ANALYSIS OF THE DECEMBER 21, 2016 DECISION & ORDER OF ACTING SUPREME COURT JUSTICE DENISE A. HARTMAN

Center for Judicial Accountability, et al. v. Cuomo, et al.,
Albany Co. #5122-2016
(Citizen-Taxpayer Action: Fiscal Year 2016-2017)

This analysis constitutes a "legal autopsy" of the December 21, 2016 decision and order of Acting Supreme Court Justice Denise A. Hartman – paralleling the "legal autopsy" of the August 1, 2016 decision and order of Acting Supreme Court Justice Roger McDonough in plaintiffs' predecessor citizen-taxpayer action, annexed as Exhibit G to plaintiffs' September 2, 2016 verified complaint in this citizen-taxpayer action.

As herein demonstrated, Justice Hartman's December 21, 2016 decision is a criminal fraud, replicating the deceits and frauds of Justice McDonough's August 1, 2016 decision, laid out by plaintiffs' Exhibit G analysis. Indeed, because plaintiffs' Exhibit G analysis is dispositive of the state of the record before Justice McDonough, Justice Hartman conceals its very existence and rests on Justice McDonough's August 1, 2016 decision, as if legitimate – using it to dismiss five of plaintiffs' ten causes of action. This, in face of the uncontested showing, by the analysis, that the August 1, 2016 decision "falsif[ied] the record in all material respects to grant defendants relief to which they [were] not entitled, *as a matter of law*, and to deny plaintiffs relief to which they [were] entitled, *as a matter of law*" and that it was "a criminal act", violative of a multitude of provisions of New York's Penal Law, including:

> Penal Law §175.35 ("offering a false instrument for filing in the first degree");
> Penal Law §496 ("corrupting the government") – part of the "Public Trust Act";
> Penal Law §155.42 ("grand larceny in the first degree");
> Penal Law §190.65 ("scheme to defraud in the first degree");
> Penal Law §195.20 ("defrauding the government");
> Penal Law §105.15 ("conspiracy in the second degree");
> Penal Law §20.00 ("criminal liability for conduct of another");
> Penal Law §195 ("official misconduct").

This, too, describes Justice Hartman's December 21, 2016 decision – which, like Justice McDonough's August 1, 2016 decision – is 'so totally devoid of evidentiary support as to render [it] unconstitutional under the Due Process Clause' of the United States Constitution, *Garner v. State of Louisiana*, 368 U.S. 157, 163 (1961); *Thompson v. City of Louisville*, 362 U.S. 199 (1960).

Much as the Exhibit G analysis identified (at pp. 2-3) that the fraudulence of Justice McDonough's August 1, 2016 decision is most speedily verified, within minutes, by examining plaintiffs' three memoranda of law that were before him – each a "paper trail" of the record – so the speediest means to verify, within minutes, the fraudulence of Justice Hartman's December 21, 2016 decision is by examining plaintiffs' September 30, 2016 memorandum of law, a "paper trail" of the record before her.

No mention of plaintiffs' September 30, 2016 memorandum of law appears in Justice Hartman's December 21, 2016 decision. Indeed, by contrast to Justice McDonough's August 1, 2016 decision which at least identified (at p. 10) that it was excluding memoranda of law from its CPLR listing of "papers considered", purporting such to be his "policy", Justice Hartman's decision dispenses with a CPLR §2219(a) listing entirely. She thereby conceals that plaintiffs' September 30, 2016 memorandum of law even exists – and likewise plaintiff Sassower's September 30, 2016 affidavit accompanying it, swearing to its truth. This enables her to make it appear as if plaintiffs had not opposed what her decision identifies (at pp. 2, 8) as defendants' motion to dismiss their complaint – but which was actually a cross-motion by Assistant Attorney General Kerwin. This concealment of plaintiffs' opposition, in its entirety, also contrasts with Justice McDonough's August 1, 2016 decision, which identified (at pp. 2, 7-8) plaintiffs' opposition to AAG Kerwin's dismissal motion, and in minimalist and besmirching fashion, its grounds and contentions, including as to the litigation fraud of AAG Kerwin, the disqualification of the Attorney General, and Justice McDonough's own disqualification for financial interest.

