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July 15, 2019

Holding Government Accountable – The People Fight Back!

ANALYSIS OF THE DECEMBER 10, 2018 REPORT OF THE COMMITTEE ON LEGISLATIVE & EXECUTIVE COMPENSATION

Presented to:
Governor Andrew Cuomo & Lieutenant Governor Kathy Hochul
Attorney General Letitia James
Temporary Senate President Andrea Stewart-Cousins & the Other 62 Senate Members
Assembly Speaker Carl Heastie & the Other 149 Assembly Members

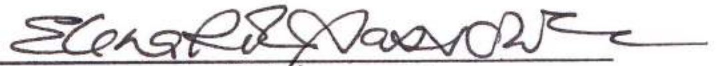
In Support of their Belated Discharge of the Oversight Responsibilities They Owe the People of the State of New York:

(1) to void the December 10, 2018 Report because it is fraudulent, statutorily-violative, and unconstitutional;

(2) to return, to the public fisc, the salary increases disbursed since January 1, 2019 as a result of the December 10, 2018 Report;

(3) to refer the Compensation Committee members and their *pro bono* counsel for criminal prosecution – and for the Attorney General to herself bring such prosecution – based on penal law violations including:

> **Penal Law §175.35: "offering a false instrument for filing in the first degree";**
>
> **Penal Law §195.20: "defrauding the government";**
>
> **Penal §190.65: "scheme to defraud in the first degree";**
>
> **Penal Law §496.05; §496.06: "PUBLIC TRUST ACT: "corrupting the government in the first degree"; "public corruption".**

Written by: 
Elena Ruth Sassower, Director

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Introduction

The December 10, 2018 Report of the New York State Compensation Committee, boosting legislative and executive salaries, is a fraud upon the People of the State of New York and a larceny of their tax dollars. This is readily proven. It requires nothing more than comparing the Report to the enabling statute on which it purports to be based – Part HHH of Chapter 59 of the Laws of 2018 – and to the opposition testimony of members of the public at the Committee's two public hearings.

To facilitate this, the non-partisan, non-profit citizens' organization Center for Judicial Accountability, Inc. (CJA) presents the within analysis of the December 10, 2018 Report for a two-fold purpose: (1) to assist the Governor, Lieutenant Governor, Attorney General, and each of New York's 213 Senate and Assembly Members – all beneficiaries of the Report's salary increase recommendations – in belatedly discharging their oversight responsibilities so as to protect the People they were elected to serve; and (2) to assist New York's press, "good government" groups, bar associations, and scholars in ensuring that happen.

As here demonstrated, such oversight must include, *at minimum*:

(1) voiding the December 10, 2018 Report because it is fraudulent, statutorily-violative, and unconstitutional;

(2) returning, to the public fisc, the salary increases disbursed since January 1, 2019 as a result of the December 10, 2018 Report;

(3) referring the Compensation Committee members and their *pro bono* counsel for criminal prosecution – and for the Attorney General to herself bring such prosecution – based on penal law violations including:

> Penal Law §175.35: "offering a false instrument for filing in the first degree";
>
> Penal Law §195.20: "defrauding the government";
>
> Penal §190.65: "scheme to defraud in the first degree";
>
> Penal Law §496.05; §496.06: "PUBLIC TRUST ACT: "corrupting the government in the first degree"; "public corruption".

The evidence substantiating this analysis, including the VIDEOS of the Compensation Committee's meetings and hearings, is accessible from CJA's website, www.judgewatch.org, *via* the prominent homepage link, now renamed, "2018 Committee on Legislative & Executive Compensation – Unconstitutionality & Fraud in Plain Sight". The direct link to the webpage for the analysis is: http://www.judgewatch.org/web-pages/searching-nys/2018-legislature/hhh-compensation-committee/7-15-19-analysis-of-report.htm.

The Transmitting Letter

The Compensation Committee's Report has no cover. It goes directly from a transmitting letter to a "Table of Contents".

The transmitting letter, from the Committee's chair, H. Carl McCall, is addressed to the "three-men-in-a-room" who inserted the enabling statute into the 2018 revenue budget bill – Governor Andrew Cuomo, then Temporary Senate President John Flanagan, and Assembly Speaker Carl Heastie. It is additionally addressed to then-incoming Temporary Senate President Andrea Stewart-Cousins.

The misrepresentations of the transmitting letter begin with its letterhead bearing the name "Committee on Legislative and Executive Compensation", also repeated in its first sentence. Although this is functionally what the Committee was about, such name does not appear in the enabling statute, Part HHH of Revenue Budget Bill #S.7509-C/A.9505-C, which became Part HHH of Chapter 59 of the Laws of 2018. Nor did the Committee use that name previously. Seemingly, this is the first time.

The letter then continues by misrepresenting the Committee's compliance with Part HHH. Its second sentence reads:

> "Pursuant to Part HHH of Chapter 59 of the Laws of 2018, this report sets forth the Committee's recommendations with respect to the levels of executive and legislative compensation over the ensuing three calendar years." (underlining added).

Yet, Part HHH did NOT authorize the Committee to make recommendations with respect to "levels" of compensation. Rather, its §1 restricted the Committee's recommendations to "adequate levels of compensation…". Neither here nor elsewhere does the Committee claim that its recommendations are as to "adequate levels of compensation". Nor does it purport that it made any finding that existing compensation levels were inadequate. As such, the Committee violated an essential condition-precedent for its recommendations.

The next sentence then continues to infer that the Committee complied with Part HHH:

> "In furtherance of its statutory mandate, the Committee considered a broad range of pertinent data, beginning with the factors delineated in the statute." (underlining added).

Yet, Part HHH did NOT mandate that the Committee consider "a broad range of pertinent data". Rather, its §2.3 required the Committee to "take into account all appropriate factors, including, but not limited to" the factors specified by the statute. Neither here nor elsewhere does the Committee claim that "all appropriate factors" were "take[n] into account" – and such would include the unspecified additional factor of citizen-opposition. Here, too, the Committee violated an essential condition-precedent for its recommendations.

The letter then states:

> "The Committee held four public hearings or public meetings that were broadcast live over the Internet and are archived on the website which is available at: https://nyscompensation.ny.gov/archived.html."

Here implied is that the Committee conducted itself in conformity with the Open Meetings Law – Public Officers Law, Article 7 (§100 *et seq.*) – which it did not, and which it here conceals. This includes its failure to identify the executive meetings it held, which, excepting the first, violated Public Officers Law §105 "Conduct of executive sessions" – unless retention of counsel permitted the Committee to thereafter privately meet with counsel without public notice and without specifying the legal issues about which it was being advised, and without disclosing the law and legal argument forming the basis of counsel's advice as to the public matters at issue. As hereinafter shown, counsel was an active accomplice in the fraud and deceit the Committee was perpetrating upon the public, culminating in its December 10, 2018 Report.

The Open Meetings Law operates in tandem with the Freedom of Information Law – Public Officers Law, Article 6 (§84 *et seq.*). Pursuant to Public Officers Law §86.3, the Compensation Committee was an "agency"[1] – and pursuant to §87.3(c) governing "Access to agency records" was required to maintain:

> "a reasonably detailed current list by subject matter of all records in the possession of the agency, whether or not available under this article."

Public Officers Law §86, subparagraph 4, defines "records" as:

> "any information kept, held, filed, produced or reproduced by, with or for an agency or the state legislature, in any physical form whatsoever including, but not limited to, reports, statements, examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, rules, regulations or codes."

Apart from the fact that the Committee's website does not post any "list by subject matter of all records" it possessed,[2] it does not properly or accurately post such written submissions and

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[1] Public Officers Law §86 entitled "Definitions" defines "Agency" at subparagraph 3 as:

> "any state or municipal department, board, bureau, division, commission, committee, public authority, public corporation, council, office or other governmental entity performing a governmental or proprietary function for the state or any one or more municipalities thereof, except the judiciary or the state legislature."

[2] *Cf.* Public Officers Law §87.3(c), which additionally states:

> "Each state agency as defined in subdivision four of this section that maintains a website shall post its current list on its website and such posting shall be linked to the website of the committee on open government. Any such agency that does not maintain a website shall arrange to have its list posted on the website of the committee on open government."

correspondence as it received, clumping them together into three relatively skimpy, disorganized, and incomplete pdfs on its webpage of "Archived Meetings".

As reflected by CJA's e-mails to the Committee (Exhibits E, H, I, J), the Committee repeatedly failed to respond to deficiencies of its website. As for its records, the Committee did not respond to a December 28, 2018 e-mail (Exhibit J-1), inquiring as to who would have custody of them upon the repeal of Part HHH, fixed by §7 as December 31, 2018 – and the Committee's *pro bono* counsel did not answer a July 9, 2019 inquiry as to whether the Committee's non-response was pursuant to its advice (Exhibits L-1, L-2).[3]

Chair McCall's letter then continues:

> "The Committee <u>carefully reviewed</u> the public testimony and extensive written submissions received in connection with the question of appropriate compensation for New York State Officials." (underlining added).

<u>This is outright fraud</u>. Firstly, "the question" before the Committee was <u>not</u> "appropriate compensation". Rather, as dictated by §1 of Part HHH, it was "<u>adequate</u> levels of compensation" – with §2.1, reinforcing this by the phrase "prevailing <u>adequacy</u>". Secondly, "careful[] review[]" would have compelled a diametrically different report. Indeed, the Committee had only to review the "public testimony and extensive written submissions" of one witness – CJA Director Elena Sassower – "to know, for a certainty, that [it had] nowhere to go" with recommendations for salary increases. Sassower herself <u>explicitly</u> stated this in her November 30, 2018 oral testimony (Exhibit D), identifying that the <u>evidence</u> she was furnishing was "dispositive" in two respects:

(1) that the committee scheme put in place by Part HHH was unconstitutional; and

(2) that the first specified "appropriate factor" that Part HHH required the Committee to "take into account" – "the parties' performance and timely fulfillment of their statutory and Constitutional responsibilities" – precluded any salary increases to legislative and executive statewide officers and made the seven other specified factors "completely irrelevant".

Yet the Report makes NO findings with respect to Sassower's November 30, 2018 testimony (Exhibits D, C) – as to which, for the Committee's convenience, Sassower had aggregated all the referred-to <u>evidence</u> on a webpage entitled: **"**CJA's Dispositive Testimony – Oral & Written – at

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[3] Indeed, notwithstanding the Governor, Senate and Assembly share responsibility for the statute – and are its beneficiaries – CJA's June 20, 2018 e-mail to their records access officers, requesting access to the Committee's records and restoration of the VIDEO of the Committee's posted November 28, 2018 meeting/hearing, which ceased to be operational, has not resulted in access or restoration (Exhibits K-1 - K-4b).

the Compensation Committee's November 30, 2018 hearing".[4] Nor does the Report make findings with respect to the further evidence Sassower furnished the Committee by correspondence sent on December 5, 2018 and December 6, 2018 (Exhibits F, G)[5], as to the fraud and deceit committed by Assembly Speaker Heastie in his November 30, 2018 oral and written testimony – as to which, additionally, she had aggregated all referred-to evidence on a webpage entitled "CJA's December 6, 2018 letter to Assembly Speaker Heastie – Demand that You Substantiate Your November 30, 2018 Testimony Before the New York State Compensation Committee with EVIDENCE – as You Furnished NONE".[6]

The letter concludes with Chair McCall thanking the Committee members for "their thoughtful consideration and hard work in dealing with this important issue". Again, utter fraud. Their work and his was shamelessly superficial, propelled and slanted by manifest bias, and their culminating December 10, 2018 Report a criminal fraud. And encapsulating this, visually, is the VIDEO of their conduct and that of their counsel during Sassower's November 30, 2018 public testimony and the VIDEO of the Committee's December 6, 2018 meeting, preceding its December 10, 2018 Report, where, in voting for salary increases, the Committee members, aided by counsel, made no reference to Sassower's evidence-based opposition because, as they knew, it was dispositive that no increases could be recommended.

"Members of the Committee on Legislative and Executive Compensation" (at pp. 3-4)

This section, consisting of bios of the Committee's four members, conceals that Part HHH specifies both the Committee's size and membership – by its §1:

> "The committee shall be comprised of the chief judge of the state of New York, the comptroller of the state of New York, the chairman of the State University of New York board of trustees and 52nd comptroller of the state of New York, the comptroller for the city of New York, and the chairman of the city university of New York board of trustees and 42nd comptroller for the city of New York".

These *ex officio* designations obscure the number of committee members, which is five, and their identities, who, in the order of designation, are: Janet DiFiore, Thomas DiNapoli, H. Carl McCall, Scott Stringer, and William Thompson, Jr.

This section does not reference Chief Judge DiFiore – omitting that she is a statutorily-designated member, that she recused herself, and the reason. It thereby conceals one of the grounds upon

[4] The direct link to that DISPOSITIVE webpage is here: http://www.judgewatch.org/web-pages/searching-nys/2018-legislature/hhh-compensation-committee/cja-testimony-11-30-18.htm.

[5] The December 6, 2018 letter annexed the December 5, 2018 e-mail as Exhibit D and additionally annexed Sassower's November 30, 2018 oral and written testimony as Exhibits A and B.

[6] The direct link to that DISPOSITIVE webpage is here: http://www.judgewatch.org/web-pages/searching-nys/2018-legislature/hhh-compensation-committee/12-6-18-ltr-to-heastie.htm.

which Part HHH is unconstitutional, *as written*, namely, that Article VI, §20b of the New York State Constitution states:

> "A judge of the court of appeals...may not: (1) hold any other public office or trust except an office in relation to the administration of the courts, member of a constitutional convention or member of the armed forces of the United States or of the state of New York…".

Such constitutional restriction was quoted in a May 14, 2018 Daily News article "*NYS Chief Judge won't serve on pay raise commission*", itself quoting a memorandum of the Office of Court Administration. According to the article:

> "The memo sent to the governor and legislative leaders cites a provision in the state Constitution that says a judge may not 'hold any other public office or trust except an office in relation to the administration of the courts.'".

