en7} This appearance, which is false, is buttressed by Exhibit C to ASG Brockner’s affirmation in support of COELIG’s September 21, 2023 order to show cause, which is the affirmation of COELIG Executive Director Sanford Berland. Its §10 concludes with the sentence:

“In 2022, 155 tips, complaints, referrals and reports were received and processed by the Commission; 128 investigative matters were closed; and the year ended with 156 open or pending investigative matters, including matters carried over from the predecessor agency”,

and its final two paragraphs, §13 and §14, read:

“13. Exhaustive detail with respect to all aspects of the Commission's operations and activity can be found in the Commission's first Annual Report, which can be accessed at <https://ethics.ny.gov/2022-annual-report>.

14. It is vital to the public interest that the Commission be able to continue to perform all of its statutorily mandated functions, which are essential to the integrity of state government, during the pendency of the Commission's appeal. Accordingly, I request that the Commission's application to stay the order of the Supreme Court, which profoundly, and to the public's detriment, impairs the Commission's ability to perform those functions, be granted in all respects, and that the Commission be granted such other, further and additional relief as may be deemed necessary and appropriate." (hyperlink made live, underlining added).

The perjury of these – enabling the false inferences of ASG Brockner's OSC/affirmation and Appellant's Brief that ECRA is a success – is proven by CJA's explicit TESTING of the COELIG statute, *as applied*, from its Day 1, July 8, 2022, established by the following primary-source, documentary evidence, annexed as exhibits:

EXHIBIT A: CJA's July 8, 2022 complaint to COELIG – entitled: "TESTING the 'ethics commission reform act' Commission on its DAY 1: Re-filing the seven complaints previously filed with JCOPE, plus a new eighth complaint against Attorney General Letitia James for litigation fraud in CJA, et al. v. JCOPE, et al. (Albany Co. #904235-22) – arising from the same conflict of interest Public Officers Law §74 violations as were the subject of CJA's March 5, 2021 complaint, unredressed by JCOPE".

The referred-to previously-filed seven complaints to JCOPE are the first seven exhibits of the *CJA v. JCOPE, et al.* verified petition [[R.101-345](#)];

EXHIBIT B: CJA's October 6, 2022 supplement/letter to COELIG – entitled: "(1) SUPPLEMENT to CJA's July 8, 2022 complaint against Attorney General Letitia James for litigation fraud in CJA, et al. v. JCOPE, et al (Albany Co. #904235-22) – arising from the same conflict of interest Public Officers Law §74 violations as were the subject of CJA's March 5, 2021 complaint, unaddressed by JCOPE..."

This furnished COELIG with CJA's September 15, 2022 sanctions/summary judgment motion, including its Exhibit A "legal autopsy"/analysis that [[R.671-699](#)] – and the record thereon – the same as would be recited by CJA's "legal autopsy"/analysis of the lower court's November 23, 2022 decision [[R.856-886](#)].

EXHIBIT C: CJA's testimony at COELIG's March 29, 2023 hearing, identifying to the commissioners that I would be filing a complaint:

"against you, to you, for your "substantial neglect of duty" and "misconduct in office"^{en} from your first meeting last September 12th to date – 6-1/2 months later – arising from your willful violations of [Public Officers Law §74](#), proscribing conflicts of interest that is your duty to enforce as to others,^{en} and of [Executive Law §94.10\(b\)](#)

explicitly mandating that you each disclose personal, professional, and financial conflicts of interest with respect to complaints – and recuse yourselves or be recused by vote of your fellow commissioners.^{en} (underlining and hyperlinks in the original).

The testimony summarized, with evidence,⁵ COELIG’s corruption by its [unsigned November 17, 2022 letter](#) that the Commission had “voted to close” CJA’s July 8, 2022 complaint, its corruption with respect to FOIL, the commissioners’ corrupt retention of JCOPE Executive Director Berland who, without any search, they had made COELIG’s executive director, retaining other corrupt top JCOPE staff, all of this enabled by a corrupt IRC, whose 15 law school deans had known, since CJA’s June 12, 2022 letter to them [[R.565-568](#)], “that *CJA v. JCOPE* is dispositive that the budget-born statute establishing this Commission must be voided, as a matter of law”, and who, thereafter, in tandem with ECRA’s “selection members”, corrupted the appointments process for commissioners – with the full knowledge of the then prospective commissioners who I had cc’d on CJA’s [August 4, 2022](#) and [August 22, 2022](#) e-mails to the IRC’s law school deans.

The testimony concluded, as follows:

“I conclude with a procedural suggestion with respect to your letters ‘closing’ complaints on alleged votes by the Commission – and other dispositions that are not, in fact, by votes of the Commission, namely that your letters indicate 30 days in which a complainant may seek reconsideration, similar to what is provided by the Appellate Division Rules pertaining to its attorney grievance procedures.^{en} Certainly, inasmuch as your dispositions of FOIL requests include, as required, that there is 30 days within which to seek an appeal, there should be an appeal/reconsideration procedure for complaints.

Consistent therewith, that is what I now request, from you, with respect to your unsigned November 17th letter of your ‘Investigations Division.’”

EXHIBIT D: CJA’s October 2, 2023 complaint/TEST to COELIG – entitled:

“(1) Updating & Now Filing CJA’s March 29, 2023 ethics complaint vs COELIG’s Commissioners, Executive Director, General Counsel, & Other High-Ranking Staff, for ‘substantial neglect of duty’ and ‘misconduct in office’, born of flagrant violations of mandatory conflict-of-interest protocols;

(2) Officially TESTING the Commission’s unofficial reconsideration/renewal remedy by resubmitting CJA’s July 8, 2022 complaint and October 6, 2022 supplement”.

The complaint stated that this was the complaint that my March 29, 2023 testimony identified I would be filing, but explained:

⁵ This included – and so-identified by its first endnote – a [dedicated webpage on CJA’s website](#) “with EVIDENTIARY links under the heading ‘PAPER TRAIL’ of Correspondence: What the Commissioners Knew, & When”.

“I deferred actually filing such complaint, so as to give you the opportunity to take steps to rectify the violations that my March 29, 2023 testimony summarized and evidentiarily-established. This you have not done and the final straw, prior to your September meetings, was your issuance on August 28, 2023 of your misnomered [2022 Annual Report](#), which is largely a first-year report, and whose material fraudulence is proven, resoundingly, by my testimony.

