

CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101
White Plains, New York 10602

Tel. (914) 421-1200

E-Mail: mail@judgewatch.org
Website: www.judgewatch.org

December 17, 2021

TO: New York State Joint Commission on Public Ethics (JCOPE)

FROM: Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)

RE: Conflict-of-interest ethics complaint against legislators and legislative employees for subverting the Legislative Ethics Commission to insulate themselves from complaints

Pursuant to Executive Law §94.9(g), I initiate this fully-documented sworn conflict-of-interest/ethics complaint¹ against legislators and legislative employees for knowingly acting on their self-interest, in violation of Public Officers Law §74, to subvert the Legislative Ethics Commission (LEC) and prevent its exposing the corruption of JCOPE, on which it statutorily depends for investigation of complaints against legislators and legislative employees. Specifically, this complaint is against:

(1) the Legislature's four majority and minority leaders who are the appointing authorities of LEC's members – currently:

- Temporary Senate President Andrea Stewart-Cousins, who has held that position since January 2019 – and prior thereto was also an appointing authority, having been senate minority leader since January 2013;
- Assembly Speaker Carl Heastie, who has held that position since February 2015;
- Senate Minority Leader Robert Ort, who has held that position since June 2020;
- Assembly Minority Leader William Barclay, Esq., who has held that position since January 2020.

¹ In addition to the live links herein, I have created an EVIDENTIARY webpage for this complaint on CJA's website, www.judgewatch.org. See left side-panel "Searching-NYS" – leading to a menu page for JCOPE. The direct link to the EVIDENTIARY webpage for this complaint is here: <http://www.judgewatch.org/web-pages/searching-nys/jcope/dec-17-2021-complaint-re-lec.htm>.

(2) LEC's four legislative members:

- Senator Neil Breslin, Esq., serving as a LEC member since 2013 and, since January 2019, its co-chair, also serving as a member of the Senate Committee on Ethics and Internal Governance;
- Assemblywoman Jo Anne Simon, Esq., serving as a LEC member and its co-chair since January 2020, and simultaneously chairing the Assembly Committee on Ethics and Guidance;
- Senator Andrew Lanza, Esq., serving as a LEC member since at least 2012 and its co-chair from at least 2012 through 2018, and, simultaneously, a member of the Senate Ethics Committee, as he is currently;
- Assemblyman Michael Montesano, Esq., serving as an LEC member since 2014, who, throughout those years and to the present, is a member of the Assembly Committee on Ethics and Guidance;

(3) LEC's Executive Director/Counsel, Lisa Reid, Esq. – positions she has held since at least 2012;(4) LEC's Deputy Director/Counsel Kate Seibert, Esq. – positions she has held since 2014, having been, prior thereto, assistant counsel since at least 2012;

This complaint is additionally against the chairs, ranking members, and members of the separate ethics committees of the Senate and Assembly, each having oversight responsibilities for the operations of LEC – and of JCOPE, which is integral to its functioning:

- the seven-member Senate Committee on Ethics and Internal Governance, whose chair is Senator Alessandra Biaggi, Esq., whose ranking member is Senator Anthony Palumbo, Esq. – and whose other members include LEC members Breslin and Lanza;²
- the eight-member Assembly Committee on Ethics and Guidance, whose chair is LEC co-chair Simon, whose ranking member is LEC member Montesano – and whose other members include Assemblyman Charles Lavine, Esq., who, from 2013 through September 2017, was simultaneously – like Assemblywoman Simon – chair of the Assembly Ethics Committee and LEC's co-chair³

² Its other members are Senators Phil Boyle, Esq., Todd Kaminsky, Esq., and Toby Ann Stavisky.

³ Its other members are Assemblymembers Kenneth Zebrowski, Esq., Marjorie Byrnes, Esq., Catalina Cruz, Esq., Jake Ashby, and Joseph Giglio.

It is also against the legislators of other relevant Senate and Assembly committees having oversight responsibilities with respect to LEC and JCOPE, *to wit*:

- the seven-member Senate Committee on Investigations and Government Operations, whose chair is Senator James Skoufis, whose ranking member is Senator Thomas O'Mara, Esq. – and whose other members include Senate Ethics Committee Chair Biaggi and Ranking Member Palumbo;⁴
- the fourteen-member Assembly Committee on Governmental Operations, whose chair is Assembly Ethics Committee member Kenneth Zebrowski, Esq. and whose ranking member is Assemblyman Mike Lawler;⁵
- the seven-member Assembly Committee on Oversight, Analysis and Investigation whose chair is Assemblyman John McDonald, whose ranking member is Assemblyman Joe Angelino – and whose other members include LEC member/Assembly Ethics Committee Ranking Member Montesano;⁶
- the seven-member Senate Committee on Corporations, Authorities, and Commissions, whose chair is Senator Leroy Comrie and whose ranking member is Senator Mario Mattera;⁷
- the twenty-six member Assembly Committee on Corporations, Authorities, and Commissions, whose chair is Assemblywoman Amy Paulin and whose ranking member is Assemblyman John Lemondes.⁸

Additionally, it is against the legislators of the Legislative Commission on Government Administration, who, pursuant to Legislative Law §83-c, are required to be 10, and whose chair, at least on the Assembly side, is Assemblywoman Diana Richardson.⁹

⁴ Its other members are Senators James Gaughran, Esq., Todd Kaminsky, Esq., and Elijah Reichlin-Melnick.

⁵ Among its other members: Assembly Minority Leader *Pro Tempore* Andy Goodell, Esq., and Assemblyman Ron Kim.

⁶ Among its other members: Assembly Members William Magnarelli, Esq., Phil Steck, Esq., and Fred Thiele, Esq.

⁷ Among its other members: Senators James Skoufis, Esq., Shelley Mayer, Esq., and James Gaughran.

⁸ Among its other members: Assembly Members Ron Kim, Yuh-Line Niou, Robert Carroll, Esq., and Dan Quart, Esq.

⁹ There appear to be no Senate members – and only two other Assembly members.