The article describes the memorandum as explaining that:

> "the intent of the restriction is to avoid conflicts with judicial services, including those involving issues of separation of powers.
>
> It's also meant to ensure it doesn't 'give the appearance of compromising judicial impartiality and independence (including independence from the political process)' while keeping a judge from taking a position on issues that might ultimately wind up before the courts".[7]

In fact, "the issues that might ultimately wind up before the courts" were already before the courts. This, as part of CJA's second citizen-taxpayer action challenging the constitutionality and lawfulness of the largely identical budget statute that established the Commission on Legislative, Judicial and Executive Compensation – Part E of Chapter 60 of the Laws of 2015 – suing the Governor, the Legislature, the Attorney General, the Comptroller – and:

> "JANET M. DiFIORE, in her official capacity as Chief Judge of the State of New York and chief judicial officer of the Unified Court System".

It was about this citizen-taxpayer action that Sassower testified, on November 30, 2018, furnishing the Committee with copies of the appeal briefs and three-volume record on appeal, then "before the Appellate Division, *en route* to the Court of Appeals". Indeed, this was the evidence that Sassower identified as "dispositive" of the unconstitutionality of Part HHH and that the legislative

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[7] CJA's attempt to secure the memorandum by a July 17, 2018 FOIL/records request (Exhibit A-1) was unsuccessful: the Office of Court Administration, the Governor, and the Senate responding that it was exempt from disclosure – with the Assembly purporting that it had no such document in its possession (Exhibits A-2 - A-5).

and statewide executive electeds could not meet its first "appropriate factor" of "performance and timely fulfillment of their statutory and Constitutional responsibilities" (Exhibits C, D).

As for the four Committee members whose bios are presented alphabetically by this section, all are either current or prior comptrollers of New York State or New York City and all are from the metropolitan New York City area. In other words, there is no occupational or regional diversity among them. Nor is there any mention of their party affiliations. All are Democrats – and long-time politicians. Such small, homogenous committee cannot be constitutionality delegated "force of law" legislative powers – and the pertinent facts and law as relates to Part E of Chapter 60 of the Laws of 2015 are set forth by the sixth cause of action (sections A & B) of CJA's citizen-taxpayer action [R.109-111 (R.187-193)] – so-devastating that neither defendants nor any court has confronted its particulars.

Adding to this unconstitutionality of Part HHH, *as written*, is the fact, evident from the bios, that all four Committee members have multitudinous longstanding personal, professional, and political relationships with each other and with the legislative and executive officers whose compensation they were evaluating – and that Comptroller DiNapoli was himself one of the benefitting executive officers.

Comptroller DiNapoli's service on the Committee is itself a ground upon which Part HHH is unconstitutional, *as written* – and in two respects. The most obvious is his direct and substantial pecuniary interest in the Committee's charge. The second is the express proscription of Article V, §1 of the New York State Constitution, which states:

> "The legislature shall assign to [the state comptroller] no administrative duties, except such as may be incidental to the performance of [his] functions [as comptroller]".

This constitutional proscription was pointed out at the November 30, 2018 hearing by the public testimony of constitutional expert James Coll – also concealed by the Committee's Report.

Of the four Committee members, only one was not, additionally, a former legislator.[8] That was Committeeman Thompson – and his bio omits his most relevant credential: that in 2011 Governor Cuomo appointed him as member and chair of the Commission on Judicial Compensation, established by Chapter 567 of the Laws of 2010 – a statute repealed and replaced by the largely identical Part E of Chapter 60 of the Laws of 2015, establishing the Commission on Legislative, Judicial and Executive Compensation – to which Part HHH of Chapter 59 of the Laws of 2018, establishing the Compensation Committee, is a largely identical supplement. This is far more germane than the other gubernatorial appointments included in his bio: three by Governor Cuomo, in 2016, 2015, and 2011, and one by former Governor David Paterson, in 2010.

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[8] Former State Comptroller McCall was in the Senate from 1975-1980; current State Comptroller DiNapoli was in the Assembly from 1987-2007; and current New York City Comptroller Stringer was in the Assembly from 1993-2005.

This omission of Committeeman Thompson's most directly relevant appointive credential is inexplicable except as an attempt to conceal his disqualification arising from his chairmanship of the Commission on Judicial Compensation.

Sassower raised the issue of Committeeman Thompson's disqualification in her first communication to the Committee – her November 14, 2018 e-mail requesting to testify at its November 30, 2018 hearing – which had read:

> "Please reserve your maximum five minutes for my opposition testimony at the Friday, November 30, 2018 NYC hearing. More to follow as to the unconstitutionality of the statute, *as written*, *as applied*, and by its enactment – as well as the absolute disqualification of two of the Committee's members, William Thompson, Jr. and Thomas DiNapoli, as they themselves should recognize. The Center for Judicial Accountability's website, www.judgewatch.org, has a webpage entitled 'The Corrupt Commission Scheme to Raise Salaries of Corrupt Public Officers', from which everything is accessible. Here's the direct link: http://www.judgewatch.org/web-pages/judicial-compensation/menu-ny-judicial-compensation.htm.
>
> Thank you." (Exhibit B-1).

All the primary-source evidence as to how the 2011 Commission on Judicial Compensation operated under its Chair Thompson – and the chain of events leading to the second citizen-taxpayer action to which Chief Judge DiFiore and Comptroller DiNapoli are named defendants – is on the cited webpage "The Corrupt Commission Scheme to Raise Salaries of Corrupt Public Officers". The Compensation Committee makes no disclosure and finding as to this. Nor does it even assert that it was an impartial tribunal – which, as manifest from the VIDEOS of its meetings, it flagrantly was not.

Also relevant to this section – but not included, even in a footnote – is the Committee's retention of *pro bono* counsel to assist it. This was Alan Klinger, Esq., for whom there is no summarizing bio, notwithstanding his credentials were shown on a slide at the Committee's November 28, 2018 and November 30, 2018 hearings, essentially lifted from his webpage at Stroock, Stroock & Lavan, LLC, where he is co-managing partner and co-chair of its litigation group: https://www.stroock.com/people/aklinger/. Mr. Klinger was sitting directly in front of Sassower when she testified at the November 30, 2018 hearing, prompting her to include him in her remarks, as follows;

> "The second of the citizen-taxpayer actions is still live and unfolding and at the Appellate Division, Third Department. And, as identified in the written statement, it is essential that each of the committee members here and your counsel review the record of that second citizen-taxpayer action, so that you can know, for a certainty, that you have nowhere to go with, insofar as recommendations…" (Exhibit D, underlining added).

Presumably, Mr. Klinger edited – and most likely wrote – the December 10, 2018 Report. His important role is only vaguely reflected by the Report's "Appendix A: Meeting Summaries" – with Appendix A altogether omitting that he was assisted by fellow Stroock attorney Dina Kolker, Esq., acknowledged by Chair McCall at the Committee's December 6, 2018 meeting.

In fact, Mr. Klinger was assisted by more Ms. Kolker – at least according to the front-page December 7, 2018 New York Law Journal article "*Committee Approves Pay Raise For New York State Lawmakers*":

> "Alan Klinger, a partner at Stroock & Stroock & Lavan was responsible for the legal analysis of what power, exactly, the Committee had in determining a pay raise for members of the Legislature. Stroock attorneys David Kahne, Dina Kolker, Beth Norton, Tina Milburn and Samantha Rubin also worked on the matter.
>
> The firm worked on a pro bono basis for the committee and prepared a memo concerning some of the legal issues involved, such as whether the committee can change the pay structure for state lawmakers and cap the amount they are able to earn outside their jobs in government.
>
> According to Carl McCall, chairman of the SUNY board of trustees who was also selected to chair the compensation committee, Klinger's team confirmed that the panel could limit the amount of money lawmakers can earn outside their legislative salary.
>
> 'We have confirmed with our counsel that it is within the scope of the committee to give consideration to outside income,' McCall said.
>
> Klinger also determined that the committee could eliminate stipends that are currently given to certain members of the Legislature in leadership positions." (Exhibit M, underlining added).

If the "memo concerning some of the legal issues involved" were legitimate – and the workproduct not only of Mr. Klinger, but of five additional Stroock attorneys[9] – there was no reason for it not to have been included in an appendix to the Committee's Report. However, it is not even referred-to and – as hereinafter shown – nothing in the Report reflects any kind of appropriate, let alone sophisticated, analysis of "legal issues".

As to the threshold "legal issues", they concerned the constitutionality of Part HHH, *as written* and *by its enactment* – and, as to these, Sassower spoke with Mr. Klinger, *face to face*, at the conclusion of the November 30, 2018 hearing. He was then conversing with Ms. Kolker and, to both, Sassower reiterated the necessity that they review the evidence she had furnished so that they could counsel the Committee concerning her testimony. She also pointed out that over and beyond

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[9] The bios of three of these five additional attorneys are posted on Stroock's website:
Dina Kolker, Esq: https://www.stroock.com/people/dkolker/;
David Kahne, Esq.: https://www.stroock.com/people/dkahne/; and
Tina Milburn, Esq.: https://www.stroock.com/people/emilburn/.

the unconstitutionality of Comptroller DiNapoli's participation on the Committee, based on Article V, §1 of the New York State Constitution, to which Mr. Coll had testified, Mr. DiNapoli's direct financial interest would void any report the Committee might render. Sassower also furnished them with legal authority for that proposition: Judiciary Law §14 and the Court of Appeals' interpretive decision in *Oakley v. Aspinwall*, 3 NY 547 (1850).[10]

"Summary of the Committee's Recommendations" (at pp. 5-7)

This section of the Committee's Report is largely identical to the Report's section entitled "Recommendations" (at pp. 14-18), but without the elaborative comments there included.

"Statutory Mandate" (at pp. 7-9)

This section of the Committee's Report purports to summarize Part HHH of Chapter 59 of the Laws of 2018, which it selectively and inconsistently cites in some of its paragraphs, but not in others.

Thus, without citing to any section of Part HHH, the first paragraph states:

> "The provisions of law which established this Committee are found at Part HHH of Chapter 59 of the Laws of 2018. These provisions establish a one-time committee to consider the compensation of statewide elected officials, the Commissioners of the state agencies whose salaries are contained in Section 169 of the Executive Law, and the compensation of the Legislature, whose salaries and allowances are contained in Legislative Law §5 and §5-a." (underlining added).

This is too broad. The Committee's charge was NOT "to consider…compensation", as, for instance, how it is structured – which is what the Report ultimately did in eliminating stipends and restricting outside earned income. Rather, pursuant to §1, the Committee was "to examine, evaluate and make recommendations with respect to adequate levels of compensation, non-salary benefits, and allowances". This was then reinforced by §2.1, repeating that its charge was to "examine the prevailing adequacy of pay levels, allowances…and other non-salary benefits".

The second and third paragraphs of this section then digress to a defense of the statute's constitutionality. The second paragraph reads:

> "While a full copy of this legislation is attached at the end of this report, it is important to note that this section of law fits within a Constitutional framework.

[10] In that same conversation, Sassower also inquired of Mr. Klinger about whether he had furnished "legal services to the judicial compensation commission when it was functioning" – which is what Chair McCall had stated at the November 28, 2018 hearing. Mr. Klinger answered that he had not. He has, however, as his bio indicates, been "*pro bono* counsel to the Association of State Supreme Court Justices" – and has represented them on compensation issues.

> The compensation of statewide elected officials and legislators is a matter which is addressed in both Article III and Article IV of the New York State Constitution.
>
> To the extent that these provisions are to be 'fixed by law,' this Committee is tasked with making recommendations which have the force of law and supersede existing law. The Committee takes this important responsibility very seriously and is guided and constrained by the provisions of Part HHH." (underlining added).

The phrase "fits within a Constitutional framework" is intended to imply that Part HHH is consistent with the New York State Constitution – and, specifically, Articles III and IV, which it is not. The Report does not discuss the meaning "fixed by law", nor even cite to where in Article III and IV such phrase appears. Instead, it asserts, in completely conclusory fashion, that the phrase can mean fixed by a committee whose "force of law" recommendations will "supersede existing law". It offers up ZERO legal authority for its implied proposition that the Legislature can delegate its constitutional duty to fix compensation of executive and legislative constitutional officers to a committee. That it cannot was summed up by constitutional activist Robert Schulz, testifying at the November 28, 2018 hearing, and constitutional scholar James Coll, testifying at the November 30, 2018 hearing. It is further particularized and established by the record of the sixth cause of action (sections A & B) of CJA's second citizen-taxpayer [R.109-110 (R.187-193)], furnished by Sassower in testifying on November 30, 2018. The Report makes no findings of fact or conclusions of law with respect to any of this.

As for the bald assertion that the Committee "takes this important responsibility very seriously and is guided and constrained by the provisions of Part HHH", this pretense of compliance with the statute is essential to upholding the constitutionality of what is unconstitutional. That such pretense is utterly false is proven by the Committee's conduct, from its belated first meeting on November 13, 2018 – nearly 7-1/2 months after Part HHH was enacted – culminating, less than a month later, in its flimsy, fraudulent December 10, 2018 Report, which could have – but did not – append any memoranda of law from its *pro bono* counsel as to the serious and substantial legal issues that were before the Committee, threshold to its proceeding.

Of course, this section conceals that pursuant to §§1 and 7 of Part HHH the Committee was immediately established upon the statute's enactment – and that facilitating this was its already-made *ex officio* designation of Committee members. The Report give no explanation for the Committee's 7-1/2 month delay until the week after the November 6, 2018 general elections to begin its work. Nor does it claim that such was not prejudicial to the public and to the Committee's ability to discharge its statutory mandate – and Sassower's written statement pointed out the consequential nature of this statutory violation (Exhibit C, p. 2).

The section then proceeds to recite, by a combination of quotes and paraphrases of Part HHH, what it purports (at p. 7) to be "Most relevant to our charge".

It begins by now quoting, incompletely, §1: "To 'make recommendations with respect to **adequate levels of compensation, non-salary benefits, and allowances** pursuant to section 5-a of the legislative law, for members of the legislature, statewide elected officials, and those state officers referred to in section 169 of the executive law'" – as to which it states "(See, Part HHH at §1

emphasis added)." It does not identify why it has bolded for emphasis the words "**adequate levels of compensation, non-salary benefits, and allowances**", but the inference is that it has adhered to this restriction to its "recommendations", which is false.