Had you made findings of fact and conclusions of law with respect to my testimony, as was your duty to have done – and *pronto* – you could not have rendered your ‘false instrument’ Annual Report, constituting a [Penal Law §175.35](#) violation by you, nor have stolen from the taxpayers scores of thousands of dollars in *per diems* to which you knew yourselves to be not entitled, violating further Penal Laws, such as:

[Penal Law §195](#) (‘official misconduct’);
[Penal Law §496](#) (‘corrupting the government’) –
part of the ‘Public Trust Act’;
[Penal Law §20.00](#) (‘criminal liability for conduct of another’).
[Penal Law §195.20](#) (‘defrauding the government’);
[Penal Law §155.40](#) (‘grand larceny in the second degree’);
[Penal Law §190.65](#) (‘scheme to defraud in the first degree’);

Indeed, with respect to *per diems*, you went way beyond availing yourselves of the fraud of its rate, which [Executive Law §94.4\(f\)](#) ties to the salary of a Supreme Court justice. What you did was to *sub silentio* convert Executive Law §94.4(f) into an hourly compensation provision by falsely purporting that this is what the statute provides, without securing an independent legal opinion because, as you knew, such would not sustain your self-serving interpretation.

I, therefore, now update and herewith file the complaint indicated by my March 29, 2023 testimony to span to the present date and to include the below ‘specific and credible evidence’. Pursuant to [Executive Law §§94.10\(d\) and \(f\)](#), ‘specific and credible evidence’ is the predicate for investigation, signified and commenced by 15-day letters. Such are here required to be sent to each of you, to Executive Director Berland, to General Counsel St. John, and to other high-level complicit staff, so that each of you may respond to the evidence of your conflict-driven, fraudulent, and larcenous conduct.” (hyperlinks in the original).

The indicated “below ‘specific and credible evidence’” included a devastating critique of COELIG’s Annual Report – the same as Executive Director Berland had cited at ¶13 of his September 21, 2022 affirmation in support of COELIG’s order to show cause to this Court. The false and misleading nature of the “155 tips, complaints, referrals and reports...received and processed” – to which Berland’s

affirmation cited (§10) and, based thereon, ASG Brockner’s affirmation, twice (at §§5, 27) is particularized at pp. 11-14.⁶

The THIRD REASON these Appeals Must be Heard Together:
CJA v. JCOPE, et al. Exposes Material Frauds by Amici Curiae
New York City Bar Association & the “Good Government” Groups --
& Such is Further Proven by CJA’s Subsequent Interaction with COELIG,
Known to Them

16. The third reason these appeals must be heard together is that the *CJA v. JCOPE, et al.* record and the above Exhibits A, B, C, and D enable the Court to discern the material frauds of the December 15, 2023 motion ([#17](#)) and *Amicus Curiae* Brief ([#18](#)) of the New York City Bar Association, the Committee to Reform the State Constitution, Common Cause-NY, Citizens Union, New York Public Interest Research Group, Reinvent Albany, and the Sexual Harassment Working Group, starting with their purported *bona fides*, which they use, in lieu of evidence, to factually assert that COELIG is “an improvement over JCOPE”, “an effective protector against corruption and unethical conduct by our public officials”, and not “a ‘toothless tiger’”, because:

“the statute eliminated the ‘minority veto,’ had the Commission appoint its own Chair, included appointees from the Comptroller and Attorney General, had the Commission determine whether the criteria for removal of a Commissioner was satisfied, [] added the protection of the Law School Dean screening process...[a]nd...has the necessary power to impose penalties.” (at p. 14).

⁶ The status of the October 2, 2023 complaint/TEST is, as follows: After two months, in the absence of any acknowledgment or response from COELIG, I sent a [December 5, 2023 e-mail](#) so-stating and additionally requesting, pursuant to FOIL:

“the Commission’s written procedures/manual for receipt, docketing, acknowledgment, preliminary review, investigation of complaints, notification of disposition to complainants – and reconsideration.”

The only response I received was to the FOIL request – [a December 6, 2023 e-mail](#) acknowledging receipt and that “The Commission expects to respond to your request on or before January 5, 2024.” The response came [on January 9, 2024](#), stating, in pertinent part:

“Written procedures that align with the Ethics Commission Reform Act are in preparation but, at this time, are not yet final. ...As such, the Commission is withholding non-final intra-agency drafts of its written procedures concerning the topics referenced in your request at this time.”

17. These three factual assertions: “an improvement over JCOPE”, “an effective protector against corruption and unethical conduct by our public officials”, and not “a ‘toothless tiger’” – on which the *amici* would have the Court rely – are in the last paragraph of their “Statement of the Case” (pp. 6-14), whose two subsections are titled:

“A. New York Has a Serious Corruption Problem” (pp. 6-9); and

“B. The Failure of Prior Efforts to Deter Corruption and Enforce Ethics Laws, and Hold Bad Actors Accountable” (9-14).

These two subsection are themselves deceptions, as is the section that precedes it “Summary of the Argument” by its operative sentence (at p. 4):

“...the entity responsible for deterring and policing ethics and corruption – JCOPE – was widely perceived to be a failure both because of deficiencies in the underlying statute and the ways in which former Governor Cuomo sought to influence its decisions”. (underlining added).

In other words, the City Bar and “good government” groups – notwithstanding they purport, as part of their credentials, to “have studied how JCOPE had performed its responsibilities” (at p. 1) are unable to assert, based on empirical evidence, that JCOPE’s “underlying statute” is the cause of JCOPE’s shortcomings, which, in fact, these sections and subsections do not present. They make no showing, indeed do not even claim, that the officials who resigned and/or were indicted – to which they refer at the outset of their “Summary of the Argument” (at p. 4), with a listing of presumably their best particulars in their subsection A (at pp. 6-8) – were the subject of complaints mishandled by JCOPE. Their subsection B then leans on “appearance”, “concerns”, and “questions about independence”, rather than facts – with such few specifics as they offer up not being deficiencies in the JCOPE statute, *to wit*, “JCOPE’s first three Executive Directors had previously served in senior positions working for Governor Cuomo”, “An incident in 2019” involving the leak, and “JCOPE’s approval of the book deal at issue in this case” (all at p. 11).