Finally, inasmuch as LEC is one of the vehicles through which, year after year, the Legislature steals taxpayer monies *via* legislative “reappropriations” that include LEC “reappropriations”, contained in an out-of-sequence, mistitled section at the back of the legislative/judiciary budget bills, this complaint is also against:

- the 23-member Senate Finance Committee, whose chair is Senator Liz Krueger and whose ranking member is Senator Thomas O’Mara, Esq.;¹⁰ and
- the 35-member Assembly Ways and Means Committee, whose chair is Assemblywoman Helene Weinstein, Esq. and whose ranking member is Assemblyman Edward Ra, Esq.¹¹

To the extent JCOPE’s jurisdiction extends to LEC’s four non-legislative members: John Brickman, Esq., Peter Coffey, Esq., Ellen Holtzman, Esq., and John J. Nigro¹², each appointed by one of the four legislative leaders or their predecessors and “reimbursed for reasonable expenses and receiv[ing] a per diem allowance in the sum of three hundred dollars for each day spent in the performance of their official duties” (Legislative Law §80.6), this complaint is also against them. Absent jurisdiction, I request their referral to the jurisdictionally-proper body.

BACKGROUND

JCOPE is already familiar with the essential underlying facts – or at least JCOPE Executive Director Sanford Berland is. These facts were summarized by my [July 20, 2021 letter](#) to him, simultaneously e-mailed to LEC Executive Director Reid on that date. The letter was entitled “JCOPE’s violations of Executive Law §94.9(1)(i) by its July 8, 2021 annual report for 2020 – and by ALL its prior annual reports – and DEMAND that it rectify same” and stated, in pertinent part:

“LEC is also being copied on this letter with a DEMAND that since it statutorily operates in tandem with JCOPE on which it relies for investigation of complaints against legislators and legislative staff, directing complainants to file such complaints directly with JCOPE – and so-facilitating by its [website](#) – that it take appropriate action to ensure that JCOPE’s handling of those complaints comports with Executive Law §94, including the mandate of Executive Law §94.9(1)(i) pertaining to JCOPE’s annual reports.^[fn] Likewise, that it take appropriate action to rectify its own violative annual reports. As identified by the [March 5, 2021 complaint](#) (at p. 7), Legislative

¹⁰ Among its other members: LEC Member/Senate Ethics Committee Member Breslin and Senators James Skoufis, Brad Hoylman, Esq., Jamaal Bailey, Esq., and Assistant Senate Minority Leader Joseph Griffo.

¹¹ Among its other members: Assembly Members Kenneth Zebrowski, Esq., John McDonald, Jeffrey Dinowitz, Esq., Edward Braunstein, Esq., and William Magnarelli, Esq.

¹² Attorneys Coffey and Holtzman and Mr. Nigro have been LEC members since at least 2012. Attorney Brickman has been an LEC member since 2016.

Law §80.7(1) comparably requires that LEC's annual reports to the Governor and Legislature contain 'a listing of each complaint and referral received by the Commission, the current status of each complaint, and the nature and date of any disposition and any sanction imposed' – a requirement reiterated by LEC's own Article VI of its By-Laws.^[fn] (at p. 5, capitalization, underlining, and hyperlinking in the original, with hyperlinking to March 5, 2021 complaint added).

The next day, July 21, 2021, Executive Director Reid was again cc'd, and so too Executive Director Berland, when [I e-mailed the July 20, 2021 letter to all the above pertinent legislative committees/commission](#) – excepting the Senate Finance Committee and Assembly Ways and Means Committee – stating:

“To assist you in discharging your oversight responsibilities over the Joint Commission on Public Ethics (JCOPE) and the Legislative Ethics Commission (LEC), attached is CJA's above-entitled letter of yesterday's date to JCOPE's executive director, sent by the below e-mail – to which LEC's executive director was cc'd. At issue are violations by JCOPE and LEC of parallel statutory provisions designed to enable you to track their handling of ethics complaints.

As the Senate and Assembly ethics committees are most immediately responsible for JCOPE and LEC, this e-mail is being sent to all their members, four of whom are themselves members of LEC – Senator Breslin, Assemblywoman Simon, Senator Lanza, and Assemblyman Montesano. To the other committees, this e-mail is being sent only to their chairs and ranking members, with a request that they forward same to all members of their respective committees so that all can participate in the EASY lift of ensuring the functioning of New York's ethics safeguards, which is their duty.

In the event you are unaware of the importance of independent examination of **the records of complaints filed with JCOPE and LEC** to your assessment of how those bodies are functioning – and what must be changed – here's what the state comptroller had to say, 32 years ago, in the context of the Commission on Judicial Conduct, by his 1989 report [Not Accountable to the Public: Resolving Charges Against Judges is Cloaked in Secrecy](#), whose accompanying press release was entitled '[Commission on Judicial Conduct Needs Oversight](#)'. The SAME principles apply – and any legislative hearings on JCOPE, LEC, or on New York's other key ethics bodies as the Commission on Judicial Conduct, the attorney grievance committees, and the state and agency inspectors general – must begin and feature the testimony of complainants about their filed complaints.” (underlining, bold, capitalization, and hyperlinking in the original).

I received no response from any of the recipients, other than from Assemblywoman Simon's legislative director with whom I had spoken prior to sending her the e-mail – and who, following her receipt of same – and claiming to have read its attached July 20, 2021 letter – berated me, asserting that it was not within Assemblywoman Simon's jurisdiction. To this I responded by an [immediate e-mail – with a cc to Assemblywoman Simon](#) – which read: “Following up your extraordinary phone

call to me moments ago, please put in writing what you stated so there is no question as to what it was – and, likewise, my response to you, including that you put it in writing.”

I received no response.

As for the non-response of Executive Directors Berland and Reid to the July 20, 2021 letter, I followed up by an [August 13, 2021 e-mail](#) to Mr. Berland, with a copy of Ms. Reid, stating:

“Do you deny or dispute that [each of JCOPE’s annual reports to the Governor and Legislature, since 2012](#), has violated the mandatory provision of Executive Law §94.9(1)(i) requiring – for accountability purposes – ‘a listing by assigned number of each complaint and referral received which alleged a possible violation within its jurisdiction, including the current status of each complaint’. If not, when will you be rectifying same – starting with [JCOPE’s 2020 annual report, dated July 8, 2021](#), for which you, as JCOPE’s executive director, are immediately responsible.