It then skips, as "Most relevant to our charge", §2.1, which reads:

> "In accordance with the provisions of this act, the committee shall examine the prevailing adequacy of pay levels, allowances pursuant to section 5-a of the legislative law, and other non-salary benefits, for members of the legislature, statewide elected officials, and those state officers referred to in section 169 of the executive law." (underlining added).

In other words, this skipped-over §2.1 reiterates that the Committee's task pertains to the "adequate levels" of §1.

The section then combines §2.2 and §2.3, to which it does not cite, stating:

> "We must determine whether on January 1, 2019 an increase in compensation is warranted, and the statute further provides that the Committee shall take into account all appropriate factors, including, but not limited to:
>
> (1) the parties' performance and timely fulfillment of their statutory and Constitutional responsibilities;
> (2) the overall economic climate;
> (3) rates of inflation;
> (4) changes in public sector spending;
> (5) the levels of compensation and non-salary benefits received by executive branch officials and legislators of other states and of the federal government;
> (6) the levels of compensation and non-salary benefits received by comparable professionals in government, academia and private and nonprofit enterprise;
> (7) the ability to attract talent in competition with comparable private sector positions; and
> (8) the state's ability to fund increases in compensation and non-salary benefits."

This is overbroad. The determination the Committee is charged with making, pursuant to §2.2, is whether "annual salary and allowances warrant an increase." It is for this defined and limited purpose that it is to "take into account all appropriate factors" – which could not be constitutional unless citizen-opposition was also deemed an "appropriate factor" that the Committee was required to "take into account".

The next two paragraphs, citing §§2(4)(a) and (b) (at p. 8), read:

> "The legislation allows that a salary increase, if determined to be warranted, may be implemented over time, however, the last installment of such increase must commence no later than January 1, 2021 (Part HHH, §2(4)(a)). Further, each such phased-in increase is statutorily conditioned upon 'performance of the executive and legislative branch and upon the timely legislative passage of the budget for the preceding year.' (Part HHH, §2(4)(b)).
>
> This Committee is tasked with, as part of its report, delineating what those conditions require, although 'legislative passage of the budget' is set forth as having the same meaning as in Legislative Law §5(3)".

Materially omitted is the definition that Legislative Law §5(3) provides for "legislative passage of the budget" – from which "timely legislative passage of the budget" is to be derived.

The next paragraph (at p. 8) then skips, entirely, §3 of Part HHH, although its first, fourth and fifth subdivisions are clearly "Most relevant to our charge".

As to §3.1, it required "at least one hearing at which the public will be afforded an opportunity to provide comments", with an option for "additional public hearings as [the Committee] deems necessary". The purpose of hearings is "for making determinations upon evidence". Otherwise, they are sham (*cf.*, *Matter of Wilfred Waltemade*, 409 N.Y.S.2d 989, 991-992 (Court on the Judiciary 1975).

As for §3.4 and §3.5, they pertain to the resources that would enable the Committee to fulfill its responsibilities:

> §3.4 "To the maximum extent feasible, the committee shall be entitled to request and receive and shall utilize and be provided with such facilities, resources and data of any court, department, division, board, bureau, committee, agency or public authority of the state or any political subdivision thereof as it may reasonably request to properly carry out its powers and duties pursuant to this act."
>
> §3.5 "The committee may request, and shall receive, reasonable assistance from state agency personnel as is necessary for the performance of its function."

Instead, the section speeds to §4.1, which it cites, falsely implying that December 10, 2018 is the date by which the Committee's Report "is to be submitted" – as if mandatory. In fact, it is the date by which the Committee "should submit" the Report – which, had §1 been complied with, would have given the Committee over seven months for completing the fact-finding and analysis to support the Report's conclusions and recommendations – rather than the less than one month, post-election, in which it operated.

The next paragraph (at p. 8) then materially misrepresents §4.2, to which it does not cite, for the proposition that the Committee's "recommendations 'shall have the force of law" unless abrogated by the Legislature "by statute prior to the commencement of the new term on January 1, 2019". This is false.

- First, not all Committee recommendations" have "the force of law". Rather, only those that "implement a determination pursuant to section two of this act" – this being §2.2 of Part HHH, which states:

> "The committee shall determine whether, on January 1, 2019, the annual salary and allowances of members of the legislature, statewide elected officials, and salaries of state officers referred to in section 169 of the executive law warrant an increase" (underlining added).

- Second, the only such recommendations which would have the "force of law" if not modified or abrogated "prior to the commencement of a new term on January 1, 2019" are those pertaining to 2019 – not those pertaining to 2020 and 2021, governed by §4.2 of Part HHH.[11]

This paragraph also combines §§6 and 7, to which it also does not cite, for the correct proposition that the Commission on Legislative, Judicial and Executive Compensation, to be appointed in June 2019 pursuant to Part E of Chapter 60 of the Laws of 2015 "shall have the ability to both consider the actions of this Committee in its determinations and, to the extent any portion of this report remains to be implemented, to modify such portion."

The final two paragraphs of this section (at pp. 8-9) are led off by the introductory phrase: "For further reference, among the provisions of law that may be impacted" – thereupon furnishing three:

- "Section 5 of the legislative law, which effectuates the salary provisions of the Constitution for Legislators AND Section 5-a of the Legislative Law, which…provides for legislative stipends for legislators who serve in a variety of positions.";

- "Section 169 of the Executive Law set[ting] forth the salaries for various state officers holding positions such as commissioner, chancellor, executive director and the like."

Thereby covered up by the word "among" is the deficiency of §4.2 in failing to include, in addition to these three provisions pertaining to the legislators and executive branch commissioners, the provisions pertinent to the salaries of the Comptroller and the Attorney General, *to wit*:

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[11] §4.2 reads "unless modified or abrogated by statute prior to January first of the year as to which such determination applies to legislative and executive compensation" (underlining added).

Executive Law §40, entitled "Department of audit and control; comptroller", which reads, in pertinent part:

> "There shall continue to be in the state government a department of audit and control.
> 1. The head of the department of audit and control shall be the comptroller. He shall be paid an annual salary of one hundred fifty-one thousand five hundred dollars."

Executive Law §60, entitled "Department of law", which reads, in full:

> "There shall continue to be in the state government a department of law. The head of the department of law shall be the attorney-general who shall receive an annual salary of one hundred fifty-one thousand five hundred dollars."

"Findings and Determinations" (at pp. 10 -13)

Under this heading are 16 paragraphs prefaced by the single sentence:

> "Based upon the public testimony and extensive written submissions, and upon its own research and deliberations, the Committee's findings are as follows:".

This prefatory sentence is fraudulent. The Committee makes no "findings" based on the "public testimony" in opposition. Of the eleven "speakers" at the Committee's two public hearings – so characterized in the Report's Appendix A (at pp. 23-25)[12] – four were in opposition. The most significant was Sassower because her public testimony was totally in opposition and fully substantiated by "extensive written submissions". Next was citizen-activist Roxanne Delgado, also because her opposition was total. Constitutional expert James Coll, who took no position as to whether salaries should be increased, devoted the entirety of his testimony to the unconstitutionality of the statute by its delegation of legislative power to a committee to increase salaries of legislative and statewide elected officers and the inclusion of Comptroller DiNapoli as a committee member.[13] Constitutional activist Robert Schulz also devoted the totality of his public

[12] At the November 28, 2018 hearing, there were four "speakers": (1) NYPIRG Executive Director Blair Horner; (2) Former Green Party Comptroller Candidate Mark Dunlea, Esq.; (3) Matt Reddick; and (4) Constitutional Activist Robert Schulz.

At the November 30, 2018 hearing, there were seven "speakers": (1) Assembly Speaker Carl Heastie; (2) CJA Director Elena Sassower; (3) Reinvent Albany Senior Policy Director Alex Camarda; (4) Common Cause Executive Director Susan Lerner; (5) Change NYS Founder James Coll; (6) Diane X. Burman; and (7) Citizen Activist Roxanne Delgado.

[13] Mr. Coll made an eloquent plea to the Committee as to its duty to address the constitutional issues, stating:

> "each member of this committee has taken an oath to uphold the state constitution. With that in mind, it was alarming to read after this committee's Albany hearing earlier this week

testimony to the unconstitutionality of the delegation of legislative power. A fifth "speaker", former Green Party Comptroller Candidate Mark Dunlea, also voiced opposition to such legislative delegation, with a sixth "speaker", NYPIRG Executive Director Blair Horner raising, in passing, the issue of legislative performance.

Whereas Appendix A purports to summarize the "public testimony" of the eleven "speakers", there is NO appendix identifying what the "extensive written submissions" consisted of or any bibliography or listing of the Committee's "own research".

Nor does the Committee's website, https://nyscompensation.ny.gov/, post "extensive written submissions", There are only three clumped-together pdfs[14] containing the written statements of

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> that Chairman McCall stated 'If someone wants to challenge the committee's constitutionality they should, but we did not make the decision.' Once again, each member before us today took an oath to uphold the constitution, which makes it more than the responsibility of our judges. It makes it each of your responsibility as well….
>
> So what are the constitutional clauses in question today? We start with the fact that this committee has been authorized with the ability to magically have their recommendations transformed into the 'force of law,' as authorized by the April Budget. The false premise that the legislature and governor can give away their constitutionally-allocated role in lawmaking to a hand-picked committee should be so obviously unconstitutional that it need no further explanation. New York's Constitution is crystal clear on who has the ability to make law…and it makes no reference to a committee such as the one before me today….
>
> If the legislature and the governor can delegate away their lawmaking power on the specific issue of compensation and the spending of taxpayer monies, what other areas of lawmaking is the legislature and governor authorized to delegate power to other forums such as this? When the state legislature gave away its power to redistrict following the results of the next constitutionally-mandated census to a commission, it required a constitutional amendment, which was approved in two sessions of the legislature and by the voters in 2014, as required by the state constitution. The power delegated here needs to go through the same process in order to empower this committee.
>
> Do we, the voters, have the right and power to hold our elected officials responsible for anything? The constitution is clear that we do and committee members present today must know that your work has the potential to absolve them of the very responsibility and accountability that is mandated in the state constitution."

[14] The three clumped together pdfs, accessible from the Committee's webpage of "Archived Meetings" are, as follows:

"November 28, 2018 Testimonies": (1) Mark Dunlea's statement (3 pages); (2) Nov. 26, 2018 e-mail from Thomas Amyot (1 page); (3) Blair Horner's written statement (9 pages); (4) Matt Rettig's written statement (1-1/2 pages); (5) August 30, 2018 letter from Assemblymen Kevin Byrne and James Skoufis (1-1/2 pages); (6) November 20, 2018 letter from Senator Chris Jacobs (1-1/4 pages).

"November 30, 2018 Testimonies": (1) Assembly Speaker Carl Heastie's written statement (3 pages); (2) Sassower's written statement, with constitutional provisions (5 pages); (3) Reinvent Albany-Alex Camarda's written statement (4-1/2 pages); (4) Diane Burman's written statement (1-1/2 pages); (5) Roxanne Delgado's handwritten statement (5 pages).

eight of the eleven "speakers", the most "extensive" being 9 pages from NYPIRG Director Horner.[15] The clumped-together pdfs additionally include:

(1) a 1-page November 26, 2018 e-mail from a private citizen, Thomas Amyot, opining that the legislative salary of "$79,500, plus committee bonuses plus expenses should remain as they are";

(2) a 1-1/2 page August 30, 2018 letter from Assemblymen Kevin Byrne and James Skoufis, not requesting increases in legislative salaries;

(3) a 1-1/4 page November 20, 2018 letter from Senator Chris Jacobs, not requesting increases in legislative salaries (with 14 pages of figures pertaining to lulus); and

(4) a 2-page November 21, 2018 e-mail from Frederick A.O. Schwarz, Jr., chair of the 2015 New York City Quadrennial Compensation Commission, without its indicated attached 2015 Commission report.[16]

The pdf clumps do not include Sassower's correspondence to the Committee – the most important being her December 5, 2018 e-mail and December 6, 2018 letter particularizing the fraud and deceit of the only legislator to publicly speak before the Committee: Assembly Speaker Heastie (Exhibits F, G) – with her other e-mails alerting the Committee to the deficiencies of its website's postings, offering to facilitate its posting of the "extensive written submissions" she had furnished at the November 30, 2018 hearing, and inquiring as to where the Committee's records would be maintained upon the statutory termination of the Committee on December 31, 2018 (Exhibits E, H, I, J).

As for the Committee's "own research", the Committee's website is also meager. It has a top panel labeled "Comparisons", whose incomplete charts contain no information about median household income and which are devoid of any qualitative assessment of the performance of the legislative and executive public officers whose salaries and legislative allowances are at issue. Additionally, it has a top panel tab labeled "Articles", posting a smattering of news articles, columns, and editorials on nine select dates in November 2018, none of whose writers appeared before the Committee to offer up testimony or to entertain questions as to the factual and legal substantiation for their writings.

The obvious starting point for the Committee's "own research" should have been examination of the records of the Commission on Legislative, Judicial and Executive Compensation, established by Chapter 60, Part E, of the Laws of 2015 – and especially as it did not produce a report on

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"Written Correspondence to the Committee": Inventoried by Sassower's December 10, 2018 e-mail to the Committee (Exhibit I).

[15] Not included are the written statements of Mr. Schulz and Ms. Lerner, though the VIDEO of their testimony shows they furnished written materials to the Committee members. As Mr. Coll submitted no written statement, there is none from him.

[16] This is contained in the pdf of "Written Correspondence to the Committee".

legislative and executive compensation, as it had on judicial compensation. The most important "public testimony" at its hearings, apart from Sassower's on November 30, 2015, at its single hearing on judicial compensation, was at its March 23, 2016 hearing on legislative and executive compensation, by then Assemblyman Bill Nojay, testifying in opposition to legislative salary increases, and by Frederick A. O. Schwarz, Jr., former chair of the 2015 New York City Advisory Compensation Commission and legal director at the Brennan Center, whose testimony encompassed the Brennan Center reports pertaining to the Legislature's dysfunction, disentitling legislators to salary increases.

Of the 16 paragraphs of the Committee's purported "findings" in this section, all are fraudulent, excepting the last two. Here's an analysis of them:

Paragraph #1:

> "This Committee is tasked with considering, among other things, the parties' performance and timely fulfillment of their statutory and Constitutional responsibilities. Indeed, the receipt of any phased-in increase is statutorily conditioned upon the fulfillment of these obligations as a legislative body, as well as on-time budget passage in the prior year. (underlining added).

