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,

AFFIDAVIT IN SUPPORT
OF ORDER TO SHOW CAUSE
FOR TRANSFER/REMOVAL TO
FEDERAL COURT, FOR A
PRELIMINARY INJUNCTION,
MANDAMUS, DECLARATORY
& OTHER RELIEF -- & A TRO

Petitioners/Plaintiffs,

-against-

NEW YORK STATE JOINT COMMISSION ON PUBLIC ETHICS,
LEGISLATIVE ETHICS COMMISSION,
NEW YORK STATE INSPECTOR GENERAL,

KATHY HOCHUL, in her official capacity as
GOVERNOR OF THE STATE OF NEW YORK,

ANDREA STEWART-COUSINS, in her official capacity as
TEMPORARY SENATE PRESIDENT, & 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,

Respondents/Defendants.

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

ELENA RUTH SASSOWER, being duly sworn deposes and says:

1. I am the above-named *pro se* individual petitioner/plaintiff, fully familiar with all the facts, papers, and proceedings that are the subject of the June 6, 2022 verified petition/complaint herein,[1] which I have written and to whose truth I have sworn.

2. Two weeks ago, on June 7, 2022, petitioners, "acting on their own behalf and behalf of the People of the State of New York & the Public Interest", filed this hybrid Article 78 proceeding, declaratory judgment action, and citizen-taxpayer action to secure the mandamus and declaratory relief compelled, *as a matter of law*, by the New York State Constitution, New York statutes, legislative rules, and caselaw – and did so with an order to show cause because time was of the essence.

3. Supporting the order to show cause was my June 6, 2022 affidavit whose ¶¶3-8 particularized the reasons time was of the essence and the parties' ability to effectuate the earliest return date the Court would designate. The balance of the affidavit, ¶¶9-13, presented the facts and law pertaining to what was not a branch of relief of that order to show cause, but which – as a result of what took place therein – is now the first branch of relief on this order to show cause, *to wit*:

> "transferring/removing this case to federal court, including pursuant to Article IV, §4 of the United States Constitution: 'The United States shall guarantee every State in this Union a Republican Form of Government', inasmuch as the justices and acting justices of the Supreme Court of Albany County – and of the 61 other counties of New York State – are divested of jurisdiction to hear the case pursuant to Judiciary Law §14 and 'rule of necessity' cannot be invoked by reason thereof".

4. For the convenience of the Court, below are ¶¶3-13 of my June 6th affidavit, with all its footnotes and substantiating links:[2]

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[1] For simplicity, the petitioners/plaintiffs are hereinafter referred to as "petitioners"; the verified petition/complaint is referred to as the "petition" – and respondents/defendants are referred to as "respondents".

[2] This affidavit also has its own substantiating links. And just as the June 7th affidavit had its own substantiating webpage on CJA's website, accessible from a menu page for the lawsuit: https://www.judgewatch.org/web-pages/lawsuit-jcope-et-al/menu.htm, so, too this affidavit. The direct link is here: https://www.judgewatch.org/web-pages/lawsuit-jcope-et-al/june-21-osc.htm.

"3. As time is of the essence, we proceed electronically, *via* NYSCEF and by order to show. Apart from the vast amounts of taxpayer monies that have been misappropriated and are being dissipated by the unconstitutional, unlawful, and larcenous FY2022-23 state budget – entitling petitioners to relief pursuant to State Finance Law, Article 7-A (§123 *et seq*.)[fn2] – the 'ethics commission reform act of 2022', which is part of the budget and abolishes the JOINT COMMISSION ON PUBLIC ETHICS [hereinafter 'JCOPE'], will take effect on July 8, 2022.

4. It is this 'ethics commission reform act of 2022' that has triggered this lawsuit, being non-fiscal policy legislation that was unconstitutionally and unlawfully inserted as Part QQ into Education, Labor, Housing, and Family Assistance Budget Bill #S.8006-C/A.9006-C, itself unconstitutional and fraudulently introduced as 'A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution' and then three times 'amended' unconstitutionally and by fraud.

5. To secure judicial determination of the constitutionality and lawfulness of Part QQ as immediately as possible and prevent the mooting of petitioners' first two branches of mandamus relief against JCOPE that would result from JCOPE's demise, petitioners seek the earliest reasonable return date for their order to show cause whose eleven branches of relief – the same as the petition's – culminate in a request for a preliminary injunction to prevent QQ from taking effect pending final determination of this order to show cause and the petition and enjoining JCOPE from closing.