...

By copy of this e-mail to Ms. Reid, I comparably ask whether she denies or disputes that [each of LEC’s annual reports to the Governor and Legislature, since 2012](#), has, likewise, violated the parallel accountability provision in Legislative Law §80.7(1) requiring ‘a listing of each complaint and referral received by the Commission, [and] the current status of each complaint...’ – a requirement reiterated by LEC’s own Article VI of its By-Laws. If not, when will she be rectifying same and, since LEC operates in tandem with JCOPE, ensuring that JCOPE’s annual reports are compliant with Executive Law §94.9(1)(i)?”

I received no response.

As against Executive Director Berland and JCOPE, I have already filed a [November 2, 2021 complaint with New York State Inspector General Lucy Lang](#) – which I incorporate herein by reference.

This complaint, pertaining to LEC, is against the legislators and legislative employees who have subverted it so that it does not function as a check upon them, through JCOPE, to which complaints against them are filed.

Suffice to say – and I have said it previously – [The Public Integrity Reform Act of 2011 \(PIRA\)](#) whose Part A established JCOPE and partnered it with an existing LEC, which it modified, contained safeguarding provisions to ensure the integrity of each in [Executive Law §94 for JCOPE](#), and in [Legislative Law §80 for LEC](#) – and in its capstone §21 of Part A, providing for appointment of a JCOPE/LEC review commission “No later than June 1, 2014”, with a report due “on or before March 1, 2015”.

For your convenience, a Table of Contents follows:

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I.**Legislators & Legislative Employees Have Allowed Temporary Senate President Stewart-Cousins and Assembly Speaker Heastie – and their Predecessors – to Flagrantly Violate Legislative Law §80.1 and §80.4 to Deprive LEC of its Fifth Non-Legislative Member**

Legislative Law §80, by its subsections 1-5, recognizes the self-interest of LEC’s legislative members and the legislature’s four appointing authorities in thwarting the proper functioning of LEC.¹³ This is why, as a safeguard, it requires that a majority of LEC’s required nine members – five – be non-legislators and, implicitly, gives them the power to override the four legislative members. This is the meaning of subsection 3, which allows “any five members of the commission” to call a LEC meeting; and subsection 5, which unremarkably fixes a quorum at five – and then states “the commission shall have power to act by majority vote of the total number of members of the commission without vacancy” – in other words, five members.

Nevertheless, since at least 2012 – and in direct violation of subsection 4 requiring the filling of any vacancy “within thirty days by the appointing authority” – LEC has had only eight members – the missing member being the non-legislative member whose appointment is to be jointly made by the temporary senate president and assembly speaker, pursuant to subsection 1. Such violation is proven, *prima facie*, by LEC’s annual reports from 2012 onward, identifying, for each year, LEC’s eight members – and by LEC’s website, listing only eight members – the missing member being the required non-legislative jointly-appointed member.

Moreover, notwithstanding subsection 3 states: “The temporary president of the senate and the speaker of the assembly shall each designate one member of the commission to serve as a co-chairperson thereof” – in other words does NOT preclude designation of non-legislative members as co-chairs – each of LEC’s annual reports, since 2012, conceals this. Identically they purport, falsely: “The legislative appointees of the majority conferences serve as the Commission’s co-chairs”, inferring that only “legislative appointees” can be LEC co-chairs – and simultaneously covering up that it is the legislative majority leaders who are statutorily responsible for designating the co-chairs, with no restriction to “legislative appointees”.

II.**Legislators and Legislative Employees Have Allowed LEC’s Annual Reports to Flagrantly Violate Legislative Law §80.7(1) to Impede Oversight and Accountability**

Legislative Law §80.7(1), recognizes the importance of annual oversight and accountability of LEC, requiring that it:

“Prepare an annual report to the governor and legislature summarizing the activities of the commission during the previous year and recommending any changes in the

¹³

See mirroring provisions in LEC’s Bylaws: Article I “Membership”; Article II “Meetings”, at §1, §3.

laws governing the conduct of persons subject to the jurisdiction of the commission, or the rules, regulations and procedures governing the commission's conduct. Such report shall include: (i) a listing by assigned number of each complaint and report received from the joint commission on public ethics which alleged a possible violation within its jurisdiction, including the current status of each complaint..." (underlining added).

Comparably, yet also materially different, is Article VI of LEC's Bylaws entitled "Annual Report", reading:

"The Commission shall prepare an annual report to the Legislature summarizing its activities and recommending changes in the laws governing the conduct of Members of the Legislature and legislative employees. Such report shall include a listing of each complaint and referral received by the Commission, the current status of each complaint..." (underlining added).

None of LEC's annual reports are posted on its website¹⁴ – reflective of its knowledge that they would not pass scrutiny.

Upon my making a [March 8, 2021 FOIL request to the Governor, Senate, and Assembly](#) for LEC's annual reports from 2012 to the present, the Governor's FOIL officer advised by a [June 24, 2021 letter](#) that the Executive Chamber had "conducted a diligent search...and has not located any records responsive to [my] request"; the Senate did not respond, at all, and the Assembly furnished, on [March 22, 2021](#), the annual reports for [2012](#), [2013](#), [2014](#), [2015](#), [2016](#), [2017](#), [2018](#), and [2019](#) – 2019 being "the most recent report available". Upon a further [December 6, 2021 FOIL request to the Assembly](#) for the LEC's 2020 annual report, it responded, [on December 13, 2021](#), that it had no responsive records. The Senate continued to not respond to my request for LEC's annual reports, reiterated by a [December 6, 2021 inquiry](#).

LEC's eight years of annual reports, for 2012 to 2019, all begin with an identical preface identifying LEC to be "a nine member commission, consisting of four legislators and five non-legislative members....The Legislative Law provides for a fifth non-legislative member to be named jointly by the Temporary President of the Senate and the Speaker of the Assembly". None reveal that throughout these years, LEC has not had the required fifth non-legislative member.