The Committee here substitutes the words "on-time", which nowhere appears in Part HHH, for the word "timely" which appears in the statute twice – first in §2.3, in the phrase "timely fulfillment of their statutory and Constitutional responsibilities" and then in §2.4(b), in the phrase "timely legislative passage of the budget". Nor do the words "on-time" appear in Legislative Law §5.3, on which §2.4(c) explicitly rests for the definition of "legislative passage of the budget".

Paragraph #2:

> "On-time budget passage occurs when both houses finally act upon the executive budget submission in accordance with Article VII of the Constitution, by April 1, with appropriations sufficient to support the ongoing operation and support for state government and local assistance for the ensuing fiscal year (hereinafter defined as 'on-time budget passage'). Satisfaction of the condition of on-time budget passage is readily ascertainable. This year, 2018, the Governor and Legislature enacted an on-time budget."

The Committee now repeats the substituted phrase "on-time budget" four times in this paragraph, in each of its three sentences. To the first sentence, which the Committee does not identify as a paraphrase of Legislative Law §5.3, it adds the date "April 1", which Legislative Law §5.3 does NOT contain or imply.

It is by this sleight-of-hand insertion of "April 1" in the first sentence that the second and third sentences baldly purport that "the Governor and Legislature" complied with "the condition of on-time budget passage" in 2018. Presumably, this means "April 1", as the budget was not enacted

consistent with Legislative Law §5.3 – and, tellingly, neither here nor elsewhere does the Committee make ANY finding or determination that it was.

Sassower's November 30, 2018 written statement (Exhibit C) both quoted and explicated Legislative Law §5.3, as follows:

> As for the Committee's statutory mandate to consider not only 'performance…of…statutory and Constitutional responsibilities', but 'timely fulfillment' thereof, this is code for the state budget – and so-reinforced by the statute's §2(¶4b) reference to 'timely legislative passage of the budget', repeated in §2(¶4c) as having 'the same meaning as defined in subdivision 3 of section 5 of the legislative law', *to wit*,
>
> > 'that the appropriation bill or bills submitted by the governor pursuant to section three of article seven of the state constitution have been finally acted on by both houses of the legislature in accordance with article seven of the state constitution and the state comptroller has determined that such appropriation bill or bills that have been finally acted on by the legislature are sufficient for the ongoing operation and support of state government and local assistance for the ensuing fiscal year. In addition, legislation submitted by the governor pursuant to section three of article seven of the state constitution determined necessary by the legislature for the effective implementation of such appropriation bill or bills shall have been acted on. Nothing in this section shall be construed to affect the prohibition contained in section five of article seven of the state constitution.'
>
> In other words, pursuant to Legislative Law §5-a, timeliness with respect to 'legislative passage of the budget' has no date, but rests on compliance with Article VII and, seemingly, §4, whose relevant language – providing for a rolling budget, enacted bill by bill – reads:
>
> > 'Such an appropriation bill shall when passed by both houses be a law immediately without further action by the governor, except that appropriations for the legislature and judiciary and separate items added to the governor's bills by the legislature shall be subject to his approval as provided in section 7 of article 4.'"
> > (Exhibit C, pp. 2-3, underlining in the original).

The Committee's failure to make ANY finding with respect to this explication reflects its knowledge that it could not do so without conceding its accuracy, precluding ANY salary increases to the legislators and the statewide electeds because the fiscal year 2018-2019 budget flagrantly violated Article VII and Legislative Law §5-a, so-established by the evidence Sassower furnished at the November 30, 2018 hearing.

<u>Paragraph #3</u>:

> "The 'performance' of the legislature in its statutory and Constitutional activities, however, is to be interpreted and determined by this Committee. While some may want a litmus test by issue (or by individual Legislator), we cannot have (nor would the statute permit), an increase to be challenged based upon the needs or wants of any particular citizen. The statute charges us with considerations and determinations regarding the body as a whole. Accordingly, we find that this first condition is met by the implementation of the Committee's limitations on stipends and outside earned income, that will advance the full-time nature of today's legislative duties to, as a body, satisfy fulfillment of their statutory and Constitutional responsibilities."

Once again, the Committee makes a word swap – changing the language of Part HHH, §2.3: "statutory and Constitutional <u>responsibilities</u>" to "statutory and Constitutional <u>activities</u>". And here, too, but now <u>expressly</u>, it engages in redefinition, purporting that it can swap "performance" – whose definition would be whether the Legislature has met its "statutory and Constitutional responsibilities" in the past and currently – for future legislative acceptance of "limitations on stipends and outside earned income". <u>This is baseless nonsense</u>:

(1) the gauge of "performance" is of past, NOT future, acts;

(2) the Legislature has NO "statutory and Constitutional responsibilities" to enact either "limitations on stipends" or "outside earned income"; and

(3) "limitations on stipends" and "outside earned income" are themselves a "litmus test by issue", arising from "the needs [and] wants" of a select band of citizens whose "public testimony" and "written submissions" made NO showing of actual impact upon legislative "performance".

Notably, neither here nor elsewhere in its Report does the Committee make ANY "finding" that "the body as a whole", as presently constituted, failed to fulfill "statutory and Constitutional responsibilities" – let alone that same was attributable to "stipends and outside earned income". Indeed, the oral statements of the Committeemen at their December 6, 2018 meeting were to the contrary:

> "I think it is clear that the state legislators and really in this case, members of the assembly, members of the senate, statewide electeds, <u>do excellent work, do a yeoman's job</u>." (Thompson);

> "…the legislature has not always lived up to its full opportunities to <u>convince the public</u> that it is a hard-working, conscientious, honest organization. And it is. There are some very good people who are honorable and work very hard and we really have to make sure that we

> send signals to the public about how serious they are about doing their job and doing it well." (McCall);
>
> "I think we all share a belief that the people who are receiving raises and the restrictions we are imposing does not in any way reflect the belief that the legislators have a real ethic (sic) and they have done a great job in their capacities. And I really believe that and I think we all believe that." (Stringer) – to which there was not only NO disagreement, but assent – "They have. Absolutely." (Thompson) and "That's true." (McCall).

Nevertheless, the Committee here find[s]" that reconfiguring the Legislature without "stipends and outside earned income" will "advance the full-time nature of today's legislative duties" so that it can fulfill "statutory and Constitutional duties" that the Committee has not found to be deficient. This is more baseless nonsense.

By contrast, at the November 30, 2018 hearing, Sassower publicly asserted that the Legislature has fallen beneath any constitutionally acceptable level of functioning – and that this was verifiable from the second citizen-taxpayer action, whose record she furnished for verification (Exhibit D). The record itself rebutted that there was any difference between full-time legislators without outside earned income, and part-time legislators, with outside earned income – and established that the issue was capable of empirical proof. It contained an excerpt of her oral testimony at the Legislature's January 30, 2017 budget hearing, in which she had stated:

> "The reason why Albany is dysfunctional, the Legislature is dysfunctional, has nothing to do with whether there are full time legislators or part-time legislators, whether you earn outside income or not, whether we have public campaign financing or not. That is bogus. Because there is no difference, empirically – I've interacted with members of the Legislature for 25 years, and I can tell you there's no difference between a legislator who purports to be full-time or one who has outside work. There's no difference. The problem is that you don't have the resources and you are emasculated by rules. (transcript, pp. 524-525)" [R.700].

The record also included her subsequent empirical test of three full-time legislators who are Harvard Law School graduates [R.710-711]:

> Assemblyman David Buchwald, Esq. – a member of BOTH the Assembly Committee on Government Operations and the Assembly Judiciary Committee – and who, additionally, is Sassower's own Assembly member;
>
> Senator Michael Gianaris, Esq. – second-in-command to then Senate Minority Leader Stewart-Cousins, who is Sassower's own Senator;
>
> Senator Brad Holyman, Esq. – then ranking member of BOTH the Senate Committee on Investigations and Government Operations AND the Senate Judiciary Committee;

and two part-time legislators:

> Assemblyman Phil Steck, Esq. – a member of the Assembly Committee on Government Operations, with a law practice;
>
> Assemblyman David Pietro – a legislator who owns three dry-cleaning stores.

There was absolutely NO difference between these five legislators. None would confront the record of the second citizen-taxpayer action – just as no other legislator had been willing to confront it – all blithely continuing and facilitating the constitutional, statutory, and rule violations the second citizen-taxpayer action establishes, *prima facie*, with respect to the budget and legislative functioning.

Suffice to note that paragraph #3 discusses only the "performance" of the Legislature. There is NO subsequent paragraph assessing the "performance" of the Governor, Comptroller, and Attorney General in fulfilling "their statutory and Constitutional responsibilities", nor concocting any "outside earned income" excuse for their not doing so. Here, too, CJA's second citizen-taxpayer action – to which these statewide elected are each defendants – establishes their wholesale violation of "statutory and Constitutional responsibilities" with respect to the budget and the other duties of their offices, not only disentitling them to salary increases, but requiring their removal from office and criminal prosecution. This is relief expressly sought by its verified pleadings [R.131 (#4), R.742 (#4)] and highlighted by Sassower's November 30, 2018 written statement (Exhibit C, at p. 3).

Paragraph #4:

> "Thus, the increase in salary that we are recommending for effectiveness on January 1, 2019 should be paid to every Legislator, whether or not they were elected or held the position the prior year as there was on-time budget passage. Going forward, with our further recommendation for an increase effective January 1, 2020, and January 1, 2021, it is the determination and finding of this Committee that the on-time budget passage by April 1, in each prior year, together with compliance with the recommendations of this Committee, shall entitle the Legislature to the recommended increases." (underlining added).

This paragraph builds on the frauds of the predecessor three. The Committee here dispenses with any "performance" component for the first phase of the legislative salary increase recommended for January 1, 2019 – justifying same by its fraud as to the Legislature's "on-time budget" in 2018. It also gives a windfall to newly-elected Senate and Assembly members, who ran for office, knowing and accepting existing salary and benefits – in disregard of the opposition testimony of Roxanne Delgado at the November 30, 2018 hearing.

Paragraph #5:

> "New York ranks fourth in the country in terms of population and second in the country in terms of its operating budget. The overall gross product produced by New York ranks third in the country with over $1.5 trillion earned annually. The duties and responsibilities of the Commissioners, the Governor and Statewide elected officials and Legislature are amongst the most complex in the world. The output of New York State and the needs of its population dwarf those of many countries worldwide."

Paragraph #5 thus implies that New York's statewide and legislative electeds are deserving of salary increases because of the enormous "duties and responsibilities" that are theirs by virtue of the size and complexity of New York State government. This is utter nonsense in the absence of any "finding" that they are discharging their "duties and responsibilities" with respect to the $175-plus billion state budget, or their other lawmaking and oversight functions. The Committee makes NO such "finding" – and the evidence that Sassower handed up at the November 30, 2018 hearing, inventoried by her December 28, 2018 e-mail to the Committee (Exhibit J), establishes, resoundingly, that the legislative and statewide electeds are not – and to an extent mandating their removal from office and prosecution on criminal charges, for which they will be convicted.

Paragraph #6:

> "By any economic measure, the compensation of New York's Executive branch and Legislative branch officials has failed to keep pace with the rate of inflation since 1999 when the last pay increase became effective. One can measure simply by the Consumer Price Index, and determine that the actual purchasing power of the salary contained in law has decreased. Speaker Carl Heastie, the only Legislator to address this Committee, made a compelling case to the erosion of the legislators' salaries. While the median household income in New York is up 67% during the past two decades, the $79,000 base salary for lawmakers now has a purchasing power of $51,401 over 1998 when it was enacted. Despite working many long hours in their districts, the cost of living in every category – health care, child care, transportation, etc. has far outpaced their salary. Members of the Legislature are seeking positions in New York City government or the Executive branch at a much greater rate than in past years."

This is materially false and deceitful – beginning with its concealment of what NYPIRG Executive Director Horner had stated in both his November 28, 2018 oral and written testimony, namely that New York City's 2015 Quadrennial Compensation Commission had found that "CPI alone does not adequately capture how the average New Yorker has fared", that median household income is a better measure, and that the Compensation Committee should review that Quadrennial Commission's work. This was easy for the Committee to do because the Quadrennial Commission's December 2015 report was already before the Committee – having been furnished

a full week earlier, by its chair, Frederick A.O. Schwarz, Jr., by a November 21, 2018 e-mail, stating:

> "In our analysis of how to address changes in the cost of living since the existing pay limits were set, we found it appropriate to rely on changes in median household income more than changes in the consumer price index ('CPI'). (See pp. 52-53 and also p. 3 and pp. 42-43).
>
> This was for two reasons. First, the CPI is less accurate. Second, and most importantly, the actions of government officials can affect median household income."

In so stating, Mr. Schwarz reiterated oral testimony he had given before the Commission on Legislative, Judicial and Executive Compensation, at its March 23, 2016 hearing – as the Committee would have discerned had it examined the VIDEO or transcript of that hearing, as part of its "own research".

Yet, the only source the Committee here identifies is Assembly Speaker Heastie who purportedly made "a compelling case". This, by doing precisely what paragraph #6 here repeats, focusing on the consumer price index, rather than median household income, whose dollar figure Assembly Speaker Heastie also did not identify in stating at the November 30, 2018 hearing:

> "The base salary for legislators has remained at $79,500, and its purchasing power has diminished to $51,401. During this same period, the state median household income has risen by 67 percent."

Concealed by Assembly Speaker Heastie's testimony was what the median household income was 20 years ago – when the legislators got their $79,500 salary increase – or what it was in 2018, constituting the 67% rise. And paragraph #6 also repeats this, concealing any dollar figures pertaining to the median household income, which, in 2018, was $64,894. In other words, <u>the legislators' base salary of $79,500 was, in 2018, still $15,000 higher than the median household income</u> – on top of which legislators had Legislative Law §5-a stipends, plus per diems, mileage reimbursements, pensions, health insurance – and perhaps other items – none of which Speaker Heastie had revealed and all of which the Committee members <u>independently</u> knew, as former legislators and/or current and former comptrollers.