Suffice to say that Justice Hartman's decision not only obliterates the existence of plaintiffs' September 30, 2016 memorandum of law and plaintiff Sassower's affidavit accompanying it, but virtually all their content. As for plaintiffs' September 2, 2016 verified complaint, it fares little better under her hand. Justice Hartman dismisses nine of its ten causes of action for failure to state a cause of action, essentially without citing a single allegation from the nine causes of action she dismisses. This flagrantly violates the non-discretionary, controlling legal standard for dismissal for failure to state a cause of action, which requires that all allegations be deemed true – a standard she quotes and observes only in the context of the one cause of action her decision preserves: plaintiffs' sixth cause of action, as to which she conceals the state of the record so as to delay and thwart plaintiffs' entitlement to summary judgment as to each of its five subsections – and, in the interim, to a preliminary injunction to prevent disbursement of tens of millions of taxpayer dollars in salary and non-compensation benefits to judges and district attorneys.

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One need only read the 5-page "Introduction" to plaintiffs' 53-page September 30, 2016 memorandum of law to immediately see how dispositive it is, succinctly summarizing the state of the record and the threshold issues that were before Justice Hartman – none more threshold than whether she could be fair and impartial, given her HUGE financial interest and multitudinous former associations and on-going relationships, as to which her duty was to make disclosure. The "Introduction" was as follows:

> "This memorandum of law is submitted in reply to defendants' opposition to plaintiffs' September 2, 2016 order to show cause for a preliminary injunction, which Assistant Attorney General Adrienne Kerwin, who identifies herself as 'of counsel' to defendant Attorney General Eric Schneiderman, has placed within her September 15, 2016 cross-motion to dismiss plaintiffs' September 2, 2016 verified complaint pursuant to CPLR §§3211(a)(7) and (8). It is also submitted in opposition to that dismissal cross-motion – and, in conjunction therewith, in support of the relief mandated by the record, including notice by the Court that it is treating AAG Kerwin's dismissal cross-motion as a motion for summary judgment in plaintiffs' favor, pursuant to CPLR §3211(c).

As with all her advocacy in the predecessor citizen-taxpayer action, *CJA et al. v. Cuomo et al.* (Albany Co. #1788-14), AAG Kerwin has again demonstrated that defendants have no legitimate defense and that the Attorney General's duty, pursuant to State Finance Law §123 *et seq.* and Executive Law §63.1, is to be representing plaintiffs.[fn1] As hereinafter shown, her opposition/cross-motion is not just frivolous, but a 'fraud upon the court',[fn2] fashioned, from beginning to end and in virtually every line, on knowingly false and misleading factual assertions, material omissions, and on law that is either inapplicable, misstated, or both. This is unacceptable from any lawyer. That it is perpetrated on behalf of the state's highest law enforcement officer to subvert the statutory safeguard for protecting taxpayer monies provided by State Finance Law Article 7-A (§123 *et seq.*) requires severest action. Consequently, this Court's duty is to exercise ALL the powers the law furnishes it for safeguarding the integrity of the judicial process – beginning with a threshold direction to defendant Attorney General Schneiderman that he identify who in his office has independently evaluated the 'interest of the state', pursuant to Executive Law §63.1, plaintiffs' entitlement to his representation/intervention in this citizen-taxpayer action, as State Finance Law Article 7-A contemplates – and his own conflicts of interest, precluding his representation of his fellow defendants. This is especially essential as defendant Schneiderman has a direct, financial interest in the sixth, seventh, and eighth causes of action to strike down the budget statute that established the Commission on Legislative, Judicial and Executive Compensation that is presently poised to make substantial 'force of law' recommendations to increase his salary. Had this been done in the predecessor citizen-taxpayer action – as plaintiffs' repeatedly requested of Justice McDonough based on the record before him – the predecessor action would have ended with declarations in plaintiffs' favor on all their causes of action.