Also readily-discerned:

- not a single LEC annual report contains recommendations for "any changes in the laws...rules, regulations and procedures". In other words, notwithstanding PIRA's

¹⁴ By an [October 22, 2015 FOIL request to LEC](#), I noted that its 2013 and 2014 annual reports were not posted on its website. Ms. Reid acknowledged receipt by an [October 26, 2015 e-mail](#), stating that she would respond by the end of the next day. I received no response.

partnering of LEC with JCOPE, such that complaints within LEC's jurisdiction are filed with JCOPE for determination of their "substantial basis",¹⁵ LEC has not had a single

¹⁵ LEC's webpage entitled "[Commission Structure and Operations](#)" summarizes the partnering of LEC with JCOPE with respect to complaints, as follows:

"Current Statutory Provisions Governing the Filing and Investigation of Complaints Against Legislators and Legislative Employees

The LEC's authority is now limited to the Public Officers Law as it pertains to the Legislative branch and does not enforce ethics laws or rules in connection with alleged violations by the Executive or Judicial branches. The LEC does not have authority to investigate complaints for violations of the Public Officers Law. In the event that a complaint against a member of the Legislative branch is misdirected to the LEC, it is referred to the appropriate investigatory body.

If a complaint is filed against a legislator or legislative staff member, the current process, enacted into law in 2011 is as follows:

All complaints alleging violations of Public Officers Law sections 73, 73-a and 74 by legislative members or staff must be filed with the Joint Commission on Public Ethics. As noted above, if a complaint against a member of the Legislative branch is misdirected to the LEC, it is referred to the appropriate investigatory body; which may be JCOPE.

If JCOPE receives a complaint or decides upon its own initiative to investigate a possible violation, JCOPE must vote, within 60 days, on whether to commence a full investigation of the matter to determine whether a substantial basis exists to conclude that a violation of law has occurred.

If JCOPE concludes that a substantial basis exists to conclude that a legislator or legislative staff member has violated any provisions of Public Officers Law, it must present a written report to the LEC. (Executive Law § 94(14-a.))

Once the LEC has received a written Substantial Basis Investigation Report (SBIR) from JCOPE, it must make public the entire report within 45 calendar days of receipt. That time period may be extended if a law enforcement agency asks for a delay due to a criminal investigation, or if the LEC sends the report back to JCOPE for additional investigation or an additional 45 days is required for disposition to be completed. (Legislative Law §80(9)(b)).

Within 90 days of receiving a Substantial Basis Investigation Report, the LEC, must dispose of the matter by concurring or disagreeing with JCOPE's conclusions of law and the reasons therefor; stating whether any penalties have been assessed and the reasons therefor and whether further actions have been taken by the LEC to punish or deter the misconduct at issue. (Legislative Law §80(10))

The LEC's written disposition must be posted on its website within ten days after it is made. All of the LEC's dispositions of SBIRs received from JCOPE and settlement agreements reached between legislators, legislative employees or candidates and the LEC with JCOPE are published on the LEC's website: legethics.ny.gov."

recommendation about the efficacy of such relationship or anything else;

- not a single LEC annual report contains a “listing of each complaint...received... [and] the current status of each complaint”. Instead they assert: “complaints must be filed with the Joint Commission on Public Ethics... [and that LEC] referred all parties who wished to file a complaint to JCOPE.”. This, in face of JCOPE’s facially-violative annual reports, from its first in 2012, none containing “a listing by assigned number of each complaint and referral received which alleged a possible violation within its jurisdiction, including the current status of each complaint...”, as required by Executive Law §94.9(1)(i) – such that complaints filed with JCOPE against legislators and legislative employees disappear without a trace – a state of affairs plainly directly beneficial, in the first instance, to the four legislative leaders and the four legislative members they appoint to LEC;
- not a single LEC annual report specifies the “activities” of LEC’s members at any of their meetings, the dates of which are alone listed – nor identify “activities” that should have been deemed among LEC’s most important. Illustrative is [LEC’s 2012 annual report](#), containing no mention of adoption of bylaws – although [LEC’s Bylaws, posted on its website](#), indicates such occurred on September 24, 2012, a date listed in LEC’s 2012 annual report as a meeting date, but without elaboration other than “Monday, September 24, 2012 (*postponed from August 24, 2012*)”.

III.

Legislators and Legislative Employees Have Permitted LEC Bylaws to Materially Violate & Subvert Legislative Law §80

Presumably, LEC’s adoption of its Bylaws, concealed by its 2012 annual report, was pursuant to Legislative Law §80.7(c), requiring LEC to:

“Adopt, amend, and rescind policies, rules and regulations consistent with this section to govern procedures of the commission which shall not be subject to the promulgation and hearing requirements of the state administrative procedure act” (underlining added).

In other words, such adoption of bylaws was without there having been any outside prior scrutiny as to whether they were – as they were required to be – “consistent with this section”.

As LEC reasonably would have known, its Bylaws are NOT “consistent” in at least two material respects – raising questions as to who proposed them, under what circumstances, and how they could

The grand total of what LEC’s website posts, from its partnership with JCOPE, over the past ten years, as to “All of the LEC’s dispositions of SBIRs received from JCOPE...and settlement agreements...” are five matters, which are essentially four, all involving, at least in part, sexual misconduct.

possibly have been approved by anyone of any competence, not afflicted by legislative self-interest and relationships.

First, as reflected by the above-quoted Article VI of LEC's Bylaws, it materially subverts the gubernatorial oversight contemplated by Legislative Law §80.7(1), by changing the mandate: "Prepare an annual report to the governor and legislature" to read: "prepare an annual report to the Legislature". Certainly, the fact that LEC's annual reports – [unlike JCOPE's](#) – contain no prefatory letter reflecting to whom they are being furnished is a further indicia that LEC removed the governor's oversight over what it has been doing – and as hereinabove recited, the governor's office responded to my FOIL request for LEC's annual reports by stating that none could be located upon "diligent search".

Second, is the astonishing §6 of LEC's Article II "Meetings", stating:

"The majority and minority members of the Commission from each house shall choose a conference staff person to attend the meetings and provide counsel and support..."

This is fraud. LEC members are fully supported by paid professional staff, the two highest of whom – its executive director and deputy director – each attorneys and bearing titles of counsel. Rather, the provision's true purpose is to give the legislators access to everything LEC is doing – including how the legislative leaders' appointed legislative and non-legislative members are voting on matters pertaining to them. As such, it plainly impinges on any pretense that LEC members can be independent and uninhibited in discharging their duties.