Notably, the ONLY <u>non-salary</u> compensation addressed by the Committee's Report – and that in a completely superficial fashion – are the Legislative Law §5-a stipends, the adequacy of which the Committee was mandated to evaluate so as to determine whether they warranted increase – and which it did not so-evaluate. <u>Nowhere</u> mentioned are the per diems and mileage – even though the Committee had a slide at its first November 13, 2018 meeting revealing them. Nor is there any mention of health insurance, nor the most substantial of non-salary benefits – itself salary-based, *to wit*, pensions, as to which almost 45 years ago, the New York Court of Appeals had held:

> "Retirement benefits in the public as in the private sector must now be viewed as a significant and integral component of current compensation. … As we observed in review of the New York State Teachers Retirement

> System, 'the security offered by membership in the retirement system is generally regarded as an inducement to employment in State service or in the public schools. The value of the retirement benefits and prospective rate of payment, especially in the face of continued inflation, is of vital concern to the [members] and might well be the determining factor in their decision to continue in the teaching profession, or seek more lucrative employment.' (*Birnbaum v New York State Teachers Retirement System*, 5 N.Y.2d 1, 6.) While we recognize that the inducements to as well as the rewards for public service by elected members of the executive and legislative branches of our State government are not precisely parallel to those in private employment or in nonelective positions in government service, nonetheless, in our view retirement benefits constitute as real and substantial a form of compensation as does a pay check. The only significant difference lies in the time of payment. … Retirement benefits are a component of present compensation", *Boryszewski v. Brydges*, 37 N.Y.2d 361, 368 (1975).

As for the last sentence of paragraph #6: "Members of the Legislature are seeking positions in New York City government or the Executive branch at a much greater rate than in past years", the Committee furnishes no particulars. Assembly Speaker Heastie gave no testimony on the subject, either orally or by written submission. The sole witness who made mention of state legislators going to other positions was Common Cause Executive Director Susan Lerner and her oral testimony at the November 30, 2018 hearing was limited to the salary disparity with the City Council, in the wake of the substantial raise its members had voted themselves in 2016 over and beyond the New York City Quadrennial Compensation Commission's recommendations. Notwithstanding Ms. Lerner stated that "several members of the Legislature made the decision that it is advantageous to their families' finances to return back to NYC and run for City Council", such is utterly non-probative, as she did not identify who these legislators are or whether they had ever stated that they were running for Common Council because of the better salary – or was this merely her surmise. Nor did she state that there was a paucity of candidates vying to replace them or that they were not just as qualified, if not more so.

Suffice to further note that neither in paragraph #6 – nor in any other – does the Committee give ANY definition of what constitutes "adequacy" and "adequate levels", notwithstanding this was its statutory charge. The record of CJA's citizen-taxpayer action furnished that definition – the same as CJA had provided, in 2011, to Committeeman Thompson, then chair of the Commission on Judicial Compensation:

> "'the judgment as to what level of pay is adequate should be based on whether a reasonable supply of well-qualified attorneys will make themselves available to become or remain judges in the courts concerned. The lowest pay which produces an adequate supply of well-qualified candidates for the various courts is the only pay level which is fair to State taxpayers; any higher pay would require unnecessarily high taxes.'"[17]

[17] CJA's August 26, 2011 letter to Chair Thompson and the other members of the Commission on Judicial Compensation (at p. 4) – Exhibit L to CJA's October 27, 2011 Opposition Report – quoting (with

In any event, ALL economic considerations are "completely irrelevant" where the subject public officers are NOT discharging the constitutional and statutory duties for which they are paid. This is what Sassower explicitly asserted in testifying at the November 30, 2018 hearing (Exhibit D), furnishing the *prima facie* evidence of the willful and deliberate non-feasance of the legislative and executive electeds. To raise their salaries, under such circumstances, is unconstitutional – and the sixth cause of action of CJA's second citizen-taxpayer action (section B) [R.110-111 (#64), R.193 (#400-401)] so asserts on a record showing that proposition to be uncontested.

Paragraph #7:

> "New York's many agency commissioners likewise do not have many entities to which they can be readily compared given the complexity and scope of their budgets, personnel and missions. However, we analyzed other cities, federal agencies and other states and found that the pay of New York's agency commissioners was also sorely lagging. For instance: looking at comparison states in the Northeast, as well as larger states like California, Florida and Texas, the highest salaries for agencies such as Health, Transportation, Police, Corrections and Education were all uniformly over $200,000, in many cases closer to $300,000. In many of these categories, New York's salaries were the lowest of the comparison group. New York City's Commissioners earn over $200,000, for talent pool with a ready transition from New York City to the State system, that significant decrease in salary makes it difficult to recruit and retain Commissioners. Further, the stagnant salaries of Commissioners has suppressed the salaries of other Executive branch staff, which has also made it difficult to retain talented staff; any increase at the Commissioner level will thus allow for other staff salaries to be increased accordingly. Lastly, the statewide elected officials, the Attorney General, Comptroller,[fn1] Lieutenant Governor and Governor have seen their collective salaries decline in the face of inflation over the last two decades as well. Other states and major cities have grown these salaries over 50% more than our own statutorily mandated amounts."

This paragraph conceals that a functioning Legislature, holding fact-finding hearings by its appropriate committees, would have had NO difficulty in enacting bills amending Executive Law §169 so as to properly adjust the salaries of appointed executive agency commissioners, thereupon signed by the Governor – without controversy or political backlash – and especially if existing salaries were making it "difficult to recruit and retain Commissioners". There is NOT the slightest evidence that salary raises for executive branch commissioners – or for legislators, statewide executive officers, or the judiciary – could not be secured through legitimate legislative process –

underling added) the Report of the Temporary State Commission on Judicial Compensation, chaired by William T. Dentzer.

and such is identified by CJA's second citizen-taxpayer action, including its sixth cause of action (section A) [R.110 (62) (R.191 (#392)].

In any event, the Committee had NO probative evidence that the "significant" differences in salaries for commissioners elsewhere in government made it "difficult to recruit and retain Commissioners" and that it was "difficult to retain talented staff". Neither the Governor, nor anyone from the Executive Chamber, testified or furnished any written statement to the Committee. Nor did any commission head testify or submit a statement. Rather, only a single Executive Law §169 commission member, Diane Burman, came forward to testify – and her testimony, at the November 30, 2018 hearing, did <u>not</u> substantiate recruitment and retention difficulty inasmuch as she stated that she had taken "an over $30,000 pay cut" from the position she had held as Senate majority counsel, in order to serve on the Public Service Commission, which she termed her "dream job". According to her, she was testifying "not about the money", but about "fairness".

Nor was there any probative evidence before the Committee from any of the "statewide elected officials, the Attorney General, Comptroller, Lieutenant Governor and Governor" of ANY "hardship" they were facing because of the depreciation of their salaries by inflation. To the contrary, their salaries were not so deplorable that they had not battled for re-election in 2018 and 2014 – facing candidates who were undeterred by the salaries in seeking those very offices. Evidence, for example, the July 25, 2018 <u>New York Law Journal</u> article "*Major Party NY AG Candidates Would Take Pay Cut If Elected, Filings Show*", whose subtitle read:

> "Their financial disclosure forms. released by the state's Joint Commission on Public Ethics, showed a wide array of incomes in 2017, ranging from below $200,000 to more than $4 million. The state attorney general has an annual salary of $151,500."

<u>Paragraph #8</u>:

> "Consideration of private sector wage growth over the same two decades reinforces that there must be an increase. The Committee analyzed salary data for, among others, lawyers, including lawyers working in private practice and the public sector throughout New York State, executives in the non-profit sector, professionals in academia and public education, and government officials in New York City. While public service should never strive to compete solely with the private sector, it is instructive and helpful to understand to properly place our public officials in context of the broader labor market in which the State competes for talented individuals."

This paragraph is insufficient for any finding that "there must be an increase", as "salary data" is only a component of the larger examination the Committee was required to undertake. Indeed, none of the "appropriate factors" that Part HHH, §2.3 required the Committee to "take into account" pertained to salary alone, but, for instance:

- "the levels of compensation and non-salary benefits received by executive branch officials and legislators of other states and of the federal government"; and

- "the levels of compensation and non-salary benefits received by comparable professionals in government, academia and private and nonprofit enterprise";

- "the state's ability to fund increases in compensation and non-salary benefits". (underlining added).

Moreover, no comparison is remotely possible to the "private sector" – where high salaries are also attributable to the fact that "private sector" employees are expected to meet "performance" standards and when they do not, they are booted out – unlike in New York State government, where public officers are able to remain in a job they are NOT doing because ALL oversight and removal safeguards have been rendered non-functional by their willful and deliberate nonfeasance and misfeasance – a state of affairs evidenced by CJA's second citizen-taxpayer action.

Paragraph #9:

> "New York State is in relatively strong fiscal condition at the present time, inasmuch as the Governor and Legislature have controlled increases in spending. While deficits are projected for the coming fiscal year, continued restraints on spending will manage such deficits. The projected additional cost to the State for the first phase of the Committee's recommendations can be managed within existing budgets, making this increase affordable as it represents less than 5 one-thousands of 1 percent of all state funds spending (0.0048%)."

The paragraph is devoid of any citation to support its bald statement about New York's "strong fiscal position" or its claim that it results from "the Governor and Legislature hav[ing] controlled increases in spending" – and this view is not consistent with the views of Republican legislators, expressed in connection with the budget. Illustrative is the March 31, 2018 statement of Assembly Minority Leader Brian Kolb, https://nyassembly.gov/Minority/?sec=story&story=80866, which began, as follows:

> "Albany's annual tradition of closed-door negotiations, conducting public work without public input, and cramming a 12-month fiscal plan in a two-day, last-minute sprint has come to a close.
>
> We met a deadline, but failed to meet our most basic obligations.
>
> New York is the highest-taxed state in the nation. It is the most corrupt state in the nation. It loses more of its residents than any state in the nation. Nothing in the final 2018-19 Budget is going to change those embarrassing realities."

That the Governor and Legislature created a larcenous, "slush fund" budget, profligate with taxpayer monies and perpetuating government corruption, is evidenced by CJA's citizen taxpayer action – and by Sassower's testimony at the Legislature's budget hearings for fiscal year 2018-

2019, to which she referred in testifying at the Committee's November 30, 2018 hearing (Exhibit D).

Indeed, that monies for the first phase of the Committee's recommended salary increases could be "managed within existing budgets" is because the existing budgets are slush-funds. Tellingly, paragraph #9 conceals the cumulative dollar amount represented by the "less than 5 one-thousands of 1 percent of all state funds spending (0.0048%)" – which the Committee surely has, since it has offered up a percentage figure for the first phase. And does this dollar figure include the increases to pensions and other salary-based non-salary benefits?

Paragraph #10:

> "Salary data for Legislators are not well-compared to legislators in most other states. Many states legislators who are considered 'part-time' as compared to New York, which is in reality considered a more 'full-time legislature, do earn less than New York's salary of $79,500. However, New York's legislators compare in workload and productivity to relatively few other legislatures in the country. Further, differences in regional cost of living impact these salaries as well. The National Conference of State Legislatures for instance, compares New York only to Michigan, California, and Pennsylvania as equivalent to work product and time commitment.[fn2] In some of those states, the salaries exceed that of New York."

This is rife with deceit, beginning with its phase "well-compared" – the inference being that New York's legislators are not well compensated in comparison to the legislators of other states. This is false, as New York's Legislature was the third highest in the country, behind California ($107,240) and Pennsylvania ($87,180), both "full time legislatures" Not only does this paragraph #10 conceal the third-in-the-country salary ranking of New York legislators – pointed out by the testimony of NYPIRG Director Horner and former Green Party Comptroller Candidate Dunlea – but, the very definition of "full-time" legislature – reflected by the annotating footnote link to the National Conference of State Legislatures: http://www.ncsl.org/research/about-state-legislatures/full-and-part-time-legislatures.aspx – contained in Mr. Horner's written submission – shows that the definition takes into account a pay level commensurate with "full time", *to wit*, "legislators are paid enough to make a living without requiring outside income." This is certainly true in New York – and such is evidenced by the fact that the overwhelming majority of New York Senate and Assembly members do not, in fact, have any outside earned income. Such is also concealed by paragraph #10 – and elsewhere in the Committee's Report, even though it appeared in a slide shown by Committeeman Stringer at the Committee's first meeting.

Nor are salary comparisons with legislatures in other states relevant, absent qualitative findings about those legislatures – which this paragraph does not make. As stated by Sassower in testifying at the November 30, 2018 hearing, prompted by Committeeman Stringer's slides with salary comparisons, which he showed at that hearing, at the November 28, 2018 hearing, and at the initial November 13, 2018 meeting:

"Your comparisons to other states, well maybe other states are functional, maybe their legislatures and public officers are not corrupt." (Exhibit D).

Finally, as to the assertion in this paragraph that "New York's legislators compare in workload and productivity to relatively few other legislatures in the country", this is also a deceit by its implication that the comparison is in New York's favor. The very opposite is the case – and the Brennan Center reports that Sassower handed up at the November 30, 2018 hearing (Exhibit D) – says this explicitly. Illustrative of a comparison to California, in the Brennan Center's 2008 report, is the following pertaining to introduction of bills:

> "The relatively high number of bills introduced in the [New York] Legislature has increased over time and continues to outpace other states. In 2006, the number of bills introduced, 17,700, jumped 17.7% in one year.[fn] In 2008, 18,239 bills were introduced, yet only 1,634 (i.e., 9%), passed both houses. That's slightly better than the 8.2% of bills passed in 2005, but it represents a 20.1% increase in the number of bills introduced over 3 just years. To put these figures in perspective, according to 2006 statistics, the state with the second highest number of bills introduced was New Jersey with 6,430, and California's legislature, representing nearly twice the population of New York, introduced fewer than 2,000 bills.[fn89]" (at p. 25, underlining added).

The annotating footnote 89 is to a front-page September 24, 2008 article in the Democrat & Chronicle entitled "*N.Y. Legislature Leads Nation in Legislative Failure*".