6. Respondents will not be prejudiced by an expeditious return date. As reflected by the petition, all have had years in which to grapple with the constitutional and statutory issues pertaining to the New York state budget and JCOPE – issues concisely summarized by the petition's first exhibit: the April 13, 2022 complaint that petitioners filed with JCOPE (Exhibit A-1), and simultaneously furnished to the NEW YORK STATE INSPECTOR GENERAL ['NYS-IG'] whose jurisdiction extends to JCOPE as a 'covered agency'.

7. Upon the Court's signing of the order to show cause – which, excepting the insertion of expedited dates, is a strictly ministerial act – I will immediately e-mail respondents, all state officers and entities, the signed order to show cause and the underlying papers on which it is based, further furnishing them with the link to where everything is posted on the CENTER FOR JUDICIAL

– as well as its own substantiating EVIDENTIARY webpage, posted on CJA's website. The direct link is here: https://www.judgewatch.org/web-pages/lawsuit-jcope-et-al/june-21-osc.htm.

"fn2 State Finance Law §123-b(1) provides for equitable and declaratory relief for 'a wrongful expenditure, misappropriation, misapplication, or any other illegal or unconstitutional disbursement of state funds or state property…' with State Finance Law §123-e(2) providing for the granting of a preliminary injunction."

ACCOUNTABILITY's website[fn3] – and request that they accept same as service or promptly consent to service, *via* NYSCEF.

8. As obvious from even a superficial review of the petition, its exhibits, and the scores, if not hundreds, of evidentiary links they cumulatively furnish, petitioners' likelihood of success on the merits is 100%, assuming the Court is fair and impartial, guided by the facts and the law, as it is required to be pursuant to §100.3E of the Chief Administrator's Rules Governing Judicial Conduct and Judiciary Law §14.

9. Judiciary Law §14[fn4] is, in fact, the threshold issue before this Court, as its judges all have HUGE direct financial and other interests in the petition's eleven branches of relief. This is manifest from the complaints annexed to the petition whose determination by JCOPE and the NYS-IG is sought to be compelled by mandamus. All the complaints involve the commission-based 'force of law" judicial pay raises that have boosted each judge's salary by approximately $80,000 per year, the Judiciary's own budget, and the New York State Commission on Judicial Conduct. By reason thereof, the Court is without jurisdiction to proceed[fn5]

"fn3 The direct link to the menu webpage I have created for this lawsuit is here: https://judgewatch.org/web-pages/lawsuit-jcope-et-al/menu.htm."

"fn4 Judiciary Law §14 entitled 'Disqualification of judge by reason of interest or consanguinity' reads, in pertinent part:

> '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. …'"

"fn5 *See* Appellate Division, Third Department's decision in *People v. Alteri*, 47 A.D.3d 1070 (2008), stating:

> '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])'. (underlining added)."

– as to which 'rule of necessity' cannot be invoked, because such is predicated on jurisdiction that Judiciary §14 divests from interested judges.[fn6]

10. As the same applies to every judge of New York's Unified Court System, the Court's only option is to transfer/remove the case to the federal courts, including pursuant to Article IV, §4 of the United State[s] Constitution: 'The United States shall guarantee every State in this Union a Republican Form of Government.'.

11. As the signing of the order to show cause is a ministerial act for relief that, but for an accelerated return date, petitioners could seek by notice of motion, the Court's refusal to even insert unaccelerated CPLR time parameters and so-sign the order to show cause would be inexplicable except as a manifestation of actual bias, born of interests and relationships. In such event, the Court's signed declination on the order to show must be accompanied by an explanation.

Also, the Appellate Division, First Department's decision in *Matter of Sterling Johnson, Jr. v. Hornblass*, 93 AD2d 732, 733 (1983):

> '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.)'" (underlining added).

Oakley v. Aspinwall, 3 NY 547, 548, 551 (Court of Appeals, 1850); 28 New York Jurisprudence 2nd §403 (2018)."

"fn6 *See* 32 New York Jurisprudence §45 (1963), 'Disqualification as yielding to necessity':

> '…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]'

Conspicuously, when New York courts invoke the 'rule of necessity' in cases involving judicial self-interest governed by Judiciary Law §14, they do NOT cite to Judiciary Law §14, which divests them of jurisdiction. Instead they cite, either directly or through other cases, to *United States v. Will*, 449 U.S. 200, 210-211 (1980), wherein the U.S. Supreme Court **expressly and under the title heading 'Jurisdiction'**, recited its jurisdiction and that of the lower federal judiciary to decide a case involving their own pay raises, there being no federal statute removing from them jurisdiction to do so.

Illustrating the New York courts' sleight of hand with respect to 'rule of necessity' in cases of judicial self-interest: the Court of Appeals decisions in *Maresca v Cuomo*, 64 NY2d 242, 247, n 1 (1984), *Matter of Morgenthau v Cooke*, 56 NY2d 24, 29, n 3 (1982), as well as in *Maron v. Silver*, 14 NY3d 230, 249 (2010) – this being its decision consolidating appeals in three lawsuits by New York judges suing for pay raises. Similarly, the Appellate Division, Third Department's decision in the *Maron* case, 58 AD3d 102, 106-107."