18. As to the reference, in subsection B, to “the Moreland Act Commission” (pp. 11-12) – whose proper name is Commission to Investigate Public Corruption – it is not for purposes of making any connection to JCOPE, which was within the Commission’s purview, and which it falsely infers was a legitimate entity, but for the former Governor’s interference with it.

19. In fact, the Commission to Investigate Public Corruption, to which, from its outset, the “good-government” groups had an inside-track and which they hijacked to advance their own agenda of campaign finance reform, abetted JCOPE’s corruption⁷ – as did federal prosecutors, who subsections A and B falsely portray as if honest players on the anti-corruption front.

20. The *CJA v. JCOPE, et al.* verified petition, by its exhibits, furnishes the true facts – and the *amici*’s knowledge of them. Among these exhibits, CJA’s December 11, 2014 complaint to JCOPE against JCOPE and the five appointing authorities of the JCOPE/LEC Review Commission that was required to be established “No later than June 1, 2014” [R.305-322] – to which the City Bar, Common Cause, and NYPIRG were indicated recipients – a complaint which rested on CJA’s June 27, 2013 complaint to JCOPE, with its physically-incorporated April 15, 2013 complaint to U.S. Southern District of New York Attorney Preet Bharara [R.323-346], that I had furnished to the Commission to Investigate Public Corruption at its [September 17, 2013 public hearing](#).

21. Tellingly, subsection B omits any mention of the never-established 2014 JCOPE/LEC Review Commission, as to which the City Bar and the “good government” groups could have, but did not, bring a mandamus proceeding – as CJA’s December 11, 2014 complaint suggested be done [R.309]. It also omits any mention of the [2015 JCOPE/LEC Review Commission](#), before which I testified at its [October 14, 2015 hearing](#), at which, also testifying, was, *inter alia*, the City Bar and

⁷ The chapter-and-verse details are set forth, with evidence, by [CJA’s April 23, 2014 order to show cause to intervene in the Legislature’s declaratory judgment action against the Commission to Investigate Public Corruption](#) (Supreme Court/NY Co. #16094/2013), and [March 28, 2014 verified complaint in CJA’s 1st citizen-taxpayer action, CJA v. Cuomo... et al.](#) (Supreme Court/Albany Co. #1788-14), each identified at fn. 7 of CJA’s December 11, 2014 complaint to JCOPE [R.305-322], *infra*.

Citizens Union, with a written submission by NYPIRG. Nor does subsection B identify the November 1, 2015 Report the JCOPE/LEC Review Commission rendered, as to which they could have, but did not, do any analysis, as such would have established it to be a fraudulent cover-up. The particulars of this the *amici* would have been reminded of by my [#1 August 4, 2022 letter to the IRC law school deans](#), with its recitation of the absolute disqualification, for interest, of IRC chair/New York Law School Dean Anthony Crowell, based on his corruption as member, if not as *de facto* chair, of the 2015 JCOPE/LEC Review Commission and its fraudulent November 1, 2015 Report,⁸ are ALSO recited by exhibits to the *CJA v. JCOPE, et al.* verified petition:

- CJA’s November 2, 2021 complaint to the State Inspector General, against, *inter alia*, the State Inspector General, JCOPE, and the Commission to Investigate Public Corruption [[R.361-385](#)];
- CJA’s December 17, 2021 complaint to JCOPE particularizing the LEC’s abetting role in subverting its JCOPE statutory partner, covered up by the 2015 JCOPE/LEC Review Commission and its November 1, 2015 Report [[R.162-184](#)].

22. Also omitted from their “Statement of the Case”, with its contextual background for the statute, is anything about the statute’s enactment, other than, cryptically, in subsection B, substituting the word “process” for “enactment” (at pp. 12-14):

“ the new Governor and the Legislature sought to create a new entity to replace JCOPE. The Amici were actively involved in providing input into this process.

Both before and during this process, some of the Amici proposed...

In a letter sent on their behalf late in the process, a majority of the Amici proposed...^{fn11} (underlining added).

⁸ This letter to the IRC law school deans entitled “Your Undisclosed Conflicts of Interest – and the Direct Interests of your Chair, New York Law School Dean Crowell, and Hofstra Law School Dean Prudenti in *CJA v. JCOPE, et al.*, Mandating that They IMMEDIATELY Disqualify Themselves from the Independent Review Committee – or that You Disqualify Them IMMEDIATELY” and its accompanying [#2 August 4, 2022 letter](#) to them entitled “Violation of Vetting Rules & Investigative Protocols by Selection Members & the Independent Review Committee – Born of Conflicts of Interest” may be presumed to have been read by the *amici* based on my March 29, 2023 testimony (Exhibit C).

Not revealed is that the “process” by which substantive policy legislation was being enacted was taking place entirely behind-closed-doors, *via* the budget – and, indeed, that these *amici* were urging JCOPE’s replacement *via* the budget, and that, in doing so, they knew – and had known, for years by CJA’s advocacy and interface with them – that the state budget is completely “OFF THE CONSTITUTIONAL RAILS”, including by the inclusion of non-fiscal, non-revenue-producing policy.⁹

23. Indeed, only by the link in the annotating footnote reading:

“*See* March 23, 2022 letter. (available at <https://reinventalbany.org/wp-content/uploads/2022/03/Memo-to-Legislature-on-Ethics-Commission-Appointment-March-23-2022.pdf>).”

is a bit of the critical truth about ECRA’s enactment revealed, reading, in pertinent part:

“We urge our elected leaders to create a new, independent New York State ethics commission in this year’s budget.

We have read the one-house budget bills and we implore you not to pass a budget that keeps the Joint Commission on Public Ethics in place. ... JCOPE must be replaced by a new agency and new agencies are best created and funded in the budget.

...

We ask you to create in the budget a new ethics commission...”

24. To further conceal that COELIG was enacted *via* the budget, the *Amicus* Brief nowhere even identifies the statute from which this might be gleaned, Part QQ of Chapter 56 of the Laws of 2022, or that this is Part QQ of the Education, Labor, Housing, and Family Assistance Budget Bill [S.8006-C/A.9006-C](#). In fact, their *Amicus* Brief does not even mention the high-sounding name “ethics commission reform act” or the acronym ECRA.¹⁰

⁹ As illustrative, *see* CJA’s outreach to them pertaining to the [CJA v. Cuomo...DiFiore](#) citizen-taxpayer action: [2017](#), [2018](#), and [2019](#).