IV.

Legislators and Legislative Employees Have Permitted LEC's Annual Reports to Omit all Information about the LEC Budget, thereby Concealing that It is Rigged and a Vehicle for Legislative Larceny

Among other "activities" not summarized or even identified by LEC's annual reports are those pertaining to its annual budget. Article V of LEC's Bylaws entitled "Annual Budget" states:

"The Executive Director shall prepare a proposed annual budget, which shall require the approval of the Commission before it is submitted for legislative approval. The budget year shall be the State fiscal year."

LEC would have reason to conceal, from its annual reports, everything about its annual budgets. This includes the meaning of "submitted for legislative approval". Does this mean "legislative approval" by the legislative leaders – and which ones – before LEC's requested budget is placed into the legislature's budget request to the governor – a request containing NO "reappropriations"? Or is it the legislators' approval by their votes on the legislative/judiciary budget bill, which contains, in an out-of-sequence section, at the back, not properly titled, roughly 30 pages of so-called legislative "reappropriations" from past years, representing scores of millions of dollars. Several of these pages

are LEC “reappropriations”, from as far back as 1989, and adding up to millions of dollars.¹⁶

With regard to the legislature’s budget request to the governor, which, pursuant to Article VII, §1 of the New York State Constitution, are required to be “itemized estimates of the financial needs of the legislature, certified by the presiding officer of each house”, the figures are contrived, being either identical from year to year, or changing, across-the-board, by a uniform percentage – and this explains why Temporary Senate President Stewart-Cousins and Assembly Speaker Heastie – like their predecessors – do not certify them. The unconstitutionality, fraud, and larceny of the legislature’s budget request was the first cause of action in [CJA’s first citizen taxpayer action](#), commenced March 28, 2014, suing, *inter alia*, the Senate and Assembly and, by name, the temporary senate president and assembly speaker – with the third cause of action pertaining to the legislature’s “reappropriations”. LEC was alerted to that first citizen-taxpayer action by my [December 11, 2014 complaint](#) to JCOPE (at fn. 7), which I filed with it, under a December 12, 2014 coverletter, expressly as a complaint against the legislature’s four majority and minority leaders based on their violation of PIRA’s Part A, §21 by not appointing the mandated JCOPE/LEC review commission – a complaint to which LEC was reminded by my [June 22, 2015 letter](#) pertaining to the JCOPE/LEC review commission appointed following the amending of Part A §21, accomplished unconstitutionally and by fraud through behind-closed-doors “three-men-in-a-room” dealmaking on the FY2015-2016 state budget by the governor, temporary senate president, and the assembly speaker, who, by then, was Heastie.

The legislature’s budget and the legislative “reappropriations” in the legislative/judiciary budget bill were also the first and third causes of action of [CJA’s second citizen-taxpayer action](#), commenced September 2, 2016, also suing the Senate and Assembly and, by name, the temporary senate president and Assembly Speaker Heastie. LEC was alerted to that citizen-taxpayer action by my [March 5, 2021 complaint](#), also filed with JCOPE, *inter alia*, against the legislators, beginning with the leaders.

¹⁶ As illustrative:

for FY2021-22, see [the legislature’s budget request \(LEC at pp. 5, 6, 10\)](#) & compare to [the governor’s legislative/judiciary budget bill \(LEC reappropriations at pp. 37-40\)](#) & [enacted bill \(LEC reappropriations at pp. 38-41\)](#);

for FY2020-21, see [the legislature’s budget request \(LEC at pp. 5, 6, 10\)](#) & compare to [the governor’s legislative/judiciary budget bill \(LEC reappropriations at pp. 34-37\)](#) & [enacted bill \(LEC reappropriations at pp. 34-37\)](#);

for FY2014-15, see [the legislature’s budget request \(LEC at pp. 4, 6, 5 \)](#) & compare to [the governor’s legislative/judiciary budget bill \(LEC reappropriations at pp. 31-34\)](#) & [enacted bill \(LEC reappropriations at pp. 31-34\)](#);

for FY2013-14, see [the legislature’s budget request \(LEC at pp. 5, 6, 12\)](#) & compare to [the governor’s legislative/judiciary budget bill \(LEC reappropriations at pp. 30-33\)](#) & [enacted bill \(LEC’s reappropriations at pp. 30-33\)](#).

More are available on CJA’s webpage for LEC’s budgets, [here](#).

V.

**LEC Allowed the Four Legislative Leaders to Flagrantly Violate
PIRA's Part A, §21 by Failing to Appoint the JCOPE/LEC Review Commission
Mandated by June 1, 2004 – Even in Face of CJA's December 11, 2014 Complaint**

All of the foregoing violations would have been readily apparent to any legitimate JCOPE/LEC review commission undertaking a methodologically-sound review. LEC's knowledge of this would explain why it took no steps to ensure compliance by the four majority and minority legislative leaders – and the governor – with PIRA's Part A, §21, which stated:

“No later than June 1, 2014, the governor and the legislative leaders shall jointly appoint a review commission to review and evaluate the activities and performance of the joint commission on public ethics and the legislative ethics commission in implementing the provisions of this act. On or before March 1, 2015, the review commission shall report to the governor and the legislature on its review and evaluation which report shall include any administrative and legislative recommendations on strengthening the administration and enforcement of the ethics law in New York state. The review commission shall be comprised of eight members and the governor and the legislative leaders shall jointly designate a chair from among the members.” (underlining added).

Thus, June 1, 2014 came and went without LEC doing what it could easily have done when the four legislative leaders and the governor failed to make the statutorily-required appointments, namely file a conflict-of-interest/ethics complaint against them with JCOPE – or bring a mandamus proceeding against them for failing to comply with its mandatory terms.