12. No application for the same or similar relief has been made to this or any other Court, except by:

- petitioners' two prior citizen-taxpayer actions, each bearing the shorthand caption, *Center for Judicial Accountability, et al. v. Cuomo, et al.* (Albany Co. #1788-2014), (Albany Co. #5122-2016), neither case involving the FY2022-23 state budget or seeking mandamus and declaratory relief against JCOPE, its statutory partner, the Legislative Ethics Commission (LEC), or against the NYS-IG;

- petitioners' declaratory judgment action, also bearing the shorthand caption, *Center for Judicial Accountability, et al. v. Cuomo, et al.* (Bronx Co. #302951-2012; transferred to New York Co. #401988-2012);

- petitioners' April 23, 2014 order to show cause to intervene in the Legislature's declaratory judgment action against the Commission to Investigate Public Corruption (New York Co. #160941-2013), whose proposed verified complaint annexed petitioners' June 27, 2013 complaint to JCOPE (Exhibit G) and their July 11, 2013 complaint to NYS-IG (Exhibit H).

13. As verifiable from the records of all four litigations, they were each 'thrown' by a double-whammy of litigation fraud by the New York Attorney General, rewarded by fraudulent decisions of New York judges. This is so-highlighted by petitioners' March 5, 2021 complaint to JCOPE (Exhibit D-1), resting on and annexing as exhibits their June 4, 2020 grand jury/corruption complaint to Albany County District Attorney P. David Soares and their June 13, 2020 grand jury/corruption complaint to then Montgomery County District Attorney Kelli McCoski, and furnishing further substantiation by petitioners' linked February 11, 2021 complaint against Attorney General JAMES, Solicitor General Underwood, and attorneys under their supervision, filed with the Appellate Division attorney grievance committees (Exhibit D-2) and petitioners' linked February 7, 2021 judicial misconduct complaint to the Commission on Judicial Conduct (Exhibit D-3), incorporated therein."

* * *

5. It was in face of this presentation that the then Part 1 duty judge, Supreme Court Justice Peter Lynch, made no disclosure of facts of which I had no knowledge – most significantly, that he is the twin brother of now Appellate Division, Third Department Associate Justice Michael Lynch, who was this Court's Part 1 duty judge on March 28, 2014, before whom I appeared with an order to show cause with TRO, upon filing the first *CJA v. Cuomo et al.* citizen-taxpayer action –

and whose misconduct, in connection therewith, flagrantly falsifying the law and the evidentiary record to deny the TRO to which the petitioners were there entitled, *as a matter of law*, I would lay out, before the Appellate Division, Third Department by a July 24, 2018 affidavit in support of an order to show cause, with TRO, to demonstrate his absolute disqualification from the appeal of the second *CJA v. Cuomo, et al.* citizen-taxpayer action (#527081) – and who thereafter absented himself from the five-judge panel hearing the appeal, of which he was a member, which then "threw" the case by a fraudulent December 27, 2018 decision, the particulars of which are presented by the above referred-to February 7, 2021 judicial misconduct complaint to the Commission on Judicial Conduct, Exhibit D-3 to the petition, furnished to JCOPE by my March 5, 2021 complaint, the petition's D-1. This February 7, 2021 judicial misconduct complaint was then supplemented by my April 26, 2021 further and supplementing judicial misconduct complaint pertaining to Appellate Division Justice Lynch's participation, thereafter, in the appeal of *Delgado v. New York State* (#529556) and authorship of the Appellate Division, Third Department's fraudulent March 18, 2021 decision therein[3] – resting on its fraudulent December 27, 2018 decision in the *CJA v. Cuomo, et al.* second citizen-taxpayer action. Both the April 26, 2021 complaint and the February 7, 2021 judicial misconduct complaint are the subjects of my November 24, 2021 complaint to JCOPE – which is against the Commission on Judicial Conduct (Exhibit C to the petition).

6. Of all the exhibits to petitioners' petition, Justice Peter Lynch – as any judge – may be presumed to have taken a special interest in Exhibits D-3 and Exhibit C – because they involve the Commission on Judicial Conduct – and to have recognized the financial and other consequences that state judges would face unless petitioners' entitlement to mandamus against JCOPE was mooted by delaying, until after July 8, 2022, determination of the preliminary injunction relief sought by

[3] The March 18, 2021 appellate decision in *Delgado*, resting on the December 27, 2018 appellate decision in the *CJA v. Cuomo, et al.* second citizen-taxpayer action, is presently before the Court of Appeals

their June 7, 2022 order to show cause and to which they would be otherwise, entitled, *as a matter of law*.