¹⁰ Notably, their “Table of Authorities” also does not include Executive Law §94, presumably because it is not anywhere in the *Amicus* Brief.

25. Why would these *amici* conceal that the “ethics commission reform act of 2022” was enacted *via* the budget – or, for that matter, the statute? *CJA v. JCOPE, et al.* has the answer, again by exhibits to the verified petition, revealing that a month before *CJA v. JCOPE, et al.* was commenced I furnished them with what would be Exhibit A to the verified petition: CJA’s April 13, 2022 complaint to JCOPE [R.104-120] pertaining to the budget and the “ethics commission reform act of 2022”:

- Exhibit J [R.386-389] consisting of two e-mails to which they were *cc*’d: my May 6, 2023 e-mail to JCOPE, and my May 5, 2022 e-mail to the Albany Times Union it forwarded which, quoting page 11 of the April 13, 2022 complaint:

“No competent person, unafflicted by conflict of interest, could regard the new Executive Law §94 governing what the Commission on Ethics and Lobbying in Government is to do upon receipt of complaints or what it must include in its annual reports as anything but inferior to the corresponding Executive Law governing JCOPE. Certainly, Governor Hochul, as an attorney, and the many legislators who are attorneys may be presumed to know that removing from Executive Law §94 non-discretionary, mandatory provisions – as they did – would prevent the public from being able to secure its rights by mandamus/Article 78 proceedings, as was done in *Trump v. JCOPE* and *Cox v. JCOPE*, cited and quoted by my March 5, 2021 complaint (at fn. 8, pp. 8-9) in the context of giving NOTICE of my intent to do likewise”,

stated:

“To that end, I am *cc*’ing the so-called ‘good government groups’, on which, over all these years, the Times Union has uncritically relied, to the public’s detriment – with a request that they assist you by their responses to the complaint – and, in particular, to the analysis appearing at pages 10-14. What, if anything, do they deny or dispute?”

- Exhibit K [R.390-396], to which they were *cc*’d, which was CJA’s May 16, 2022 letter to the State Inspector General reciting facts pertaining to the IG’s corruption and that under the new ECRA statute, the IG would have no jurisdiction over COELIG, in contrast to the jurisdiction it had had over JCOPE.

26. This is not the end of what the *CJA v. JCOPE, et al.* record reveals about what these *amici* know, but have not disclosed by their *Amicus* Brief. It also includes two of the several e-mails I directly sent to the *amici*, not as *cc*’s, after commencement of *CJA v. JCOPE, et al.*, seeking

their expert opinion and assistance – and, most importantly, with respect to the sixth cause of action upon which I was seeking to secure a TRO/preliminary injunction to prevent ECRA from taking effect on July 8, 2022:

- [CJA’s July 2, 2022 e-mail to the amici \[R.569-574\]](#), identifying and linking to two e-mails I sent them on [June 9, 2022](#) and [June 16, 2022](#) – to which I had received no responses. This now further e-mail forwarded to them my July 2, 2022 e-mail to the 15 law school deans of the IRC [\[R.560-564\]](#) and attached the June 12, 2022 letter I had sent the deans [\[R.565-568\]](#) requesting, “on behalf of the People of the State of New York”, for whom the lawsuit had been brought, that they furnish the lower court with their “expert opinion as to the constitutionality and lawfulness of the enactment of the ‘ethics commission reform act of 2022’ *via* the budget”;
- [CJA’s July 3, 2023 e-mail to the New York City Bar Association \[R.575-581\]](#), identifying and linking to two e-mails I sent them on [June 14, 2022](#) and [June 16th e-mail](#). ... and further stating:

I have also received no responses to [my June 15th e-mail](#) to your general counsel..., entitled ‘CLARIFICATION...’, to which, *inter alia*, your Governmental Ethics and State Affairs Committee Chair...and its presumed member former City Bar President Evan Davis were *cc*’d, just as, likewise, they were *cc*’d on my [June 13th e-mail](#) to her entitled ‘Request that the NYC Bar Association discharge [] its ethical, professional, & civic responsibilities: Lawsuit to VOID the ‘ethics commission reform act of 2022’ and for TRO...’.

What are your responses?”

Below, with the above-attached, is my self-explanatory July 2nd e-mail to the 15 law school deans comprising the ‘independent review committee’ of the ‘ethics commission reform act of 2022’, to which you are *cc*’d so that you can also ‘discharge some ethical and professional responsibility and civic duty and...come forward with findings of fact and conclusions of law as to the [verified petition](#)’s sixth cause of action as to the unconstitutionality and unlawfulness of the enactment of the ‘ethics commission reform act of 2022’’. (links, capitalization, underlining in the original).

27. I *cc*’d the lower court on these July 2-3, 2023 e-mails, and on my corresponding e-mails to the IRC law school deans [\[R.560-564\]](#), and the New York State Bar Association [\[R.882-883\]](#) – all bearing, in the RE: clause, “TIME IS OF THE ESSENCE” – hoping that this might help

prompt their responses, and, thereafter annexed all the e-mails to my July 6, 2022 affidavit in support of CJA’s order to show cause for a TRO/preliminary injunction [[R.547-588](#)], stating:

“I have received no responses from any of the recipients of these e-mails – and it should be obvious that if they could deny or dispute the accuracy of the content of my e-mails – or of my June 12th letter to the law school deans it annexed – beginning with the flagrant unconstitutionality and unlawfulness of the enactment of the ‘ethics commission reform act of 2022’ – the basis of petitioners’ *matter of law* entitlement to the TRO/preliminary injunction – they would have done so.^{fn}” [[R.558](#)].

The annotating footnote read:

“Although not parties, the relevant principles, applicable to summary judgment, are certainly known to the mostly lawyer recipients: ‘failing to respond to a fact attested in the moving papers... will be deemed to admit it’, Siegel, New York Practice §281 (1999 ed., p. 442) – citing *Kuehne & Nagel, Inc. v. Baiden*, 36 N.Y.2d 599 (1975), itself citing Siegel, Practice Commentaries, McKinney’s Cons. Laws of NY, Book 7B, CPLR 3212:16, p 437): ‘If key fact appears in the movant’s papers and the opposing party makes no reference to it, he is deemed to have admitted it’ id. Undenied allegations will be deemed to be admitted, *Whitmore v. J Jungman, Inc.*, 129 N.Y.S. 776, 777 (S.Ct., NY Co. 1911).”