The record in the predecessor citizen-taxpayer action is comprehensively summarized by plaintiffs' 36-page, single-spaced analysis of Justice McDonough's August 1, 2016 amended decision and order therein – annexed to their September 2, 2016 verified complaint as Exhibit G.[fn3] The analysis establishes plaintiffs' entitlement to summary judgment on the eight causes of action of their predecessor citizen-taxpayer action and leave to file their verified second supplemental complaint so as to thereafter promptly obtain summary judgment on its additional eight causes of action. That AAG Kerwin does not deny or dispute the accuracy of the analysis in any respect makes her cross-motion to dismiss plaintiffs' instant complaint and opposition to their order to show cause for a preliminary injunction frivolous, *as a matter of law*.

The law is clear that 'failing to respond to a fact attested to in the moving papers…will be deemed to admit it", Siegel, New York Practice, 281 (4th ed. 2005, p. 464), citing *Kuehne v. Nagel, Inc. v. Baiden*, 36 N.Y.2d 539 (1975), itself citing Siegel, McKinney's Consolidated Laws of New York Annotated, Book 7B, CPLR

3212:16. 'If a key fact appears in the movant's papers and the opposing party makes no reference to it, he is deemed to have admitted it'.

Not only does AAG Kerwin's opposition/cross-motion make no reference to plaintiffs' analysis of Justice McDonough's August 1, 2016 decision, but her only references to Exhibit G are without identifying what Exhibit G is. Those references, in her memorandum of law, are in a besmirching paragraph which reads:

> 'plaintiffs lack the ability to differentiate between actual and admissible evidence that supports legally-cognizant arguments, and their own baseless thoughts and opinions. In refusing to accept legal rulings, the plaintiffs resort to making disparaging comments and claims about the court, see e.g. Complaint at ¶24, ¶25, **Exh. G**, the parties, see e.g. id at ¶14(b), and defense counsel. See e.g. id. at **Exh. G**. It is within this context that the complaint herein must be analyzed and, ultimately, dismissed in its entirety.' (at p. 4, bold added).

Such is a brazen fraud on this Court. Exhibit G is not about 'baseless thoughts and opinions'. Rather, as the most cursory examination of it reveals, it is about 'actual and admissible evidence that supports legally-cognizant arguments', concealed and falsified by Justice McDonough, in tandem with AAG Kerwin, to utterly corrupt the judicial process in the predecessor citizen-taxpayer action by judicial decisions 'so totally devoid of evidentiary support as to render [them] unconstitutional under the Due Process Clause' of the United States Constitution, *Garner v. State of Louisiana*, 368 U.S. 157, 163 (1961); *Thompson v. City of Louisville*, 362 U.S. 199 (1960). Tellingly, AAG Kerwin furnishes not a single example from Exhibit G to support her false characterizations in that paragraph or elsewhere in her cross-motion.

The fundamental legal principle is as follows:

> 'when a litigating party resorts to falsehood or other fraud in trying to establish a position, a court may conclude that position to be without merit and that the relevant facts are contrary to those asserted by the party.' Corpus Juris Secondum, Vol 31A, 166 (1996 ed., p. 339);
>
> 'It has always been understood – the inference, indeed, is one of the simplest in human experience – that a party's falsehood or other fraud in the preparation and presentation of his cause…and all similar conduct, is receivable against him as an indication of his consciousness that his case is a weak or unfounded one; and that from that consciousness may be inferred the fact itself of the cause's lack of truth and merit. The inference thus does not necessarily apply to any specific fact in the cause, but operates, indefinitely though

> strongly, against the whole mass of alleged facts constituting his cause.' II John Henry Wigmore, Evidence §278 at 133 (1979).

Plainly, if AAG Kerwin believed that this Court was a fair and impartial tribunal that would draw the proper inferences from her instant litigation misconduct and sanction her and her conspiring superiors, consistent with 22 NYCRR §130-1.1 *et seq.*, Judiciary Law §487, and the Court's mandatory disciplinary responsibilities under §100.3D(2) of the Chief Administrator's Rules Governing Judicial Conduct, she would not be engaging in litigation misconduct. As in the predecessor citizen-taxpayer action, her unabashed fraud demonstrates that she has no such belief – reinforcing this Court's even more threshold duty to confront, by appropriate disclosure, the factors contributing to AAG Kerwin's audacious conduct, replicating, in every material respect, precisely what she did in the predecessor citizen-taxpayer action, chronicled by plaintiffs' Exhibit G. This includes:

- concealing that this is a citizen-taxpayer action;
- concealing that judicial salary increases are challenged herein;
- concealing the controlling standard governing dismissal motions.