7. What Justice Peter Lynch did with respect to that order to show cause, before him on Tuesday, July 8, 2022 as the Part 1 duty judge – and the course of the proceedings thereon culminating in this order to show cause – are, as follows**:**

(a) Disregarding that pursuant to CPLR §2214(b), the return date of a motion, personally served, is eight days – and if served 16 days before the noticed return date, the movant is afforded six days for reply papers – Justice Lynch signed the order to show cause, fixing a return date 17 days later – June 24th – requiring petitioners to make "personal service in accord with CPLR Article 3" by June 13th, respondents to serve "*via* e-filing" their answering papers by June 21st, and petitioners' reply to be served "via e-filing" by 5:00 pm June 23rd. He then struck out entirely what I had formatted as a TRO, but which – as plain from my affidavit – was intended as a preliminary injunction, so that now my motion papers contained neither relief.

(b) Upon receipt of the signed order to show cause, in the afternoon of June 7th, I immediately phoned Justice Lynch's law clerk, Stehle Hetman – with whom I had spoken hours earlier, upon receipt of e-mail notification from the Clerk's Office that the order to show cause was before Justice Lynch. I stated that I assumed that the reason the injunctive relief was stricken was because, as I now realized, I had formatted the preliminary injunction as if a TRO. I told her that it had not been my intent to seek a TRO because, with more than a month until July 8th when the "ethics commission reform act of 2022" was to take effect and JCOPE shut down, there was obviously ample time for a hearing on a preliminary injunction – especially with an expedited return date.

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on an appeal of right (APL-2021-0080) – a right the Court of Appeals did not recognize for *CJA v. Cuomo, et al.*, nor grant petitioners leave to appeal.

(c) I thereupon filed and e-mailed an amended order to show cause, identical to the original, but now formatting the preliminary injunction as the first branch of relief. My expectation was that this amended order to show cause would be immediately signed – and that were Justice Lynch to retain his required "personal service" by June 13th, he would change the return date to eight days later, June 21st – with appearances on that date specifically for a hearing on the preliminary injunction, so that the preliminary injunction could be decided at such hearing, or promptly thereafter.

(d) It was not until the next day, Wednesday, June 8th, that Judge Lynch signed the amended order to show cause – and then in a fashion effectively mooting the preliminary injunction by now pushing the return date to July 15th and adding, "*** Personal appearances are not permitted unless authorized by the assigned Justice." The other time parameters were also extended. The requirement that petitioners make "personal service in accord with CPLR Article 3" was now extended to June 20th, respondents' answering papers "*via e-filing*" were not required until July 11th, and petitioners' reply papers "*via e-filing*" by 5 p.m. July 14th.

(e) Again, I immediately phoned Ms. Hetman, now stating that I was not so stupid as to not understand the import of what Justice Lynch had done, which was to moot my preliminary injunctive relief by pushing the return date to after July 8th. I further stated that it now seemed clear to me that, although my premise had been that with an early return date the Court would have ample time to render decision on a fully-submitted motion for a preliminary injunction to which petitioners had an absolute entitlement, I now realized that a TRO was necessary as otherwise there would be nothing to prevent the Court from delaying decision until after July 8th , so as to then be able to deny the preliminary injunction on the only basis upon which it could be denied, *to wit*, as moot.

(f) Ms. Hetman stated – I believe after conferring with Justice Lynch – that he would hear oral argument on a TRO. However, she declined, several times, my offer to submit a new

order to show cause for the TRO and preliminary injunction – presumably, as I now believe, to conceal that his duty was to hear the TRO, without any prior service of papers required – and immediately.[4] As it was, by then, Wednesday afternoon, June 8th, we initially agreed upon Friday, June 10th, at 1 p.m. for the argument. I then rushed to find a local car rental, only to discover that none were available. I called Ms. Hetman back immediately to request that argument on the TRO be scheduled for Monday or Tuesday, June 13th or June 14th, but she stated that Justice Lynch would be tied up with a jury trial and that only Friday, June 17th would be possible, to which I agreed.

(g) The court notice I thereafter received, *via* NYSCEF notification, contained the earlier – and already discarded June 10th date. It read:

> "On June 7, 2022 the undersigned issued an Order to Show Cause, returnable June 24, 2022, and struck the requested injunctive relief (labeled a preliminary injunction, but effectively a TRO). Petitioner proffered an Amended Order to Show Cause seeking a preliminary injunction, without temporary relief, which this Court issued this date. Petitioner has requested an opportunity to be heard on an application for a Temporary Restraining Order. The application has been scheduled for an in person proceeding to take place on Friday, June 10, 2022 at 1:00 PM. The application is subject to the express provision of CPLR Sec. 6313. Petitioner shall provide notice of this proceeding to all named Respondents on or before noon on June 9, 2022."