28. On March 29, 2023, the *amici* testified at COELIG’s public hearing at which I testified ([Exhibit C](#)) and were, by my testimony, which COELIG posted on its website with theirs, fully updated as to *CJA v. JCOPE, et al.* and how corruptly COELIG had operated, from its inception – as, likewise, the corruption of the appointment/vetting process by the appointing authorities and the IRC, on which they had placed such stock.

29. On September 7, 2023, COELIG held a public meeting whose purpose was to publicly discuss and vote on recommendations from the March 29, 2023 hearing. Based upon my March 29, 2023 testimony, the *amici* would have had no difficulty discerning how corruptly COELIG disposed of two of the three recommendations that it identified as mine. The first of these, transmogrified into something it was not, was disposed of by COELIG’s vice-chair, as follows: without dissent from his fellow commissioners:

“Number 8 is from Elena Sassower, and she asks that the stat, that we void the statute creating the Commission. I think Governor Cuomo is helping us along

that, her along that way. Anyway, we're waiting for a decision, so I don't think there is anything we can do with that, on so many different levels. So, with your kind permission, I am going to mark that one as rejected." (VIDEO, at 50mins).

30. Needless to say, none of the *amici* concerned themselves that COELIG's November 1, 2023 "roundtable", whose purpose was to further discuss the recommendations that would be part of its legislative agenda, to which they were all invited, did not include me – nor reflect my March 29, 2023 testimony (Exhibit C).

31. And, of course, in offering up their *Amicus* Brief that COELG is "an improvement over JCOPE", "an effective protector against corruption and unethical conduct by our public officials", and not "a 'toothless tiger'", none of them did so based on any analysis of COELIG's misnomered 2022 Annual Report – which, just as CJA did ([Exhibit D](#)), they could have easily done, exposing the truth of such frauds as had been three times cited-to by AG James' September 21, 2023 order to show cause pertaining to what is COELIG's most important function: handling complaints.

32. The foregoing unethical conduct by a preeminent New York bar association and supposed "good government" groups is consistent with what I have documented about these *amici* for decades by interactions memorialized by a "paper trail" of correspondence with them about the true causes of New York's corruption problem and the ease with which it could be rectified. Always they have not only refused to confront my presentments of evidence to them, refused to engage in any dialogue about it, and excluded CJA from any of their coalitions, but have engaged in knowingly false and deceitful advocacy, subverting every opportunity to achieve the kind of "transparent" "accountable" government they purport to champion.¹¹ This includes as to JCOPE, spanning back to 2013 and the Commission to Investigate Public Corruption.

¹¹ For more than two decades, this "paper trail" of correspondence, has been contemporaneously posted on CJA's website, www.judgewatch.org, including on specially dedicated webpages, accessible from the left side panel "Search for Champions (Correspondence). Here linked are the webpages for the [City Bar](#), including, as well, the so-called Committee to Reform the State Constitution (which is another name for

**The FOURTH REASON These Appeals Must be Heard Together:
CJA v. JCOPE, et al. Exposes Material Fraud by Former Governor Cuomo
& his Attorneys, by their Respondent’s Brief and Initiating and Amended Complaints,
Verified by Attorney James McGuire, Esq.**

33. The fourth reason the appeals must be heard together is that the *CJA v. JCOPE, et al.* record exposes material fraud of former Governor Cuomo’s December 27, 2023 Respondent’s [Brief \(#22\)](#), his April 25, 2023 verified [complaint \[R.39-358\]](#), July 24, 2023 amended verified complaint, and his litigation thereon, predicated on great concern with constitutional separation of powers, while concealing the constitutional separation of powers violations pertaining to the state budget by omitting that that is how the “ethics commission reform act of 2022” was enacted.

34. Here are the first two paragraphs of the “Background” section of the Respondent’s Brief (at pp. 5-6):

“BACKGROUND”^{fn2}

A 2022 act (the ‘Act’) of the New York Legislature created COELIG, and conferred on it broad powers to enforce numerous ethics and other laws. R.615 (¶1), 661 (Ex. A). COELIG replaced the Joint Commission on Public Ethics (‘JCOPE’), which a Senate committee, after hearing calls for a more independent agency, determined should be ‘replace[d] ... with a truly independent body’ though the committee thought it ‘clear’ a ‘comprehensive constitutional amendment’ was required to do so. R.627 (¶¶36–37), 682 (Ex. B), 764 (Ex. C). Other advocates shared the belief that a constitutional amendment was necessary. R.637 (¶37), 682 (Ex. B), 770 (Ex. D).

The constitutional amendment never even made it out of committee. R.628 (¶39). Nonetheless, on January 5, 2022, Governor Hochul announced a plan to replace JCOPE with a ‘truly independent agency’—solely through legislation. *Id.* & 774 (Ex. E). That legislation, the Act, was enacted on April 8, 2022 and signed into law by Governor Hochul the next day. *Id.*”

The referred-to “2022 act” – Part QQ of Chapter 56 of the Laws of 2022 – appears nowhere in the Brief’s “Table of Authorities”. As for footnote 2 annotating the “BACKGROUND” title, it states:

former City Bar President Evan Davis); [Common Cause-NY](#); [Citizens Union](#); [NYPIRG](#); and [Reinvent Albany](#).

“Respondent refers to the Complaint for further background. R.615”.

This “[R.615](#)” is the first page of Respondent’s July 24, 2023 amended complaint which, identically to Respondent’s April 25, 2023 [complaint \[R.39\]](#), reads, by its first sentence:

“1. The Ethics Commission Reform Act of 2022 (the ‘Act’) of the New York Legislature created the Commission on Ethics and Lobbying in Government (‘COELIG’) and conferred on it broad powers to enforce numerous ethics, lobbying, and other laws.^{fn1}”.