Apart from this Court's $60,000-a-year judicial salary interest, plus the additional thousands of dollars in salary-based, non-salary benefits challenged by this citizen-taxpayer action, are the Court's professional and personal relationships that led to its being appointed to the bench by defendant Governor Cuomo and confirmed by defendant Senate, last year, after 30 years of employment in the Attorney General's office, including as an assistant solicitor general to defendant Attorney General Schneiderman and, before that, as an assistant solicitor general to then-Attorney General defendant Cuomo.[fn4]

Based on plaintiffs' showing herein and by plaintiff Sassower's accompanying affidavit, the duty of any fair and impartial tribunal is to not only grant the preliminary injunction sought by their September 2, 2016 order to show cause, indeed, to grant the TRO that a self-interested Justice McDonough wrongfully struck, but, upon denying AAG Kerwin's dismissal cross-motion, to give notice to the parties that the Court is treating it as a motion for summary judgment for plaintiffs, pursuant to CPLR §3211(c)[fn5]. This, moreover, is the only disposition consistent with the expedition that State Finance Law §123-c(4) expressly mandates for citizen-taxpayer actions:

> 'An action under the provisions of this article shall be heard upon such notice to such officer or employee as the court, justice or judge shall direct, and shall be promptly determined. The action shall have

preference over all other causes in all courts.'

As with the Court's discharge of its mandatory responsibilities of disqualification/disclosure, pursuant to §§100.3E and F of the Chief Administrator's Rules Governing Judicial Conduct and its mandatory disciplinary responsibilities under §100.3D(2), such does not require any formal motion by plaintiffs." (plaintiffs' September 30, 2016 memorandum of law, "Introduction", underlining in the original).

Thus highlighted by plaintiffs' "Introduction" were four threshold issues:

(1) Justice Hartman's duty to disqualify herself and, absent that, to make on-the-record disclosure of facts pertaining to her financial interest and multitudinous associations and relationships with the defendants;

(2) plaintiffs' entitlement to the Attorney General's representation/intervention, pursuant to Executive Law §63.1 and State Finance Law Article 7-A;

(3) plaintiffs' entitlement to the disqualification of defendant Attorney General Schneiderman from representing his fellow defendants;

(4) plaintiffs' entitlement to sanctions, and disciplinary and criminal referrals of AAG Kerwin and those supervising her in the Attorney General's office, responsible for her legally-insufficient, fraudulent dismissal cross-motion.

These four threshold issues were then expounded upon with fact, law, and legal argument by the balance of plaintiffs' September 30, 2016 memorandum of law, including in a 20-page section entitled:

"PLAINTIFFS' REQUESTED AFFIRMATIVE RELIEF TO SAFEGUARD THE INTEGRITY OF THESE JUDICIAL PROCEEDINGS" (at pp. 42-52).

Its subheadings, as listed in the memorandum's Table of Contents, were as follows:

All of this is concealed and not adjudicated by Justice Hartman's decision – reflective of her knowledge that she could NOT adjudicate the threshold, integrity issues before her without conceding plaintiffs' entitlement to a determination in their favor as to each – and, with it, summary judgment on all ten of their causes of action – the substantive relief plaintiffs' September 30, 2016 memorandum of law sought by way of conversion of AAG Kerwin's dismissal cross-motion pursuant to CPLR §3211(c).

The Decision's Coverpage
(p. 1)

The decision begins with a coverpage (p. 1) containing the case caption – with the names of the parties in capitalized letters. The capitalized names of the plaintiffs are CENTER FOR JUDICIAL ACCOUNTABILITY, INC. and ELENA RUTH SASSOWER. A section entitled "Appearances" is beneath the case caption. It lists two "Appearances":

> "ELENA RUTH SASSOWER", identified as "Plaintiff pro se";
>
> "ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL OF THE STATE OF NEW YORK – Adrienne J. Kerwin of Counsel", identified as "Attorney for Defendants".