Paragraph #11:

> "New York's Legislature does, however, uniquely pay a significant number of Legislators a stipend pursuant to §5-a of the Legislative Law. New York pays out 160 special stipends ranging from $9,000 to $41,500. Pennsylvania, by comparison, only pays 15 members a stipend, California pays only four. It is the finding of this Committee that only those highest ranking officials with the level of duties commensurate to those positions in each house should receive a stipend, and the remainder should be folded into an increase in base pay. This will create more equity amongst all 213 Legislators, more stability and transparency regarding legislative compensation and address certain ethical concerns associated with the stipends. The reconfiguration of the balance between salary and stipend, in the overall compensation of Legislators, also complies within the statutory directive limiting the Committee to consideration of increases in compensation."

The "find[ing]" that stipends should be eliminated, except for those paid to legislators filling the highest and most demanding positions, is beyond the Committee's to make. Part HHH did not give the Committee authority to recommend elimination of any legislative stipends – or to "reconfigure[e]…the balance between salary and stipend in the overall compensation of

Legislators". Rather, Part HHH, §§1 and 2 limited the Committee's charge to determining whether "allowances pursuant to section 5-a of the legislative law" were inadequate and warranted increase by reason thereof.

Nor is the Committee's so-called "find[ing]" in fact a "finding". Rather, it is a recommendation that required relevant findings, in support. "[E]quity among all 213 Legislators" is not a relevant finding, nor are "stability and transparency" – and all are devoid of detail that would give them any meaning. As for "certain ethical concerns associated with stipends", it is not only vague, but a deliberate cover-up of use of stipends by the Temporary Senate President and Assembly Speaker to reward obedient and compliant rank-and-file legislators – detailed by the Brennan Center reports that Sassower furnished.

The Committee purports to justify its "Recommendation on Stipends" in a 2-1/2 page section under the title heading "Statement in Support" (at pp. 18 - 20), but that is not identified by its paragraph #11.

Paragraphs #12-14:

> "As part of this process, many individuals and organizations have called on this committee to ban outside income for Legislators. **The Committee was statutorily charged with reviewing other mechanisms of compensation nationally and in other states.** This Committee finds that the Congressional model employed to limit outside income and potential conflicts of interest is best. Applying this model to limit receipt of outside earned income will eliminate both the perception of and any actual conflicts of interest amongst the membership of the two houses. Further, by completely eliminating outside earned income in those areas of employment set forth in the Congressional rules (which include, but are not limited to, instances of fiduciary relationship by service on a board of a company whether for-profit or not-for-profit, service as an attorney, financial advisor, and consultant), it eliminates the possibility for the public to question whether the citizens of this State are being properly served. Speaker Heastie was the only legislative leader to address this committee and he expressed an openness and willingness to consider such a proposal. Temporary President-elect Andrea Stewart-Cousins did not address this Committee, however she noted on December 6 in a public statement that she and her colleagues in the Democratic Conference have pushed to adopt the Congressional model." (bold and underlining added).
>
> "Therefore the Committee finds that the consideration of compensation cannot be complete without considering outside income, its role in overall compensation and the ability of Legislators to fulfill their responsibilities to serve the public in a focused and ethical manner. Accordingly, as part of a compensation framework for Legislators, the Committee determined to limit outside earned income to ensure that Legislators devote the appropriate time and energy to fulfilling their Constitutional obligations and to also minimize the possibility and perception of conflicts. The

> Committee finds and determines that a complete ban on any outside income would restrict access to these positions, and the limitation on outside earned income is sufficient to prevent avoidable conflicts of interest." (underlining added).
>
> "Accordingly, as of January 1, 2020, the Congressional model prohibition on outside income from certain professions and a cap on proceeds from outside employment shall apply to the legislature. Where employment is not prohibited, there shall be an earned income limit of 15% of legislative base salary, to be implemented analogously to the cap on Congressional outside income. For 2020, the limitations on outside earned income shall be $18,000. The Committee recognizes that a small number of Legislators have existing obligations and therefore provides this one-year window for Legislators to come into compliance. Furthermore, the Committee believes that the existing guidance and interpretation available under the Congressional model should serve as a guide to implementation of these restrictions in New York."

These three paragraphs, pertaining to legislators' outside income, rest on the fraud, in the second sentence of paragraph #12, that "[t]he Committee was statutorily charged with reviewing other mechanisms of compensation nationally and in other states". Nowhere does Part HHH so-charge the Committee – and its provisions could not be clearer. §1 and §2.1 direct the Committee to examine "adequate levels of compensation, non-salary benefits, and allowances" and "prevailing adequacy of pay levels, allowances…and other non-salary benefits" – for the purpose, stated by §2.2, of "determin[ing] whether…salary and allowances…warrant an increase". Indeed, the requirement in §2.3 that the Committee "take into account all appropriate factors" is <u>expressly</u> to enable it to "discharge[e] its responsibilities" pursuant to §2 – and, <u>thereby limited</u>.

These paragraphs do not justify the Committee's recommendation on legislators' outside income based on ANY evidence of conflicts of interest affecting legislative performance. Rather, their justification rests on the "appearance" and "possibility" of conflict of interest arising from such outside income. The Committee gives further justification of the same ilk in a two-paragraph section under the title heading "Statement in Support" (at p. 18) – although this is not identified by paragraphs #12, #13, #14.

<u>Paragraph #15</u>:

> "There have been additional calls for reforms completely unrelated to the compensation of those within the jurisdiction of this Committee. These include campaign finance reform, closing the LLP loophole, and many other myriad requests be part of any package to increase salaries. We believe these demands, wholly unrelated to 'compensation,' are inappropriate for this Committee to consider, even while we may individually and collectively support some or all of them, and encourage the Governor and Legislature to give them appropriate consideration."

The referred-to calls for reform unrelated to compensation are policy matters within the jurisdiction of the Legislature, whose committees – if they were functioning – would have long ago held hearings with respect thereto, rendered reports with findings based thereon, drafted and debated responsive legislation – which, *via* appropriate legislative rules would have been voted out of committee and reached the Senate and Assembly floors for debate, amendments, votes – and then the reconciliation of bills for signature by the Governor. As demonstrated by CJA's second citizen-taxpayer action – expanding upon and updating the showing made by the 2002, 2004, and 2006 Brennan Center reports – the Legislature is not functioning on any constitutional level and has supplanted an open legislative process by rank-and-file legislators with behind-closed-doors deal-making by leadership, in collusion with the statewide electeds.

Paragraph #16:

> "There have also been calls to enact a permanent cost of living adjustment to the recommendations here. The statutory mandate of the Committee requires that no increase be effectuated beyond January 1, 2021, which places the imposition of a permanent cost of living adjustment or COLA outside the scope of this Committee's authority. Furthermore, the Commission on Judicial, Legislative and Executive Compensation created pursuant to Part E of Chapter 60 of the Laws of 2015 will be re-appointed in June 2019 and will be empowered to make recommendations effective in 2021."

This paragraph and Paragraph #15 are the only ones making findings as to the Committee's jurisdiction consistent with Part HHH. However, the Committee here bumbles the name of the commission created by Part E of Chapter 60 of the Laws of 2015. It is the Commission on Legislative, Judicial and Executive Compensation.

"Recommendations" (at pp. 14-18)

This section purports that the Committee's recommendations were "unanimously adopted" at the Committee's December 6, 2018 meeting – and that they incorporate the "findings and determinations" made by the Report. It may reasonably be argued that this does not comply with the last sentence of Part HHH, §4.1, which, with its preceding sentence reads:

> "Any findings, conclusions, determinations and recommendations in the report must be adopted by a majority vote of the committee. Each member of the committee shall report their vote and describe their reasoning for their determination." (underlying added).

In any event, this section essentially repeats the "Summary of the Committee's Recommendations" at the outset of the Report (at pp. 5-7), differing only by elaborative comments, most particularly with respect to the ban and restriction on outside earned income, essentially repeating paragraphs ##12-14 of the preceding "Findings and Determinations" section (at pp. 12-13), amplified by specifics of the prohibitions and restrictions. None of the elaborative comments identify any finding having been made by the Committee that existing salary levels were "inadequate" —

although this is the only statutory basis for its recommendations of salary increases. Indeed, the elaborative comments reveal that "adequacy" was NOT the basis for the Committee's salary increase recommendations.[18]

"STATEMENT IN SUPPORT" (at pp. 18-21)

"Recommendation on Outside Income" (at p. 18)

The paltry two paragraphs under this heading offer sham justification for the Committee's recommendation on outside income. The first is:

> "This Committee is created to 'examine, evaluate, and make recommendations with respect to adequate levels of compensation.' This directive authorizes a holistic review and analysis of compensation for Legislators without limiting that analysis to simply setting salary levels. The list of considerations is extensive, but not exhaustive. The law explicitly provides that the Committee shall take into account 'all appropriate factors.' Part HHH, Sec. 2.3. Limiting outside income in conjunction with increases in salary falls squarely within the scope of 'examining and evaluating adequate levels of compensation.' It also falls within the broad objective of the Legislature in creating the Commission in the first place."

The use of the word "holistic" echoes the webpage of the "General Litigation and Government Affairs" division of the Stroock law firm:

> "Our litigation and government affairs lawyers combine a holistic approach with deep experience in our individual areas of focus."

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[18] As to the Legislature, this section identifies that the Committee's recommended increases are based on what it deems "appropriate compensation for a member of the Legislature" (at p. 14).

As to the Governor and Lieutenant Governor, whose salaries the Report nowhere identifies, this section skips over the basis for its recommendation for the Lieutenant Governor, and advises (at p. 16) that its recommended salary increase for the Governor is:

> "a number that while short of the inflation-adjusted amount, reflects the complexity of the office and the fairness in supporting a substantial increase."

As to the Attorney General and Comptroller, whose salaries the Report also nowhere identifies, this section states (at p. 17) that the Committee is recommending a salary that "while less than the inflation-adjusted amount for each reflects the complexity of the office and the fairness in supporting a substantial increase."

As to Executive Law 169 Commissioners, this section states (at p. 17), without elaboration, that it is recommending "an increase for all levels of commissioners" and "simplifying the categories of Commissioners to better reflect scope of responsibilities, complexity, budget and workforce based on current data and account for ranges of income."

(https://www.stroock.com/services/general-litigation-and-government-affairs/, underlining added).

The definition of "holistic", by the Merriam-Webster Dictionary,[19] is "relating to or concerned with wholes or with complete systems rather than the analysis of, treatment of, or dissection into parts", further elaborated upon by its note 1:

> **"Look at the Big Picture With *Holistic***
> 'The whole is greater than the sum of its parts' expresses the essence of *holism*.... Holism generally opposes the Western tendency toward analysis, the breaking down of wholes into parts sometimes to the point that 'you can't see the forest for the trees'. Holism is an important concept in the sciences and social sciences, and especially in medicine. …"

As for the Committee's supposedly "holistic review and analysis", it is a deceit. The starting point for "a holistic review and analysis" of "adequate levels of compensation" would be actually examining compensation. This the Committee did not remotely do, not even identifying in its Report what the components of compensation are. Indeed, the most significant components, pensions and health benefits, are not even mentioned, let alone detailed as to their dollar amounts and evaluated as required by three of the eight enumerated "appropriate factors" of Part HHH, §2.3.[20]

Moreover, the "extensive, but not exhaustive" "list of considerations" that Part HHH enumerates at §2.3 omits median household income. This important consideration was pointed out by NYPIRG Executive Director Horner and by former New York City Quadrennial Compensation Commission Chair Schwarz – but not identified or considered by the Report, notwithstanding the Committee's supposed "holistic review and analysis".

As for the Committee's bald claim that its recommendation on outside income "falls within the broad objective of the Legislature in creating the Commission in the first place", it is a flagrant falsehood. And proving this is the outcry of legislators in the wake of the Committee's Report – including Temporary Senate President Flanagan and Assembly Speaker Heastie – the "two men in the room" responsible with Governor Cuomo for Part HHH – and the legislators' several subsequent lawsuits challenging same:

- *Delgado, et al. v. State of New York, et al.* (Albany Co. #907537-18) —with one assemblyman among its four plaintiffs;

[19] https://www.merriam-webster.com/dictionary/holistic#note-1

[20] These three are: "the levels of compensation and non-salary benefits received by executive branch officials and legislators of other states and of the federal government"; "the levels of compensation and non-salary benefits received by comparable professionals in government, academia and private and nonprofit enterprise"; and "the state's ability to fund increases in compensation and non-salary benefits". (underlining added).

- *Barclay, et al. v. New York State Committee on Legislative and Executive Compensation, et al.* (Albany Co. #901837-19) – with nine assemblymen and two senators comprising its 11 plaintiffs; and

- *Steck, et al, v. DiNapoli, et al.*, (SDNY #1:19-cv-05015) – with three assemblymen plaintiffs.

The brief second paragraph reads:

> "Moreover, among its criteria for examining adequacy is a comparability analysis to the federal government. It would be difficult to analyze the comparable levels of compensation and use them to set compensation levels without at least considering the concomitant restrictions on outside income."

This is nonsense. Apart from the fact that the Committee's minimal and superficial comparisons "to the federal government" were to salaries, not such other aspects of compensation as pensions, health insurance, per diems, mileage reimbursements, the statute did not task the Committee with setting "comparable levels of compensation" to the federal government. Rather, the Committee's charge was to set levels that were "adequate". And there was nothing "difficult"[21] about that – beginning with the task of defining "adequacy", which even this the Committee did not do.

"Recommendations on Stipends" (at pp. 18 - 20)

The 2-1/2 pages under this heading alternate paragraphs and sentences that are true with those that are deceitful – and false.

Among those that are deceitful and false, are the following:

> "Section 5-a…sets forth an allowance schedule to be paid to members of either house of the Legislature based on their specific positions. See N.Y. Leg. L. 5-a (2018). From 1976 through 2000, the number of members eligible for allowances and their respective allowance amounts increased. For example, in 1976, there were 8 senate officers listed (the highest allowance for this category was $21,000), 48 senators serving in special capacity (the highest allowance for this category was $18,000), 16 assembly officers (the highest allowance for this category was $21,000), and 54 assembly members serving in special capacity (the highest allowance for this category was $18,000). See N.Y. Leg. L. §5-a (1976). In 2000, this number was increased to 24 senate officers (the highest allowance for this category was and remains $41,5000), 63 senators serving in a special capacity (the highest allowance for this category was $34,000), 34 assembly officers (the highest allowance for this category was and is $41,500), 74 assembly members serving in a special capacity (the highest allowance for this category was $34,000), and 8 assembly

[21] Likewise, the Report's "Recommendations" section (at pp. 14-15) purports that outside income creates "difficulty in setting levels of compensation".