However, although the annotating footnote 1 states:

“A copy of the legislation is attached as Exhibit A to this Amended Complaint”,

Exhibit A is not the “Ethics Commission Reform Act of 2022”, with its §§1 and 2 reading:

“Section 1. This act shall be known and may be cited as the ‘ethics commission reform act of 2022’.

§2. Section 94 of the executive law is REPEALED and a new section 94 is added to read as follows:...”

Instead, it is the Executive Law §94, which omits these §§1 and 2 [\[R.661-681\]](#); [\[R.83-103\]](#).

35. The complaint does cite, but only once, to “(L. 2022, c. 56, Part QQ)”, but not identifying that it is a budget bill or that it is Education, Labor, Housing, and Family Assistance Budget Bill [S.8006-C/A.9006-C](#)). The citation is contained in the complaint’s “FACTUAL ALLEGATIONS”, in its section A entitled “Calls for a More ‘Independent’ Ethics Agency” [\[R.627-629\]](#). In full, this section A reads:

“36. On August 25, 2021, the New York State Senate Standing Committee on Ethics and Internal Governance held a public hearing on the state’s system of ethics oversight and enforcement, focusing on concerns about COELIG’s predecessor, the Joint Commission on Public Ethics (‘JCOPE’).^{fn2} Specifically, the Committee was concerned about JCOPE’s ‘neutrality and ability to function as an independent body.’ Ex. B at 2. The consensus among those who testified was that JCOPE had failed as an ethics watchdog because it was insufficiently ‘independent’ of those in power, particularly of the Governor. As described by the Senate committee in its December 17, 2021 report, ‘JCOPE’s structure and function are set

^{fn2} The committee’s report from that hearing, dated December 17, 2021, is attached to this Amended Complaint as Exhibit B (‘Ex. B’).”

up to avoid holding those in power accountable.’ *Id.* The Senate committee concluded that ‘immediate change and structural reform’ was needed—the stated goal being to ‘replace JCOPE with a truly independent body.’ *Id.*

37. The Senate committee thought it ‘clear’ that such a goal could be achieved only through a ‘comprehensive constitutional amendment,’ such as the bill introduced by Senator Krueger (S855), which would replace JCOPE with an ethics agency modeled on the New York State Commission on Judicial Conduct established in Article VI, §22. *Id.*^{fn3} The structure of the proposed agency would have 13 members: 7 members jointly appointed by the chief judge of the court of appeals and the presiding justices of each of the appellate divisions; 1 member appointed by each of the four legislative leaders; and 2 members appointed by the Governor. Ex. C at §2(c).

38. Support for Senator Krueger’s amendment was shared by so-called good government groups and advocates at the hearing. According to written testimony submitted by the New York City Bar Association Committee on Government Ethics and State Affairs, the necessary reforms ‘can only be realized by abolishing JCOPE and replacing it with an entity to be established by constitutional amendment.’ Ex. B. The city bar committee further explained why, in its view, a constitutional amendment was necessary: ‘The Constitution must be amended to achieve that goal so that the ability of the judicial branch to participate in making appointments and the creation of a single entity with jurisdiction over the legislative and executive branches is beyond constitutional question.’ Ex. D at 3 (emphasis added).^{fn4} Another advocacy group expressly supported a constitutional amendment ‘to limit the Governor’s policy-making authority.’ Ex. B.

39. Senator Krueger’s amendment never made it out of committee, and no other constitutional amendment was passed. Undaunted by the want of an amendment designed to legitimize a body much like COELIG, on January 5, 2022, Governor Hochul announced her own plan to replace JCOPE with a ‘truly independent agency’^{fn5}—but through the Act, not a constitutional amendment. *See Ethics Commission Reform Act of 2022 (L. 2022, c. 56, Part QQ)*. On April 8, 2022, the Legislature passed the Act, and Governor Hochul signed it into law the next day.” (underlining added).

^{fn3} A copy of the Krueger Amendment (S855) is attached to this Amended Complaint as Exhibit C (‘Ex. C’).”

^{fn4} The New York City Bar Association Report on Legislation by the Committee on Government Ethics and State Affairs, reissued on March 2021, is attached to this Amended Complaint as Exhibit D (‘Ex. D’).”

^{fn5} Press Release, ‘Governor Hochul Announces Plan to Replace JCOPE with New Independent Ethics Agency,’ dated January 5, 2022. A copy of the press release is attached to this Amended Complaint as Exhibit E (‘Ex. E’).”

36. This is the sum total of what the complaint says about the enactment of the “ethics commission reform act of 2022”, no mention of the budget.

37. Although I have no proof that former Governor Cuomo’s concealment of ECRA’s enactment *via* the budget by his April 25, 2023 complaint, repeated in his July 24, 2023 complaint, was with knowledge of [CJA v. JCOPE, et al.](#), I believe it unlikely that his legal team was unaware of the lawsuit. The [New York Law Journal](#) published [a front-page, above-the-fold, article about CJA v. JCOPE et al. in its June 13, 2022 print edition](#) and, assumedly, the Cuomo lawyers were aware of and watched COELIG’s March 29, 2023 annual hearing, either as live-streamed or recorded, at which I testified.

38. In any event, Cuomo attorney James McGuire, with whom I interacted in 1996 when he was first assistant counsel to then Governor Pataki¹² and then, more than 20 years later, in 2017, knew, from that second interaction,¹³ of the monumental [CJA v. Cuomo...DiFiore citizen taxpayer action, then in Supreme Court/Albany County](#), challenging the constitutionality of the New York state budget and that I was searching for:

“(1) scholarship on the Court of Appeals’ 2004 *Silver v. Pataki/Pataki v. Assembly and Senate* decision – and the constitutional provisions relating to the New York State budget;

(2) scholars to whom I might furnish the ‘on-the-ground’ empirical evidence that the New York State budget is so flagrantly ‘OFF the constitutional rails’ and violative of the *Silver v. Pataki/Pataki v Assembly and Senate* 2004 Court of Appeals decision and Article VII, 4, 5, 6 and Article III, 10 of the New York State Constitution as to mandate SUMMARY JUDGMENT declarations...[in *CJA v. Cuomo...DiFiore*]”.

39. Five years later, Mr. McGuire would have seen from the *CJA v. JCOPE, et al.* verified petition exactly what had happened in *CJA v. Cuomo...DiFiore*, as it journeyed through

¹² This is reflected by my [May 6, 1996 letter to Mr. McGuire](#), transmitting to him a copy of [the record of CJA’s first lawsuit against the Commission on Judicial Conduct](#).