Upon my promptly calling Ms. Hetman about the incorrect date, a second court notice was issued, reading:

> "This Court Notice will amend the Court Notice filed earlier today. The application has been rescheduled for an in person proceeding to take place on Friday, June 17, 2022 at 2:00 PM. The application is subject to the express provision of CPLR Sec. 6313. Petitioner shall provide notice of this proceeding to all named Respondents on or before noon on June 16, 2022."

(h) On Friday afternoon, June 10th, I phoned Ms. Hetman to apprise her that I had advised all respondents of the Friday, June 17th oral argument on the TRO and, additionally, to request permission to have a videographer film the oral argument. She asked that I put the request in

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[4] See, for example, all four orders to show cause for TROs that I presented in the two *CJA v. Cuomo, et al.* citizen-taxpayer actions – and the order to show cause for a TRO in the citizen-taxpayer action *Delgado v New York State*, presented by the attorney for the plaintiffs therein (¶¶11-12 & fn.5, *infra*).

writing, which I did by e-mail whose message, addressed to Justice Lynch, essentially repeated what I had stated to Ms. Hetman. The e-mail read:

> "Following up my telephone conversation with your Principal Law Clerk Stehle Hetman-Mika earlier this afternoon, this is to request permission for a videographer to film the oral argument to be held before you at 2 pm on June 17, 2022 of the TRO petitioners/plaintiffs are seeking to stay the 'ethics commission reform act of 2022' from taking effect on July 8, 2022 and to enjoin JCOPE from closing, pending final determination of their June 6, 2022 verified petition/complaint and its accompanying order to show cause.
>
> The TRO – and the case – are of obvious public importance and interest. A video of the oral argument will enable the public to more directly understand the constitutional and legal issues and how our system of government provides for their resolution through the courts.
>
> The videographer has background in filming court proceedings – and was previously engaged by me three times. Twice, in 2018, it was to film proceedings at the Appellate Division, Third Department in the citizen-taxpayer action, *CJA, et al. v. Cuomo, et al.* (3rd Dept App. Div. Docket #527081) – the first time being the August 2, 2018 oral argument on a TRO. The third time was to film the January 11, 2019 oral argument for a preliminary injunction in a case in which I was NOT a party, *Delgado, et al. v. NYS, et al.* (Albany Co. #907537-18). After allowing the parties to be heard with respect thereto, permission for the filming was granted by Justice Christina Ryba, the justice assigned to the case.
>
> Anticipating your favorable determination, I thank you.
>
> Respectfully,…"

(i) Reinforcing the lawsuit's obvious public importance, on Monday, June 13th, I e-mailed Ms. Hetman, for Justice Lynch, a copy of my June 12th letter to the 15 deans of New York's ABA-accredited law schools comprising the "independent review committee" of the "ethics commission reform act of 2022" – sought to be enjoined – calling upon them to furnish Justice Lynch with their opinion on the constitutional and other issues germane to the TRO by Thursday, June 16th.

(j) On Wednesday afternoon, June 15th, having not received any communication from Justice Lynch to my video request, I called chambers and spoke to his secretary, Jaime Montarello, thereupon forwarding her my June 10th e-mail, and stating: "I would appreciate confirmation that

permission has been granted, as I know of no reason why it should not be." 17 minutes later, Ms. Montarello e-mailed back, stating:

> "The Judge will give everyone the opportunity to be heard on 6/17. You could have the videographer on standby if you wish.
>
> Thank you!"

(k) So disconcerted was I by this non-confirmatory e-mail – and the possibility that oral argument on the TRO might not be videoed – that, for the first time, I googled Justice Lynch, pairing his name with the name of Michael Lynch, before whom I had appeared on March 28, 2014 to argue for a TRO in CJA's first citizen-taxpayer action. It was then that I discovered, from a March 10, 2016 Albany Times Union article, that they are not only related, but they are brothers – indeed, twin brothers.

(l) I thereupon immediately telephoned Ms. Montarello about what I had learned. She hesitated in answering whether it was true and I told her that I was assuming it to be true and that oral argument on the TRO would have to be put over as Justice Lynch was utterly without jurisdiction pursuant to Judiciary Law §14, because, in addition to his financial and other interests in the case, he had a direct interest arising from his twin brother.