> members serving in a special capacity (the highest allowance for this category was $12,500). See N.Y. Leg. L. §5-a (2000). The numbers of eligible members and their respective allowance amounts have remained unchanged since 2000. See N.Y. Leg. L. §5-a (2018)."

This is followed by a paragraph stating:

> "No other state comes close to New York in the number of stipends for serving in a special capacity. Since many of the 'additional' duties of these positions would be minimal, if there were additional duties at all, it stands to reason that the number and size of these stipends has been inflated to offset a stagnating base wage."

The inference of the second sentence is that the added number of stipend-earning positions resulting from the 2000 amendment were sham. However, the Committee does not identify this larceny of taxpayer dollars, spanning the past 18 years. Instead, it states: "it stands to reason that the number and size of these stipends has been inflated to offset a stagnating base wage." This is not only a cover-up, it is FALSE. Indeed, on January 1, 1999, as a result of a deal between the Governor and Legislature, base legislative salaries had been increased to $79,500. Consequently, a year later, in 2000, there was no "stagnating base wage" being offset by amendment of Legislative Law §5-a, increasing the number and amounts of the stipends.

Throughout this section, the Committee conceals the language of Part HHH in order to falsely claim that the statute empowers it to eliminate stipends – which, as evident from §§1, 2, it does not. Its penultimate paragraph then states:

> "The Committee is authorized to determine whether 'compensation' warrants an increase. In determining that an over-arching increase is warranted, this Committee may limit the stipends to achieve their true purpose, to supplement the income for those whose positions within the body require significantly more work than that of a Legislator who is serving as a Chair or a Ranking Member in the ordinary sense." (underlining added).

The section's final paragraph then specifies:

> "These positions are: Speaker, Temporary President, the Deputy Leaders in both houses, and the Minority Leaders in Both Houses as well as their respective Deputy Leaders. Additionally, the chair of the Ways and Means Committee and the Senate Finance Chair both have significant additional duties with respect to appointments, consideration of a large volume of legislation, and conducting legislative hearings on the Budget, with the Ranking Members of the fiscal committees in both houses carrying additional duties as well. For similar reasons, in the Assembly, the Speaker Pro Tempore of the Assembly, the Chair of the Codes Committee, and the Ranking Member of the Codes Committee will

> receive stipends. Significantly, the recommended increase to the base salary will offset the elimination of the stipends and the Legislator will see an increase."

Yet, there is no finding that those in the referred-to positions are performing their "significantly more work" duties in any kind of responsible, constitutional fashion. That they are not – and to a degree that would warrant their removal from office and criminal prosecution, involving, as it does "grand larceny of the public fisc" and other corruption – is established, *prima facie*, by CJA's two citizen-taxpayer actions and, specifically, with respect to the Temporary Senate President, Assembly Speaker, Senate Minority Leader, Assembly Minority Leader, their top Senate and Assembly leaders, and, specifically, the chairs and ranking members of the Senate Finance Committee and Assembly Ways and Means Committee.

Nor is there any explanation as to why stipends would not be appropriate for the "significantly more work" which chairs and ranking members of the Legislature's scores of committees and joint commissions should be doing, in comparison to rank-and-file legislators – thereby covering up that the legislative committees and commissions are sham, not discharging their lawmaking and oversight responsibilities, so-established by the 2004, 2006, and 2008 Brennan Center reports and reinforced by CJA's citizen-taxpayer actions. Obviously, removing the stipends attached to the chair and ranking member positions disincentivizes the legislators filling those positions from doing the "significantly more work" that is required for the committees and joint commissions to operate properly.

There is ALSO no explanation as to why, apart from the chairs and ranking members of the Legislature's fiscal committees, only the chair and ranking member of the Assembly Codes Committee are included among those whose stipends should be continued. There would be no basis to so-distinguish the Assembly Codes Committee, except if it had a unique role. However, the Report does not identify what that is.

A clue is provided, however, by Article III, §6 of the New York State Constitution – selectively quoted in the first paragraph of the "Statement in Support" (at p. 18). In full, Article III, §6 reads:

> "Each member of the legislature shall receive for his or her services a like annual salary, to be fixed by law. He or she shall also be reimbursed for his or her actual traveling expenses in going to and returning from the place in which the legislature meets, not more than once each week while the legislature is in session. Senators, when the senate alone is convened in extraordinary session, or when serving as members of the court for the trial of impeachments, and such members of the assembly, not exceeding nine in number, as shall be appointed managers of an impeachment, shall receive an additional per diem allowance, to be fixed by law. Any member, while serving as an officer of his or her house or in any other special capacity therein or directly connected therewith not hereinbefore in this section specified, may also be paid and receive, in addition, any allowance which may be fixed by law for the particular and additional services appertaining to or entailed by such office or special capacity. Neither the

> salary of any member nor any other allowance so fixed may be increased or diminished during, and with respect to, the term for which he or she shall have been elected, nor shall he or she be paid or receive any other extra compensation. The provisions of this section and laws enacted in compliance therewith shall govern and be exclusively controlling, according to their terms. Members shall continue to receive such salary and additional allowance as heretofore fixed and provided in this section, until changed by law pursuant to this section." (underlining added).

In other words, among the duties of the Senate is to sit "for the trial of impeachments". Obviously, the Senate cannot sit "for the trial of impeachments" where the underlying procedural channels for bringing charges of impeachments are non-functioning and corrupted. In this regard, Article I, §6 of the New York State Constitution is germane, stating:

> "…any public officer who, upon being called before a grand jury to testify concerning the conduct of his or her present office or of any public office held by him or her within five years prior to such grand jury call to testify, or the performance of his or her official duties in any such present or prior offices, refuses to sign a waiver of immunity against subsequent criminal prosecution, or to answer any relevant question concerning such matters before such grand jury, shall by virtue of such refusal, be disqualified from holding any other public office or public employment for a period of five years from the date of such refusal to sign a waiver of immunity against subsequent prosecution, or to answer any relevant question concerning such matters before such grand jury, and shall be removed from his or her present office by the appropriate authority or shall forfeit his or her present office at the suit of the attorney-general.
>
> The power of grand juries to inquire into the wilful misconduct in office of public officers, and to find indictments or to direct the filing of informations in connection with such inquiries, shall never be suspended or impaired by law." (underlining added).

The conduit to the grand jury are the district attorneys – whose performance in office is within the jurisdiction of the Codes Committee. Yet, the Codes Committees of both the Assembly and Senates – as likewise the Assembly and Senate Judiciary Committees – have not, for decades, held any oversight hearings over the district attorneys to determine whether, in fact, they are discharging their duties to investigate and prosecute public officers for corruption of their official duties – and CJA's second citizen-taxpayer action establishes this, as well.

"Appendix A – Meeting Summaries" (at pp. 22-27)

Rather than furnishing transcriptions of the Committee's four meetings – or identifying that they were not stenographically transcribed – the Report annexes an Appendix A entitled "Meeting Summaries".

These "summaries" do not substitute for transcripts, and transcripts do not substitute for VIDEOS, and the VIDEOS are the BEST EVIDENCE of what transpired at the meetings, DISPOSITIVE of the fraud and manifest bias demonstrated by Committee members at those meetings and by their Report.

Most obviously missing from the meeting summaries is any notation as to the length of each meeting – thereby concealing how truly minimal they were. Below is that information and some further relevant observations.

The Committee's first meeting, on November 13, 2018, was approximately 20 minutes, excluding the break of about 15 minutes for an executive session.

The Committee's summary (at p. 22) indicates that the purpose of the executive session was to "consider the employment of a counsel to the Committee". However, it omits why such was being considered. This was stated by Chair McCall, at about 20 minutes into the meeting, as follows:

> "…one of the things that we as a group believe we need is counsel, because we are dealing with legislation…we certainly want to make sure that we are doing everything within the bounds of the law and to assist us in that we believe we ought to have a counsel to the Committee." (at approximately 29:15 mins).

The Committee then adjourned to executive session – and when it came back, approximately 15 minutes later, announced that it had "come up with a couple of names" and would "pursue them". It thereupon adjourned.

Also omitted is that the Committee's 20-minute meeting was accompanied by slides, including one with the text of Part HHH as it appeared in #S.7509-C/A9509-C. Chair McCall summarized it, stating:

> "The legislation which we will now show you on the screen is outlined here and the legislation basically lays out the specific responsibilities of the Committee and the most important thing about this is that we have the responsibility, this group, of making a report with respect to possible salary increases and in doing so, there are some particular things that we have to consider. There are some seven factors that we have to consider as we look at the possibility of an increase and those factors, as follows, they are up on the screen, we have to look at the performance and timely fulfillment of the statutory and constitutional responsibilities of the people who might receive increases…"

In fact, there are eight factors specified by Part HHH – the first of which is "the parties' performance and timely fulfillment of their statutory and Constitutional responsibilities". However, none of the four Committeemen discussed the methodology that would be used to evaluate this first factor. To the contrary, throughout the balance of the meeting, they skipped over that factor, as, for instance:

(1) when Committeeman DiNapoli showed a slide about the Committee's website, which stated that it that it would be "the main means of communicating with and receiving information from the public", he made no mention of any feature on the website pertaining to the first factor of "performance". Instead, he identified that the website would include "Comparisons of NYS compensation of legislators and other officials to other states and NYC", which is what the slide itself stated;

(2) when Committeeman Stringer showed his first slide, entitled "Background", which identified "the parties' performance and timely fulfillment of their statutory and Constitutional responsibilities" as the first "Criteria" of the statute, he skipped over it in his oral remarks, even while it was on the screen.

The Committee's second meeting, on November 28, 2018, which was its first public hearing, was just over half an hour.

The VIDEO is no longer operative on the Committee's website (Exhibits K and L). Based on notes taken from the live-stream broadcast and from the subsequently posted VIDEO, when it was operational, the meeting began with Chair McCall stating that the Committee was retaining Alan Klinger of the law firm Stroock, Stroock & Lavan, as *pro bono* counsel – and thanking Stroock partner (and former Attorney General) Bob Abrams for his "great help…in establishing this relationship" and Committeeman DiNapoli for "reaching out" to Mr. Abrams. A slide of Mr. Klinger's credentials was shown, and Chair McCall stated that he had a distinguished background and had furnished "legal services to the judicial compensation commission when it was functioning". Although Mr. Klinger was not physically present, he was present *via* a phone hook-up.

Many of the same slides shown at the first meeting were shown at the second, following which the hearing portion commenced. It lasted approximately 20 minutes – there being three registered speakers, each given five minutes, plus a walk-in, given three minutes.

The Committee's third meeting, on November 30, 2018, which was its second public hearing, was 1-1/4 hours.

The summary (at pp. 24-25) does not identify that Mr. Klinger was present, indeed, sitting with the Committeemen. He was introduced by Chair McCall who stated that he was "serving *pro bono* from the Stroock firm as the counsel for the Committee". Simultaneously, the same slide of Mr. Klinger's credentials as had been used at the November 28, 2018 meeting, was shown.

The summary makes no mention of Chair McCall, who opened the meeting and, after introducing Mr. Klinger, stated:

> "The Committee's job is to, really, examine the adequacy of compensation for state legislators, commissioners and other executive employees of the state. In doing that, we have to look at several appropriate factors in terms of making a decision with respect to whether or not we should go forward to make a recommendation for a raise. Those factors are being shown at the present time, on the board, that's our legislation, these are the factors that we're supposed to consider." (underlining added).

The "board" to which he referred featured a slide not previously presented. Entitled "Appropriate Factors", it dropped two of the eight "appropriate factors" specified by §2.3 of Part HHH, including the first: "the parties' performance and timely fulfillment of their statutory and Constitutional responsibilities" – and put in their place §2.4(a) and (b) as the seventh and eighth factors, although these pertained to phase-ins.

As for the summaries of the "public testimony" of the seven "speakers" at the hearing, the shortest and most inaccurate pertains to Sassower, which reads, in its entirety:

> "The second speaker was Elena Sassower, Director of the Center for Judicial Accountability. Ms. Sassower expressed concerns about the constitutionality of the Committee's authority to make changes to the law addressing the compensation of elected officials." (at p. 24, underlining added).

This is false in that Sassower's testimony was NOT about "concerns". Rather, it was about the evidence she was furnishing the Committee establishing the unconstitutionality of Part HHH and that the legislators and statewide executive officers could not meet its first specified factor of "performance and timely fulfillment of their statutory and Constitutional responsibilities" that the Committee was required to "take into account" and which it had "skipped over". Sassower identified that evidence in publicly testifying on November 30, 2018 – and, thereafter, repeatedly requested its inclusion on the Committee's website (Exhibit H, I, J-1), without response from the Committee.

None of the summaries of the seven witnesses at the hearing indicate questions from the Committeemen – and, with respect to Sassower's testimony, there were none – just as, likewise, the Committee had no questions for the last witness, Roxanne Delgado. However, additionally remarkable about Sassower's testimony (Exhibit D), apart from its substantive content, were the actions of Committeemen Thompson, Stringer, and McCall in trying to cut her off, aided and abetted by a silent Committeeman DiNapoli – and Committeeman Stringer's demeanor of disinterest, while she was testifying. This disinterest by Stringer was all the more astonishing since Sassower was testifying about matters that involved Stringer, directly. Thus, when Sassower asserted that the Committee had "skipped over" the first factor it was required to "take into account", *to wit*, the parties' performance and timely fulfillment of…statutory and Constitutional responsibilities" – and that such factor, where it had not been met, rendered all other financial and economic factors "completely irrelevant" – such was germane to Committeeman Stringer's slide-accompanied presentations at that hearing, at the prior hearing, and at the November 13, 2018 meeting, all focused, exclusively, on financial and economic factors. Committeeman Stringer did

not question her or otherwise challenge or dispute what she was saying. Instead, he manifested a complete lack of concern, looking away from her as she testified on the subject. And, notwithstanding Committeeman Stringer was personally familiar with the Brennan Center's 2004 report that New York's legislature was the most dysfunctional in the country, having been at that time in the Assembly and not only sponsoring a resolution based thereon to advance its recommendations for legislative rules reform, but partnering with the Brennan Center with press releases and op-eds (Exhibits N-1, N-2), he was the most aggressive in trying to cut Sassower off as she testified about the Brennan Center reports, asking Committeemen Thompson and McCall, "Do you want to adjourn just for five minutes?" and thereafter suggesting "You should call up the next speaker" as Sassower continued, pointing out that Part HHH was an "unconstitutional rider" and that the Committee had concealed that it was part of the revenue budget bill (Exhibit D). Here, too, Committeeman Stringer had participated in that concealment by his slide entitled "BACKGROUND".