¹³ This is reflected by my four e-mails to Mr. McGuire: [April 18, 2017](#), which, following his rather immediate response, I answered back “[What are you talking about?...](#)”, on [July 20, 2017](#), and on [October 6, 2017](#). The webpage on which it is posted is [here](#).

Supreme Court, through this Court, and through the Court of Appeals – because it was chronicled by my complaints to the Commission on Judicial Conduct and Attorney Grievance Committees, annexed as exhibits [\[R.251-286; R.241-250\]](#). And he would have seen that a month after the case ended, I had done my own scholarship of the Court of Appeals’ 2024 *Silver v. Pataki* decision and presented it to then Governor Cuomo, by a March 18, 2020 letter entitled:

“Your January 21, 2020 address on the Executive Budget – Part III: GOOD NEWS DURING THIS CORONAVIRUS EMERGENCY – You Can Chuck Six of Your Seven ‘Article VII Bill’ Because They are Unconstitutional. Here’s why based on the Court of Appeals’ 2004 plurality, concurring, and dissenting opinions in *Pataki v. Assembly/Silver v. Pataki*, 4 N.Y.3d 75.”

which the verified petition also annexed as an exhibit [\[R-132-154\]](#), stating, at ¶82 of its sixth cause of action:

“The March 18, 2020 letter (Exhibit A-5) is the starting point for the declaration that Part QQ was unconstitutionally enacted...” [R.82]

and had thereafter reinforced CJA’s entitlement to summary judgment on the sixth, seventh, eighth cause of action by a June 28, 2022 notice to furnish papers to the Court pursuant to CPLR §2214(c) [\[R.518-527\]](#), for production of records pertaining to the FY2022-23 budget bills – and, among them, Education, Labor, Housing, and Family Assistance Budget Bill S.8006-C/A.9006-C – but also including, as a first item:

“all records of **findings of fact and conclusions of law** made with respect to petitioners’ March 18, 2020 letter to then Governor Cuomo ([Ex A-5 to petition](#)), simultaneously furnished to the Legislature and Budget Director Mujica – identified at ¶82 of the June 6, 2022 verified petition as ‘the starting point for the declaration that Part QQ [of Education, Labor, Housing and Family Assistance Budget Bill #S.8006-C/A.9006-C – the ‘ethics commission reform act of 2022’] was unconstitutionally enacted’.” [\[R.519\]](#), bold in the original].

40. It was Mr. McGuire who both signed and verified Respondent’s April 25, 2023 complaint [\[R.81-82\]](#) and who verified the July 24, 2023 complaint [\[R.660\]](#), making no mention of the budget.

**The Reasons Warranting These Appeals Being Heard Together Also Warrant
The Granting of Leave to File an *Amicus Curiae* Submission**

41. The same reasons as warrant these appeals being heard together also warrant the granting of leave to file an *amicus curiae* submission, in the event the appeals are not heard together. In the interest of expedition and economy, and so that the Court may be protected from fraud, I ask that this affidavit be deemed that *amicus curiae* submission.

Elena Ruth Sassower

Elena Ruth Sassower, unrepresented petitioner-appellant
Center for Judicial Accountability, et al. v. JCOPE, et al.
(CV-23-0115)

Sworn to before me this
12th day of January 2024

Charles Rodman

Notary

CHARLES B. RODMAN
Notary Public, State of New York
No. 4620811
Qualified in Westchester County
Commission Expires 12/31/2025

ENDNOTES

en1

Brief: p. 1: "...Governor Kathy Hochul...included in the 2022-2023 budget a law that replaced the prior ethics commission with the Commission on Ethics and Lobbying in Government"; p. 8: "included in the 2022-2023 budget. L. 2022, ch. 56, pt. QQ, §§1-2 (codified, in part, as Executive Law §94)."

OSC/ASG Brockner's aff: ¶3: "The Ethics Commission Reform Act of 2022 was enacted as part of the 2022-2023 budget bill. L. 2022, ch. 56, pt. QQ §§1-2"; ¶40: "The Governor... included Executive Law §94 in her budget bill, which the Legislature passed into law. *See supra* at 3".

en2 Respectively quoting, Brief: p. 1, first sentence; and OSC/ASC Brockner aff: ¶26, quoting "*Nicholas v. Kahn*, 47 N.Y.2d 24, 32 (1979)"

en3 Brief, p.1 : "...the State has long struggled to create an ethics commission that is seen as able to fulfil this vital goal...[JCOPE] was widely perceived as unduly influenced by the officials whom it was supposed to monitor." p.23: "the Commission's structure was a response to the perceived failings of the prior ethics commission, JCOPE"; "JCOPE was widely seen as unduly beholden to the officials it was charged with overseeing. This perceived lack of independence..."; p. 24

OSC/Brockner aff: "36. ...As Governor Hochul explained, JCOPE's perceived lack of independence from the Governor undermined its ability to maintain the public's trust and confidence in government by ensuring compliance with the State's ethics and lobbying laws...."

en4 Brief: pp. 6-7:

"Over time, concerns grew over JCOPE's 'ability to function as an independent body.' (Record on Appeal 'R.'] 107 [December 2021 New York Senate Report].) During a 2021 hearing before the Senate's ethics committee, legislators and witnesses explained that JCOPE's structure impaired it from fulfilling its statutory mission. Speakers expressed concerns about JCOPE's appointment process and the independence of those who were appointed. (See R.107, 113-114, 118.) As witnesses explained, JCOPE's members were appointed based more on their connections to the official who appointed them than on their ability to administer the State's ethics and lobbying laws fairly. (R.113-114, 118-119.)

Those at the hearing also criticized JCOPE's 'special voting' requirement. (R.114, 119, 123.)"

en5 Brief: p. 1: "The Commission's structure was carefully designed to ensure that it possessed the actual and perceived independence that would allow it to carry out its mission and restore the public's trust in government."; p. 3: "...the Commission's structure is designed to meet a uniquely compelling need for the Commission to be sufficiently independent, both in fact and in appearance, from the political branches it monitors."; pp. 22-23: "New York's flexible separation-of-powers doctrine...allows...where there is a particularly compelling need for a commission with both the reality and the appearance of independence"; p. 31: "The Commission's structure is valid because of the coexistence of the several factors detailed above: the compelling need for the Commission's actual and perceived independence from the political branches it monitors..."