(m) I believe Ms. Montarello deliberately disconnected the call – and when I immediately called back, got a machine recording, on which I left a voice mail message, thereupon following it by an e-mail to Ms. Montarello, with a *cc* to Ms. Hetman, which read:

> "Following up my phone conversation with you, from which I was disconnected – and the voice message I immediately left on your line thereafter – the oral argument on the TRO that had been scheduled for Friday, June 17th, must be rescheduled for next week, before another justice – who I understand will be Justice Platkin.
>
> I am still shaking from the discovery – upon doing some internet googling following receipt of your below unacceptable e-mail – that Justice Peter Lynch is not only related to Justice Michael Lynch, but is his twin brother. Pursuant to Judiciary Law 14, Justice Peter Lynch is without jurisdiction to hear this case – and his lack of fairness and impartiality has been evident, from the outset and by the below.

> Will set forth more tomorrow, but wanted to give the earliest possible notice that the June 17th argument on the TRO must be put over."

(n) The next morning, Thursday, June 16th, I called the Albany County Supreme Court Clerk's Office, requesting to speak to Deputy Chief Clerk Mary Grace Sullivan about the situation. Shortly before noontime, I succeeded in speaking with her – and at length – reciting most of the foregoing. I advised her that I would not be serving the amended order to show cause that Justice Lynch had signed, but, rather, would be submitting a new order to show cause that I had already drafted, which would now seek a TRO and – as a result of my experience with Justice Lynch – transfer/removal to federal court. I stated I would send the drafted order to show cause to her, along with my June 15th e-mail notifying Justice Lynch's chambers that the June 17th oral argument could not go forward.

(o) The June 16th e-mail I then wrote to Deputy Chief Clerk Sullivan, was, as follows:

> "Following up our phone conversation late this morning (518-285-8989) and then your call-back – for which I thank you – below, as discussed, is my e-mail chain with Justice Lynch's chambers beginning with my June 10th request for permission to video the June 17th oral argument on the TRO herein, culminating yesterday in my e-mail giving notice to Justice Lynch that the oral argument could not go forward as he is utterly without jurisdiction pursuant to Judiciary Law §14.
>
> So that respondents/defendants do not show up for oral argument that is not taking place, I will e-mail them notice that I will not be there and not be serving upon them the order(s) to show cause that Justice Lynch signed. Likewise, I will e-mail the press and others who I had alerted to the oral argument, such as the 15 law school deans who are the 'independent review committee' of the 'ethics commission reform act of 2022'.
>
> So that respondents/defendants may be fully prepared for what I hope to be **oral argument on the TRO on Wednesday, June 22nd**, I will additionally e-mail them an advance copy of the order to show cause that I will be electronically filing, *via* NYSCEF, early in the morning on Tuesday, June 21st, for signature of the Part 1 duty judge, who will then be Acting Supreme Court Justice Richard Platkin.
>
> As the TRO has to be granted, *as a matter of law*, because petitioners/plaintiffs have a 100% likelihood of success on the merits inasmuch as we have an open-and-shut entitlement to summary judgment based on *prima facie* documentary evidence and black-letter law – as well as clear irreparable injury that will be suffered if the 'ethics commission reform act of 2022' is not stayed because our mandamus relief against

> JCOPE will be moot, and because ALL the equities are in our favor, I will also e-mail respondents/defendants a CPLR §2214(c) notice to furnish papers to the Court, in conjunction with the oral argument on the TRO. Pursuant to CPLR §6313(a), the Court is required to set a hearing on the preliminary injunction 'at the earliest possible time' – and I would be willing for such hearing to be held immediately upon the granting of the TRO, on June 22nd.
>
> My already drafted order to show cause, which I believe to be pretty close, if not identical, to what I will file on Tuesday, is above attached, for informational purposes.
>
> Thank you." (hyperlinking, bold, underlining, and italics in the original).

(p) Shortly after sending this e-mail to Ms. Sullivan – *cc*'ing both Ms. Hetman and Ms. Montarello – I received, in my inbox, e-mail notification of a court notice, filed in NYSCEF, which read:

> "Petitioner requested an in-person hearing to apply for a TRO. The hearing has been scheduled to take place on Friday, June 17, 2022 @ 2:00 p.m. (See NYSEF Doc Nos. 38 and 39). Petitioner's request (via e-mail dated June 15, 2022) to reschedule the hearing to next week is denied.
>
> So Ordered,
> Peter A. Lynch, J.S.C."

In other words, Justice Lynch was denying, without reasons and without making any disclosure, my June 15th e-mailed request for the rescheduling of oral argument on the TRO.

(q) Before I could respond, I received an e-mail of a second court notice, also from Justice Lynch – now reflecting my June 16th e-mail, which he obviously received only after sending out the first notice. It read:

> "By e-mail dated June 16, 2022 Petitioner advised she would not attend the proceeding scheduled to take place on June 17, 2022 @ 2:00 p.m. The June 17, 2022 proceeding is cancelled, and the request for a TRO is deemed withdrawn.
>
> So Ordered,
> Peter A. Lynch, J.S.C."