Indeed, LEC allowed the four legislative leaders to continue to violate PIRA's Part A, §21 even after I myself filed with JCOPE my [sworn, fully-documented December 11, 2014 complaint](#) against them and the governor for their self-interested violation of PIRA's requirement to appoint the review commission “No later than June 1, 2014” – a complaint also against JCOPE for its self-interested complicity. The pertinent two paragraphs of the December 11, 2014 complaint relating to LEC were as follows:

“By copy of this letter to the Legislative Ethics Commission (LEC), we also initiate an ethics complaint with it against the Legislative Leaders for their self-interested violation of their statutory duty to appoint the JCOPE/LEC review commission – and of their correlative duty to have taken appropriate action against the Governor, if the failure to make appointments was attributable solely to him. In so doing, we request that LEC refer this complaint to all relevant authorities, including investigative and prosecutorial officers able to bring an Article 78 proceeding for mandamus to compel the Governor and Legislators to appoint the review commission.^{fn6} The jurisdictionally-proper public officers for this task are: Attorney General Eric Schneiderman, Albany County District Attorney P. David Soares, and U.S. Attorney for the Northern District of New York Richard Hartunian. Then, too, there are New

York's purported corruption-fighting U.S. Attorneys for the Southern and Eastern Districts of New York, Preet Bharara and Loretta Lynch.

So that no time is wasted in bringing the necessary mandamus proceeding to uphold the rule of law and the public's rights, a copy of this letter will be directly furnished to these five investigative/prosecutorial officers, with a request that they rise above their own conflicts of interest born of their inaction, with JCOPE, in the 'grand larceny of the public fisc' that is the subject of our April 15, 2013 corruption complaint on which our June 27, 2013 ethics complaint to JCOPE rests.^{fn7} (at p. 4, underlining in the original).

I quoted these two paragraphs, *verbatim*, in my short [December 12, 2014 coverletter](#) to LEC and the five cited investigative/prosecutorial officers – followed by the sentence “Please advise, without delay.”.

Did Ms. Reid and Ms. Siebert – to whose e-mail addresses I sent the complaint and coverletter – furnish them to LEC's eight members for their determination of their duties?

According to Article III, §3 of LEC's Bylaws, the executive director's duties include:

“...(a) assuring that the staff of the Commission functions to assist the members in meeting their duties and responsibilities under the law; (b) insuring that the Commission is kept apprised of all official matters directed to it...”

As LEC's counsel, did they not also recommend an appropriate course of action, beginning with an emergency meeting jointly called by the co-chairs or by any five LEC members, pursuant to Legislative Law §80.3 and Bylaw Article II “Meetings”, §1. I do not know, as I received NO response from either of them.

Suffice to say that IF, prior to their receipt of my December 11, 2014 complaint, Ms. Reid and Ms. Siebert did not know, from their own examinations of JCOPE's 2012 and 2013 annual reports, that JCOPE was omitting the required listing of complaints and their status, in violation of Executive Law §94.9(1)(i) – and did not know of the [sworn, fully-documented June 27, 2013 complaint I had filed with JCOPE](#) that for the past 18 months it had been “sitting on”, in violation of Executive Law §94.13 and §94.14 – they certainly knew it from the December 11, 2014 complaint. Upon examining it, it would have been evident to them that it was 100% correct in asserting that:

“any legitimate review commission would have to ‘blow the whistle’ on JCOPE and expose its corrupt protectionism of the Governor and Legislative Leaders – as proven, resoundingly, by CJA's June 27, 2013 ethics complaint against them and other constitutional and public officers and employees that JCOPE has been sitting on...” (at p. 2, underlining in the original).

As detailed by the [December 11, 2014 complaint](#) – and instantly verifiable from the [June 27, 2013 complaint](#) it furnished – but for JCOPE’s flagrant violations of Executive Law §94.13 and §94.14, JCOPE would have sent LEC – and by October or November 2013 at the latest – “substantial basis investigation reports” against all four legislative leaders, top tier legislators, and a huge swath of rank-and-file legislators and legislative employees for their Public Officers Law §74 violations with respect to the August 29, 2011 report of the Commission on Judicial Compensation – and the state budget. Based thereon, LEC’s duty, pursuant to Legislative Law §80.9(b) and §80.10, would have been, in addition to imposing penalties against all the JCOPE-reported legislators and legislative employees, referring them to criminal authorities for indictments mandated by the open-and-shut, *prima facie* EVIDENCE of their “grand larceny of the public fisc and other corruption”, with jury convictions assured by reason of that EVIDENCE. At the latest – and pursuant to Legislative Law §80.10 – LEC’s final disposition of JCOPE’s “substantial basis investigation reports” arising from the June 27, 2013 complaint would have been “No later than ninety days after receipt”, in other words, by the end of February 2014.

It was with this devastating December 11, 2014 complaint before LEC, or at least before its attorney executive director and its attorney deputy director, that [LEC’s 2014 annual report](#):

- omitted any mention of the review commission that PIRA’s Part A, §21 required be appointed “No later than June 1, 2014” – paralleling [JCOPE’s 2014 annual report](#), also silent on the subject;
- concealed LEC’s receipt of the December 11, 2014 complaint by its violation of the listing required by Legislative Law §80.7(1)(i) and its Article VI Bylaw – paralleling JCOPE’s 2014 annual report, also concealing the December 11, 2014 complaint by its violation of the listing requirement of Executive Law §94.9(1)(i); and
- falsely asserted, under the heading “Complaints and Investigations”, that LEC had “referred all parties who wished to file a complaint to JCOPE.” (p. 7) when, in fact, Ms. Reid and Ms. Siebert had not so-responded to my December 11, 2014 complaint, [e-mailed to each of their e-mail addresses three times: December 12, 2014, December 16, 2014, and December 18, 2014.](#)

VI.

LEC’s 2015 Annual Report Affirmatively Concealed the Flagrant Violation of PIRA’s Part A, §21 by the Legislature’s Four Leaders -- & Covered-Up the Fraud of the JCOPE/LEC Review Commission, which JCOPE & LEC had Enabled

The JCOPE/LEC Review Commission, which LEC and JCOPE had each omitted from their 2014 annual reports, was included in [LEC’s 2015 annual report](#), though not [JCOPE’s 2015 annual report](#). The totality of the LEC’s inclusion was the following three sentences:

“At the direction of the Commission, LEC staff met with The New York Ethics Review Commission, created by Section 21 of Part A of Chapter 399 of the Laws of New York of 2011. Staff provided materials, answered questions from the Review Commission and discussed various matters relative to the LEC. The New York Ethics Review Commission published its report, *Review of the Joint Commission on Public Ethics and the Legislative Ethics Commission* on November 1, 2015.” (at p. 7).