The fourth Committee meeting, on December 6, 2018, was just over half an hour.

This final meeting began with "a summary of the Committee's hearings and meetings by Member McCall" (at p. 25). This glosses over how the meeting opened, which was as follows:

McCall: I'd like to call to order the meeting of the state, New York State Committee on Compensation. As you know, we've had several earlier meetings and public hearings at which time we spent some time discussing the legislation that created this committee and the responsibilities mandated to the Committee and we have had several discussions about that. We have also had two meetings with our counsel, which is permissible under the Open Meetings Law to talk about the legal issues that really will impact the decisions that we hope to make and I want to thank our counsels Alan Klinger and Dina Kolker, from the Stroock law firm. They have provided excellent legal services, *pro bono*. We really do appreciate that. Counsel do you want to say anything about the discussions we have had with you and what we are prepared to do.

Klinger: Yes, yes. I want to say that, just because some of also raised concerns about this, is that under the Open Meetings Law, that is recognized that there is an attorney client privilege relationship that arises out of our work. What we were asked to do was to consider some of the legal issues that have arisen in connection both with the testimony as well as with commentators and what we have done is provided advice to the Committee members as to what we believe the legal consequences are, what is permitted, not permitted, and then, given that, to help the Committee make its determination."

McCall: And that has been very helpful to us and our determinations will be based on that".

Chair McCall then stated, with respect to "our ability to set compensation for legislators", that "counsel has advised us that we are authorized to do that." This was followed by Committeeman Thompson, prefacing his remarks about pay raises by stating:

> "And also let me echo your comments in thanking Alan and Dina for coming on board, helping to provide direction, and really, if there are, the parameters for what are responsibility is as to what we can and cannot do."

The meeting was then punctuated with comment by Committee members that they were proceeding as "our attorneys have advised us" and with confirmatory inquiries to Counsel Klinger about what they were doing and how to structure the voting. This included pertaining to outside income. At no point during the meeting was there discussion of witness testimony, let alone of evidence substantiating it.

"Appendix B – Legislation Part HHH of Chapter 59, L. 2018" (at pp. 28-30)

The Report annexes as its Appendix B the statute that established the Compensation Committee. Entitled "Legislation Part HHH of Chapter 59, L. 2018", the Committee thereby conceals that the "Legislation" was part of the Governor's revenue budget bill for fiscal year 2018-2019. This was also concealed at ALL the Committee's meetings and by the slide prepared and presented by Committeeman Stringer entitled "BACKGROUND", whose opening sentence read:

> "Compensation Committee enacted in part HHH of General Government Article 7 bill, SFY 2019 Budget."

Budget Bill #S.7509-C/A9509-C was NOT a "General Government Article 7 bill". It was the revenue budget bill – and it was this slide that prompted Sassower's testimony, as follows, at the November 30, 2018 public hearing:

> "And by the way, the legislation that created this commission is an unconstitutional rider. Okay? And you are concealing that it is part of the revenue bill. What revenue is produced by this, this Part HHH? It was inserted after behind-closed-doors, three-men-in-a-room deal-making – completely unlawful, unconstitutional." (Exhibit D, underlining added).

No Committee members inquired about this. Rather, as the VIDEO shows, all they cared about was cutting Sassower off, based on nothing but an arbitrary, completely inappropriate five-minute time limit.[22] The particulars, however, of the odyssey of the budget bill that became the vehicle

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[22] Sassower objected to such time limit at the outset of her oral testimony, as follows:

> "Before beginning, and before my time begins to run, I'd like to protest the restricted nature of this hearing, curtailing testimony so that it's no more than five minutes, no matter how serious and substantial. The fact is you had, at your last hearing, two days ago, you had only three registrants, plus an additional person, four. Here, you also have only a handful. There is no reason that you shouldn't relax the time restrictions, so that people who have

for Part HHH were before the Committee by Sassower's December 6, 2018 letter to Assembly Speaker Heastie, entitled "Demand that You Substantiate Your Nov. 30, 2018 Testimony before the NYS Compensation Committee with EVIDENCE – as You Furnished NONE", which she simultaneously furnished the Committee (Exhibit G). In pertinent part, it stated:

> "As for your sham 37 standing committees, why don't you demonstrate their functioning, in the context of the current 2018-2019 fiscal year budget. Please start with the Assembly Ways and Means Committee – the only one whose funding is specified in the Legislature's budget – and to which all the Governor's budget bills, introduced on January 18, 2018, were 'referred'.
>
> As the Governor's revenue budget bill #S.7509/A.9509 ended up as the vehicle for Part HHH, establishing the Compensation Committee, begin with that bill. That is what I was intending to do, as part of my testimony, substantiated by relevant records, which I had brought to the hearing, only to be cut off because of the Committee's demand that I conclude my testimony because of its 5-minute time-limitation for registered speakers.
>
> How was the revenue budget bill 'amended' – apart from the Governor's 30-day amendment, of right, which changed his bill #S.7509/A.9509 to #S.7509-a/A.8509-a. Then what happened? Where was the vote, on March 13, 2018, that 'amended' #A/9509-a to #A.9509-b? Was it by the members of the Ways and Means Committee – and, if so, at what meeting? And where was the vote by the Ways and Means Committee – or the Assembly – on March 30, 2018 – that voted to "amend" #A.9509-b to make it #A.9509-c? Isn't it correct that NO Assembly members ever voted to 'amend' #A.9509-a to #A.9509-b – which was done, behind-closed-doors, by staff. Likewise, that NO Assembly members ever voted to amend the staff-'amended' #A.9509-b to #A.9509-c, with its inserted HHH – which was done by you, Governor Cuomo, and Temporary Senate President Flanagan, behind-closed-doors, as part of your 'three-men-in-a-room' budget deal-making. What legal authority do you have for the Legislature to operate in such fashion?" (Exhibit G, at p. 4, capitalization in the original).

> taken their time and made the effort to prepare testimony can give you the benefit of what they have prepared." (Exhibit D).

Indeed, had the Committee members reviewed the transcripts and/or videos of the two hearings on legislative and executive compensation held by the Commission on Legislative, Judicial and Executive Compensation, they would have found that it had abandoned any time restrictions due to the few witnesses testifying. Thus, at its March 10, 2016 hearing, its chair, Sheila Birnbaum, had stated: "There is no time limit today since we do not have as many people as we would've liked" (at pp. 2-3) and at its March 23, 2016 hearing, she stated: "We only have four people who have signed up to talk to us this morning. We have done away with any limitations on the amount of time so we can have a robust discussion with people who are here, and we would like to do that; so we will proceed." (at p. 2).

Suffice to add that at the November 30, 2018 hearing, Committeeman DiNapoli was accompanied by his Deputy Comptroller for Budget and Policy Analysis, Robert Ward, with whom Sassower spoke, extensively, at length, both before and after her testimony, about the foregoing odyssey of the revenue budget bill and that Part HHH was an unconstitutional rider.[23] In addition to furnishing him with a copy of her written testimony (Exhibit C), she discussed with him Comptroller DiNapoli's own April 2018 "Report on the State Fiscal Year 2018-2019 Enacted Budget" – pertinent pages of which she had brought with her. Among these, its Appendix C entitled "Evolution of SFY 2018-19 Budget Bills" (p. 69), fraudulently designating the behind-closed-doors, three-men-in-a-room "amending" of budget bills, including Revenue Budget Bill #S.7509-c/A.9509-c, as an "Executive Resubmittal" and stating, by an asterisked footnote:

> "Executive resubmittal: Section 3 of Article VII of the State Constitution provides that the Governor may amend the Executive Budget within 30 days after it has been submitted to the Legislature and, with the consent of the Legislature, at any time before the houses adjourn."

There is no "consent of the Legislature" to the so-called "Executive resubmittal" – and Sassower discussed this and other frauds and unconstitutionality with Deputy Comptroller Ward, including on Tuesday, December 4, 2018, when – as he promised he would – he phoned Sassower so that they could continue their conversation about the budget – and about the second citizen-taxpayer action whose fourth, fifth, sixth, and ninth causes of action she urged him to review as particularly germane to the odyssey of the budget bills.

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[23] This was not Sassower's first conversation with Deputy Comptroller Ward, as she had met him at a conference on the New York State Constitution on October 8, 2013, furnishing him, *in hand*, with a copy of her April 15, 2013 corruption complaint to then U.S. Attorney Preet Bharara against Comptroller DiNapoli and his fellow constitutional officers for "grand larceny of the public fisc" and other corruption with respect to the fraudulent, statutorily-violative and unconstitutional August 27, 2011 report of the Commission on Judicial Compensation and the budget. This is memorialized by the October 9, 2013 e-mail she sent Deputy Comptroller Ward – which, with her subsequent e-mails to him pertaining to the corruption of the budget giving rise to CJA's first citizen-taxpayer action, to which Comptroller DiNapoli was a named defendant, and her April-May 2014 corruption complaints based thereon to Comptroller DiNapoli's purported "Investigations Unit" – is posted on CJA's website, on a webpage for scholars, such as Deputy Comptroller Ward is purported to be, having written the supposedly definitive book on New York State government and having served as deputy director of the Rockefeller Institute of Government: http://www.judgewatch.org/web-pages/searching-academia/ward-robert.htm.

TABLE OF EXHIBITS

Exhibit A-1: CJA's July 17, 2018 FOIL/records request to Governor, Senate, Assembly, and Judiciary – "Part HHH of Fiscal Year 2018-2019 Budget Bill S.7509-C/A.9509.C"

Exhibit A-2a: Judiciary's July 17, 2018 acknowledgment;

Exhibit A-2b: Judiciary's August 28, 2018 response

Exhibit A-3: Senate's July 24, 2018 response

Exhibit A-4: Assembly's July 24, 2018 response

Exhibit A-5a: Governor's July 24, 2018 acknowledgment

Exhibit A-5b: Governor's August 21, 2018 extension letter

Exhibit A-5c: Governor's September 19, 2018 extension

Exhibit A-5d: Governor's October 3, 2018 response

Exhibit B-1: CJA's November 14, 2018 e-mail –
"Request to Testify – Friday, Nov. 30, 2018 NYC hearing"

Exhibit B-2: Compensation Committee's November 16, 2018 response

Exhibit B-3: CJA's November 28, 2018 e-mail – "Confirmation…"

Exhibit B-4: Compensation Committee's November 29, 2018 e-mail

Exhibit C: Sassower's November 30, 2018 written testimony, with its accompanying constitutional provisions pertaining to the state budget and the openness mandated for legislative proceedings

Exhibit D: Transcription of Sassower's oral testimony at the November 30, 2018 public hearing

Exhibit E-1: CJA's December 3, 2018 e-mail – "The NYS Compensation Committee's website, its e-mail address – & the records of the prior compensation commissions"

Exhibit E-2: Compensation Committee's December 3, 2018 e-mail

Exhibit E-3: CJA's December 3, 2018 e-mail – "Excellent"

Exhibit F: CJA's December 5, 2018 e-mail – "Assembly Speaker Heastie's fraudulent, deceitful presentation in support of legislative pay raises – as established by EVIDENCE"

Exhibit G: CJA's December 6, 2018 e-mail to Assembly Speaker Heastie, with cc to Compensation Committee – "Demand that You Substantiate Your Nov. 30, 2018 Testimony before the NYS Compensation Committee with EVIDENCE – as You Furnished NONE"[1]

Exhibit H: CJA's December 7, 2018 e-mail – "When will the Compensation Committee be posting the video of yesterday' meeting – as well as all comments/submissions received?"

Exhibit I: CJA's December 10, 2018 e-mail – "AGAIN: "When will the Compensation Committee be posting the video of its Dec. 6th meeting – & will it post pdfs of the EVIDENCE I handed up in substantiation of my Nov. 30th oral & written testimony?"

Exhibit J: CJA's December 28, 2018 e-mail to the Committee – "Where Will the Records of the Compensation Committee be Maintained Upon Expiration & Repeal of the Committee Statute on December 31, 2018?"

Exhibit K-1: CJA's June 20, 2019 FOIL/Records Access request to Governor, Senate, and Assembly – "Records of the Compensation Committee Established Pursuant to Part HHH of Chapter 59 of the Laws of 2018"

Exhibit K-2: Senate's June 27, 2019 response

Exhibit K-3: Assembly's June 27, 2019 response

Exhibit K-4a: CJA's July 1, 2019 FOIL/Records Access request to Governor – "AGAIN…"Records of the Compensation Committee Established Pursuant to Part HHH of Chapter 59 of the Laws of 2018"

Exhibit K-4b: Governor's July 3, 2019 response

[1] The exhibits to the letter included Sassower's written statement and transcription of her oral testimony and her December 5, 2018 e-mail, here separately annexed as Exhibits C, D, and F.

Exhibit L-1: CJA's July 9, 2019 e-mail to Compensation Committee *pro bono* counsel Alan Klinger, Esq. and Dina Kolker, Esq. – "Whereabouts of the Records of the Committee on Legislative & Executive Compensation – & Responsibility for its Website"

Exhibit L-2: July 10, 2019 response from Compensation Committee *pro bono* counsel Kolker

Exhibit M: "*Committee Approves Pay Raise For New York Lawmakers*", New York Law Journal, December 7, 2018, front-page article (Dan Clark)

Exhibit N-1: "*Assemblymembers Scott Stringer, Sam Hoyt and Fifteen Other Majority Members Introduce Landmark Assembly Rules Change*", Press Release September 28, 2004

Exhibit N-2: "*How to Make Albany Behave*", New York Times, Op-Ed (Scott Stringer & Jeremy Creelan), November 7, 2004