THE POSTURE OF THE CASE, GOING FORWARD

8. On June 16th, following receipt of Justice Lynch's court notice cancelling the June 17th oral argument of the TRO, I e-mailed respondents, furnishing them with the link to it, atop my June 16th e-mail to which his notice referred, with its attached draft of this order to show cause and request for oral argument on the TRO on Wednesday, June 22nd, at 2 p.m. I similarly e-mailed the 15 law school deans of the "independent review committee". Likewise, the press, the New York State Bar Association, as well as the New York City Bar Association, along with the "JCOPE Must Go Coalition" of which the City Bar is a member, instrumental in urging that a statutory repeal/replace of JCOPE be made part of the budget.

9. On Friday, June 17th, I confirmed with Deputy Chief Clerk Sullivan the procedure, going forward, asking, specifically – as I did not want to be improper – whether, in the order to show cause I would be filing today, I could include June 22nd, at 2:00 p.m., as the date and time for argument on the TRO. She stated I could – and that, if not convenient for Part 1 Duty Judge Platkin, he would change it. She further stated that he would decide my request for videoing the argument.

10. I had already discussed with Deputy Chief Clerk Sullivan, on Thursday, June 16th, whether, pursuant to the Third Judicial District Rules, at the back of the Assignment Book, the order to show cause would be presented, not to Judge Platkin, but to District Administrative Judge Gerald Connolly, as it states that the District Administrative Judge "will: a) Make case assignments when judges are disqualified" – and, at bar, all the Court's judges, indeed, District Administrative Judge Connolly himself, are "disqualified", by reason of their Judiciary Law §14 financial and other interests, divesting them of jurisdiction. She stated, however, that inasmuch as I am presenting a new order to show cause to a new Part 1 duty judge, it would be up to Justice Platkin to decide how he was going to address the disqualification/Judiciary Law §14 issue.

11. Suffice to conclude by stating that petitioners' *matter of law*, absolute entitlement to the granting of a TRO herein – because, as evident from their June 6, 2022 verified petition/complaint, they have a *prima facie*, documentary entitlement to summary judgment on their causes of action – replicates the identical situation in the *CJA v. Cuomo, et al.* two citizen-taxpayer actions when, on four separate occasions, I came to Albany County Supreme Court with orders to show cause for TROs. On each of those occasions, petitioners had an absolute *matter of law* entitlement to the requested TRO because they had a *prima facie*, documentary entitlement to summary judgment:

- The first time, on March 28, 2014, was when petitioners commenced their first citizen-taxpayer action, by a March 28, 2014 verified complaint pertaining to the FY2014-15 state budget, brought on by an order to show cause for a TRO – and the Part 1 duty judge on that date was Albany Supreme Court Justice Michael Lynch;

- The second time, on March 23, 2016, was when petitioners brought an order to show cause, with TRO, in their first citizen-taxpayer action, before Acting Supreme Court Justice/Court of Claims Judge Roger McDonough, the assigned judge – seeking leave to file their March 23, 2016 verified second supplemental complaint pertaining to the FY2016-17 state budget;

- The third time, on September 2, 2016, was when – as a result of Judge McDonough's August 15, 2016 decision on plaintiffs' March 23, 2016 order to show cause – they were forced to commence a second citizen-taxpayer action, which they did by a September 2, 2016 verified complaint pertaining to the FY2016-17, brought on by a September 2, 2016 order to show cause, with TRO – with the Part 1 duty judge on that date being Judge McDonough;

- The fourth time, on March 29, 2017, was when petitioners brought an order to show cause, with TRO, in their second citizen-taxpayer action, before Acting Supreme Court Justice/Court of Claims Judge Denise Hartman, the assigned judge – seeking leave to file a March 29, 2017 verified supplemental complaint pertaining to the FY2017-18 state budget.