OSC/Brockner aff:

“35. The separation-of-powers doctrine is sufficiently flexible so as to permit the Governor to agree with the Legislature and sign into law an ethics commission where members are nominated by the political branches and which may act independently from the Executive, in an area – ethics and lobbying requirements – where the appearance and reality of independence is vital to maintaining the public’s trust.”

en6 Brief: p. 10-12:

“the Commission’s structure was carefully designed to enhance its ability to impartially administer and enforce the State’s ethics and lobbying requirements.

...Each candidate is reviewed by the Independent Review Committee (‘IRC’). *Id.* §94(3)(b). The IRC is a non-partisan body composed of the deans, or associate deans if so designated, of New York’s 15 accredited law schools. *Id.* §94(2)(c).

... The law provides that upon the receipt of the elected officials’ ‘appointments,’ the IRC’s members must disclose whether they have a conflict of interest with respect to that ‘appointee’ and, if appropriate, recuse themselves from ‘involvement in the consideration of and action upon the appointment.’ *Id.* §94(3)(j).

pp. 24-25:

“...to address concerns over the independence and qualifications of JCOPE’s appointees, Executive Law §94 created a non-partisan body—the IRC—to ensure those appointed to the Commission are, in fact, qualified to fairly enforce the State’s ethics and lobbying requirements. *See id.* §94(3)(b)-(d). As detailed *infra* at 39-54, there is ‘no constitutional bar’ to creating a body that consists of the heads of private organizations, and that can limit who an elected official may appoint to a state board, where such a body can ‘reasonably be expected’ to help ensure the appointment of qualified individuals, *Lanza v. Wagner*, 11 N.Y.2d 317, 333-334 (1962). The IRC, which is composed of law school deans, serves just that role. The IRC’s members lack a personal interest in the Commission’s composition. And they bring an informed perspective as leaders of institutions charged with training professionals for whom adhering to a legal code of ethics is central to their trade.”

OSC/Brockner aff: “11. Each candidate is reviewed by the Independent Review Committee (‘IRC’). *Id.* §94(3)(b). The IRC is a non-partisan body composed of the deans, or associate deans, of New York’s 15 accredited law schools. *Id.* §94(2)(c)...” “47. ...the IRC, a non-partisan body of law school deans...”

en7 Brief: pp. 8-9:

“Like JCOPE, the Commission is responsible for investigating and enforcing violations of the State’s ethics and lobbying requirements. Executive Law §94(10), (14). Unlike JCOPE, the Commission functions solely by majority vote. *See id.* §94(10)(f)(h).

When the Commission receives a complaint, its staff is responsible for investigating and recommending whether to pursue the matter to disposition. *See id.* §94(10)(d)-(f). If, after considering the staff’s recommendation, the Commission finds credible evidence of a violation, the person under investigation is entitled to a due process hearing before an independent arbiter. *See* §94(10)(h)-(i).”

OSC/Brockner aff:

“5. The Commission is also responsible for investigating and enforcing violations of the State’s ethics and lobbying requirements. *See* Executive Law §94(10), (14). In its first year of operation, the Commission received over 150 complaints, tips, and referrals alleging violations of the ethics and lobbying laws. (Ex. C ¶ 10.)

6. The Commission staff is responsible for investigating complaints and recommending to the Commission whether to pursue the matter to disposition. *See* Executive Law §94(1)(d)-(f). If, after considering the staff’s recommendations, the Commission finds credible evidence of violation, the person under investigation is entitled to a due process hearing before an independent arbitrator. *Id.* §94(10)(h)-(i). ...”

“27. The injunction prohibits the Commission from performing myriad tasks that are essential to maintaining the public’s trust and confidence in government. To start, the injunction flatly bars the Commission from engaging in all investigative and enforcement activities. (Ex. A at 24-25.) The Commission receives over 150 complaints, tips, and referrals annually that allege violations of the State’s ethics and lobbying laws. (Ex. C ¶ 10.) The injunction renders the Commission powerless to take any steps to even begin to investigate such complaints. And, unless stayed, the injunction could impede either the Commission or any other entity from ever substantiating those complaints...”

The referred to “(Ex. C ¶ 10.)” is COELIG Executive Director Berland’s Sept. 21, 2023 affidavit, stating, in pertinent part:

“10. The Commission's Investigations and Enforcement Division in the first instance carries out the Commission's duties, under Executive Law §94(10), to investigate possible violations of the laws administered by the Commission and, when appropriate, to pursue enforcement proceedings. Executive Law §94(10)(d) provides that:

The commission staff shall review and investigate, as appropriate, any information in the nature of a complaint or referral received by the commission or initiated by the commission, including through its review of media reports and other information, where there is specific and credible evidence that a violation of section seventy-three, seventy-three-a, or seventy-four of the public officers law, section one hundred seven of the civil service law or article one-A of the legislative law by a person or entity subject to the jurisdiction of the commission including members of the legislature and legislative employees and candidates for members of the legislature.

Following such a preliminary review, the Commission or staff may ‘elevate’ the preliminary review into an ‘investigation,’ affording the subject a 15-day period within which to respond to a written notice of ‘the possible or alleged violations of...law...and a description of the allegations against the respondent and the evidence, if any, already gathered pertaining to such allegations....’ (Executive Law §94(10)(f).) If the investigation proceeds beyond that point, then at its conclusion, staff prepares a report to the Commission ‘setting forth’ the allegations and the evidence tending support or disprove them, the relevant law and a recommendation ‘for the closing of the matter as unfounded or unsubstantiated, for settlement, for guidance, or moving the matter to a confidential due process hearing.’ (*Id.*) Thereafter, depending upon the recommendation of staff and how the Commission acts upon it, the matter may be closed or settled, further investigated, or,

if the Commission finds that there is credible evidence of a violation (*id.*, §94(10)(h)), finally determined through the adjudicatory process... In 2022, 155 tips, complaints, referrals and reports were received and processed by the Commission; 128 investigative matters were closed; and the year ended with 156 open or pending investigative matters, including matters carried over from the predecessor agency.” (underlining added).