This was materially false as LEC could not direct its staff to meet with the review commission “created by Section 21 of Part A of Chapter 399 of the Laws of New York of 2011” – as no such commission was ever established.

On March 31, 2015, §21 of Part A of Chapter 399 of the Laws of New York of 2011, which is PIRA, was unconstitutionally and through fraud, amended by the governor, temporary senate president, and by Assembly Speaker Heastie in their behind-closed-doors “three-men-in-a-room” dealmaking on the FY2015-16 state budget. The amendment, inserted as Part DD into the education, labor and family assistance budget bill ([#S.2006-B/A.3006-B](#)), read (at p. 108):

“Section 21 of part A of chapter 399 of the laws of 2011, relating to establishing the public integrity reform act of 2011, is amended to read as follows: S 21. No later than [June 1, 2014] MAY 1, 2015, the governor [and], the [legislative leaders] TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY shall jointly appoint a review commission to review and evaluate the activities and performance of the joint commission on public ethics and the legislative ethics commission in implementing the provisions of this act. On or before [March] NOVEMBER 1, 2015, the review commission shall report to the governor and the legislature on its review and evaluation which report shall include any administrative and legislative recommendations on strengthening the administration and enforcement of the ethics law in New York state. The review commission shall be comprised of eight members and the governor [and], the [legislative leaders] TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY shall jointly designate a chair from among the members.”

It was this review commission with whose members LEC staff, presumably Ms. Reid and Ms. Siebert, met.

LEC’s concealment, by its 2015 annual report, of the violation by legislative leaders – and the governor – of PIRA’s §21 of Part A, replicated and covered up what the JCOPE/LEC Review Commission’s [November 1, 2015 report](#) had done in falsely stating that the Commission had been “created by Section 21 of Part A of Chapter 399 of the Laws of New York in 2011 as part of the ‘Public Integrity Reform Act’ (PIRA)”.

That the JCOPE/LEC Review Commission knew this statement to be false, as likewise Ms. Reid and Ms. Seibert, who, doubtless, drafted LEC’s 2015 annual report, copying that portion of the

November 1, 2015 report, is established by: (1) [my June 18, 2015 letter to the JCOPE/LEC Review Commission](#), which I sent to LEC with a [June 22, 2015 coverletter](#), via the [e-mail addresses](#) of both Ms. Reid and Ms. Seibert; and (2) [my testimony on October 14, 2015 at the JCOPE/LEC Review Commission's one and only public hearing](#), whose live-stream and/or video recording Ms. Reid and Ms. Seibert certainly watched and, presumably, LEC members.

What did Ms. Reid and Ms. Siebert do upon receipt of my June 22, 2015 letter, with its express request that LEC compel JCOPE to supply the JCOPE/LEC Review Commission with the listings of complaints and their status that were missing from its 2012, 2013, and 2014 annual reports, if JCOPE did not do so voluntarily. Did they not furnish it and the June 18, 2015 letter it enclosed to LEC's members for discussion and vote? Did they make no recommendations in connection therewith as to LEC's duty? What did the LEC members instruct?

My June 22, 2015 letter highlighted the significance of the June 27, 2013 and December 11, 2014 complaints in establishing:

“prima facie and conclusively, that JCOPE and LEC are corrupt facades, brazenly violating the statutory and rule provisions under which they are supposed to operate so as to ‘protect’ their appointing authorities – the Governor and Legislative Leaders – and other influential or connected persons from investigation, prosecution, and sanction” (at p. 2, italics and underlining in the original),

further stating:

“JCOPE has now been sitting on CJA’s June 27, 2013 ethics complaint for nearly 24 months – a dereliction that has cost New York taxpayers upwards of \$120 million in statutorily-violative, fraudulent, and unconstitutional judicial salary raises that the Governor, Attorney General, Comptroller, and Legislators were duty-bound to void, but did not, because judicial salary raises were the means to their own salary raises. And reinforcing the truth of what pages 4-6 of the June 27, 2013 complaint particularize as to the violations of Public Officers Law §74 by the Governor, Attorney General, Comptroller, and Legislators, born of their ‘self-interest in the judicial pay raises’ and their ‘self-interest in the ‘success’ of the statute creating the Commission on Judicial Compensation’, is that in this year’s ‘three-men-in-a-room’, behind-closed-doors, budget deal-making – to which rank-and-file Legislators gave their rubber stamp – the Governor, Temporary Senate President, and Assembly Speaker inserted into Budget Bill S.4610-A/A.6721-A a Part E, repealing the statute that had created the Commission on Judicial Compensation and putting in its place a Commission on Legislative, Executive, and Judicial Compensation, structured in material-identical fashion.^{fn3}” (at p. 3, underlining and italics in the original),

^{fn3} “On its face, Part E, establishing a Commission on Legislative, Executive, and Judicial Compensation is as unconstitutional as the repealed provision of Chapter 567 of the Law of 2010, establishing the Commission on Judicial Compensation, as it identically allows the Commission’s salary increase recommendations to have the force of law, automatically, without executive or legislative action. And because of executive and legislative self-interest, to which JCOPE’s

Did LEC believe that this letter and my June 22, 2015 letter could be disregarded, as if of no significance – and that the JCOPE/LEC Review Commission could do the same? And what about my October 14, 2015 testimony, wherein I gave scathing particulars as to the rigged fashion in which the JCOPE/LEC Review Commission was operating and stated:

“Your ethical duty – and you haven’t even identified how you are, how you are going to address conflict of interest issues and it is clear that you don’t want to examine the most important issues, which is whether or not JCOPE and LEC have been protecting New York’s highest public officers when they are the subject of complaint. And the complaints that I have filed are the evidence that the answer is a resounding yes.

One final thing. The provision that set up JCOPE, that set up JCOPE, gave one important safeguard to the public. And that’s the annual report, which required JCOPE to identify by number all the complaints it had received, by number, and the status. And as I pointed out to you in my second letter of June 22nd, all the annual reports of JCOPE fail to give an inventory of the complaints that they have received and their disposition, their status.