12. In addition to the above links to the transcripts of the oral arguments of the four orders to show cause for TROs in the two *CJA v. Cuomo, et al.* citizen-taxpayer actions, CJA's webpage for this order to show cause and affidavit furnishes additional links to enable verification of

the "double-whammy" of fraud committed by Albany County Supreme Court justices and acting justices in tandem with the Attorney General, a defendant representing himself and his fellow defendants, in connection with the TROs and preliminary injunctions petitioners sought therein and to which they were entitled, *as a matter of law*.[5]

13. Finally, I believe it appropriate to mention – and I did mention it to Deputy Chief Clerk Sullivan – that I had interactions with Acting Supreme Court Justice/Court of Claims Judge Platkin when he was a counsel to Governor Pataki. These related to the corruption of "merit selection" appointment to the New York Court of Appeals, resulting from the corruption of the Commission on Judicial Nomination and Commission on Judicial Conduct, in which bar associations were complicity, and, specifically, with regard to then Appellate Division, Second Department Justice Albert Rosenblatt's candidacy for the Court of Appeals. It was Governor Pataki's subsequent nomination of Justice Rosenblatt to the Court of Appeals in December 1998, while the Commission on Judicial Conduct was "sitting on" on an October 6, 1998 complaint against him based, *inter alia*, on his believed perjury on his publicly-inaccessible application for the Court of Appeals, for reasons therein particularized – a complaint that had been furnished to the Commission on Judicial Nomination and, thereafter, to the bar associations purportedly "vetting" the Commission

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[5] Sharply contrasting with what took place at the oral argument of petitioners' orders to show cause for TROs in their two *CJA v. Cuomo, et al.* citizen-taxpayer actions is what took place in the citizen-taxpayer action *Delgado v. New York State* (Albany Co. #907537-2018), at the oral argument before Justice Ryba on the December 19, 2018 order to show cause for a TRO of Cameron MacDonald of the Government Justice Center, representing the plaintiffs therein, who sought a TRO, in the alternative, if a hearing on a preliminary injunction could not be held prior to the January 1, 2019 effective date of the legislative and executive pay raises recommended by the December 10, 2018 report of the Committee on Legislative and Executive Compensation. Based on the probative evidence she was presented by defendants on December 19, 2018, establishing no irreparable injury if the hearing on the preliminary injunction was held after January 1, 2019, Justice Ryba denied the TRO and scheduled the hearing on the preliminary injunction for January 11, 2019. This was the hearing that I, a non-party, requested be videoed, by a January 9, 2019 e-mail to Justice Ryba, as to which, on that same date, she e-mailed Mr. MacDonald and the other attorneys asking that they advise as to their positions – and then, by a January 10, 2019 e-mail, informed me that the request was granted. As for the order to show cause Justice Ryba signed on December 19, 2018, returnable on January 11, 2019, she added the notation " * appearances are required * ".

on Judicial Nomination's short-list of nominees – that gave rise to CJA's Article 78 proceeding against the Commission on Judicial Conduct, commenced in April 1999 in Supreme Court/New York County (#108551-1999) – whose two final motions, at the Court of Appeals, in 2002, I handed up to the Commission on Judicial Compensation, in support of my testimony at its July 20, 2011 hearing and which would be the free-standing exhibits to CJA's October 27, 2011 opposition report to the Commission on Judicial Compensation's August 29, 2011 report whose recommendations of 27% pay raises would have the "force of law".

14. It was the Commission on Judicial Compensation's statutorily-violative, fraudulent, and unconstitutional August 29, 2011 report – and the funding of the pay raises that would be concealed in the budget – as to which executive and legislative officers, in violation of Public Officers Law §74, were refusing to discharge their constitutional duties so as to ultimately benefit themselves with comparably-procured pay raises[6] – that became petitioners' complaint #1 to JCOPE, filed with it on July 27, 2013 (Exhibit G to the petition) that JCOPE has been "sitting on" ever since, in violation of Executive Law §§94.13(a) and (b), and for which it has not accounted in its annual reports, in violation of Executive Law §94.9(l)(i).

[6] Legislative and executive pay raises were ultimately procured *via* the Committee on Legislative and Executive Compensation, enacted as Part HHH of the FY2018-19 revenue budget bill. *Delgado v. New York State*, before Justice Ryba, was but the first of several cases challenging the December 10, 2018 report of the Committee on Legislative and Executive Compensation. Another case, *Barclay v. New York State Committee on Legislative and Executive Compensation* (Albany Co. #901837-2019), an Article 78 proceeding brought by eleven legislators – including the current minority leaders of both Respondents Senate and Assembly – was before Justice Platkin. His August 28, 2019 decision therein cited the December 27, 2018 Appellate Division, Third Department decision in the *CJA v. Cuomo, et al*. second citizen-taxpayer action, in its footnote 10, whose first and last sentences read: "Like many budget bills, Part HHH is not a model of drafting clarity. … In other words, courts should be cautious in construing doubtful language as effecting the type of extraordinary delegation made by Part HHH."

15. No application for the same or similar relief has been made, except as above recited.

ELENA RUTH SASSOWER

Sworn to before me this 21st day of June 2022
(1st day of summer & day of most sunlight)

Notary Public

JOHN PELOSE
Notary Public, State of New York
No. 04PE6147380
Qualified in Westchester County
Commission Expires June 5, ~~2019~~ 2026