And, as you know from the complaints that I furnished you, JCOPE has been sitting on them. And last thing. Of course, those letters, those 15-day letters that go out, there is no involvement of the Commissioners, there is no vote required by the Commissioners to send out those letters and yet, it appears, if you look at the annual reports, very few 15-day letters have actually gone out. And, of course, the Commission is not complying with the 45-day rule. ...

The statute pertaining to JCOPE sets time tables, time parameters.

...you need evidence and this Commission should close down with an acknowledgment that it has not proceeded in a methodologically proper way, it has no evidence, it has turned its back on evidence, it did not do outreach, its hearing was virtually unattended. Shame.”

And were LEC members informed of my [October 22, 2015 FOIL request to LEC](#) – to which JCOPE/LEC Review Commission was cc’d – pertaining to LEC’s annual reports and website – to which, other than an [October 26, 2015 e-mail](#) acknowledgment from Ms. Reid promising a response, I received none.¹⁷

nonfeasance has given a green light, no executive or legislative action will restrain the Commission from operating in the same statutorily-violative, fraudulent, and unconstitutional fashion as the Commission on Judicial Compensation did, with consequences catastrophic for the People of New York.” (underlining in the original, italics added).

¹⁷ It appears that the only response to my October 22, 2015 FOIL request was LEC’s removal from its website of the three LEC annual reports that were then posted – for 2010, 2011, and 2012. As for the question raised about why LEC’s website address was www.legethics.com, the Assembly’s March 22, 2021 production of LEC’s annual reports reveal that those for 2014, 2015, and 2016 all identify LEC’s website as

As for [the JCOPE/LEC Review Commission's November 1, 2015 report](#), which identified that the Commission had “met...with some JCOPE and LEC members, including the Chairs and key JCOPE and LEC staff...”(at p. 6, underlining added), it:

- made NO mention of ANY statutory or rule violations by JCOPE and LEC pertaining to their handling of, and accountability for, complaints – or pertaining to anything else. This includes as to LEC’s flagrant violations in operating, for years, without the statutorily-required non-legislative fifth member, whose “appointment made jointly by the Speaker of the Assembly and the Majority Leader of the Senate”, it noted (at p. 5), citing to “N.Y. EXEC. LAW §80(1)”;
- implied falsely that JCOPE and LEC were operating in conformity with PIRA’s statutory provisions, though it made not even a conclusory assertion to that effect;
- made NO findings with respect to my June 18, 2015 and June 22, 2015 letters, or my October 14, 2015 testimony – all EVIDENCE-supported – or with respect to my post-hearing FOIL requests to JCOPE, with one to LEC, to which the JCOPE/LEC Review Commission was cc’d, and whose express purpose was “Assisting the JCOPE/LEC Review Commission with a methodologically-sound review”.¹⁸

This would explain why LEC’s 2015 annual report offered ZERO details about the contents of the meetings or the November 1, 2015 report, why JCOPE’s 2015 annual report omitted everything, and why legislative leaders, upon receipt of the November 1, 2015 report, took no action to ensure that any legislative committees held an oversight hearing or oversight meeting thereon. And no one, including the JCOPE/LEC Review Commission, apparently, took steps to ensure the preservation of its records, the VIDEO of its hearing, or its website, which have all vanished.¹⁹

CONCLUSION

LEC, having colluded, with JCOPE, in enabling the legislative leaders and the governor to violate PIRA’s capstone safeguarding provision of a review commission to be appointed “No later than June 1, 2014” – and thereafter colluding, with JCOPE, in the corruption of the appointed review commission so as to obtain from it a sham November 1, 2015 report was thereby enabled to continue all the statutory and bylaw violations which a legitimate review commission would have made the

www.legethics.com. Only with the 2017 annual report is the website identified as “legethics.ny.gov”. By the way, LEC’s www.legethics.com web address is still LIVE – and, when accessed, switches to the www.legethics.ny.gov web address.

¹⁸ All are posted on CJA’s webpage entitled “The delayed & sham JCOPE/LEC Review Commission...”, whose direct link is here: <http://www.judgewatch.org/web-pages/searching-nys/commission-to-investigate-public-corruption/holding-to-account/exposing-jcope-2015-review-commission.htm>.

¹⁹ See my [August 30, 2018 FOIL request](#) and the responses thereto, posted on CJA’s “[delayed & sham JCOPE/LEC REVIEW COMMISSION...](#)” webpage.

subject of scathing report.

As a result, the above-demonstrated violations of statutory and bylaw provisions and the legislative larceny of taxpayer monies via LEC “reappropriations” have continued from the 2012 first year of the LEC/JCOPE statutory partnership to the present, a decade later. All were always in plain sight, but rectifying them, as was easy to do, was not in the self-interest of legislators and legislative employees – who would thereby become vulnerable to a functioning complaint process. That self-interest is the subject of this complaint, as to which JCOPE employees and members are themselves interested.

In addition to JCOPE’s accompanying complaint form, wherein I have sworn to this complaint’s truth, stating further that “I also understand the intentional submission of false information may constitute a crime punishable by fine or imprisonment, or both”, I herewith repeat same.

As this complaint plainly meets the standard for investigation pursuant to Executive Law §94.13(a), JCOPE’s “15-day” letters must be sent, at very least, (1) to the legislature’s four majority and minority leaders who are LEC’s appointing authorities; (2) to LEC’s four legislative members – two of whom are the Assembly Ethics Committee’s chair and ranking member, namely, Assemblywoman Simon and Assemblyman Montesano; (3) to LEC’s Executive Director/Counsel Reid and Deputy Director/Counsel Siebert; (4) to LEC’s former member/co-chair Assemblyman Lavine, whose tenure and simultaneous chairmanship of the Assembly Ethics Committee, of which he remains a member, spanned 2013 to 2017; and (5) to the chair and ranking member of the Senate Ethics Committee, namely, Senator Biaggi and Senator Palumbo.

I trust the “15-day” letters will instruct each of them that their written responses to this complaint must also be sworn to be true under penalties including “fine or imprisonment, or both.”

Thank you.

s/ELENA RUTH SASSOWER

cc: New York State Inspector General Lucy Lang, Esq.