The corporate plaintiff CENTER FOR JUDICIAL ACCOUNTABILITY, INC. is not listed in this section as having appeared or not appeared. However, its address – Box 8101 White Plains New York 10602" – has been placed under the name of *pro se* plaintiff Elena Sassower, notwithstanding the address she had furnished for herself in the paperwork she filed to commence the action, on the summons to plaintiffs' September 2, 2016 verified complaint, on legal backs, and on the cover of plaintiffs' September 30, 2016 memorandum of law was 10 Stewart Place, Apt. 2D-E, White Plains, New York 10603.

The Decision's Untitled Three Prefatory Paragraphs (p. 2)

Page 2 of the decision is headed with the name "Hartman, J.", followed by three paragraphs, not preceded by any identifying section heading.

The first paragraph, consisting of two sentences, summarizes plaintiffs' case as follows:

> "Plaintiffs Center for Judicial Accountability and Elena Sassower seek a declaratory judgment under the State Finance Law that the Legislature's and Judiciary's proposed 2016-2017 budgets are improper and that the budgeting process violates various New York State Constitutional and statutory provisions, and an injunction blocking certain disbursements under the 2016-2017 legislative and judicial budget bill, including judicial pay raises and district attorney salary grants. Plaintiffs also move for a preliminary injunction preventing disbursement of funds."

Concealed by this first paragraph – as elsewhere in the decision – is the section of the State Finance Law pursuant to which plaintiffs are seeking "a declaratory judgment" – Article 7-A (§123 *et seq*), entitled "Citizen-Taxpayer Actions", whose express provisions:

(1) anticipate the Attorney General's participation/representation (§123-a(3); §123-c-(3); §123-d; §123-e(2);

(2) mandate expeditious proceedings (§123-c(4)); and

(3) allow for issuance of temporary restraining orders, notwithstanding CPLR §6313 (§123-e(2)).

Plaintiffs' rights pursuant to the citizen-taxpayer action statute were highlighted by their September 30, 2016 memorandum of law (pp. 1-6, 12, 14, 36, 40-41, 45, 52) and by plaintiff Sassower's September 30, 2016 affidavit (¶¶1, 3, 5-6, 10) – with their Exhibit G analysis particularizing (at pp. 7-10) how Justice McDonough, in tandem with AAG Kerwin, had colluded in the predecessor proceeding to conceal that it was a citizen-taxpayer action, as to which plaintiffs' rights had been flagrantly violated.

By concealing that this is a citizen-taxpayer action, Justice Hartman also conceals that she is replicating all Justice McDonough's violations of the citizen-taxpayer statute – beginning with the length of time it took her to render the decision – nearly three weeks more than the 60-day maximum that judges are allowed for determining motions in ordinary proceedings, pursuant to CPLR §2219(a) – of which this is not one.

And she conceals that plaintiffs did more than "move for a preliminary injunction". They brought an order to show cause for a TRO, in addition to a preliminary injunction – which Justice McDonough,

in violation of the citizen-taxpayer statute, denied as proscribed by CPLR §6313.

As for Justice Hartman's cursory description that plaintiffs seek "a declaratory judgment under the State Finance Law that the Legislature's and Judiciary's proposed 2016-2017 budgets are improper", this is false. The declarations available pursuant to the citizen-taxpayer action statute are of illegal and unconstitutional acts – and those are the declarations plaintiffs sought. Indeed, plaintiffs sought similar declaration with respect to "district attorney salary grants"—and such were not part of the Legislature's and Judiciary's proposed 2016-2017 budgets, contrary to Justice Hartman's false inference. They were part of the Division of Criminal Justice Services' budget for fiscal year 2016-2017, encompassed in the Aid to Localities budget bill.

As for Justice Hartman's second paragraph, its three sentences describe defendants as having "move[d]" to dismiss. In fact, theirs was a cross-motion by AAG Kerwin.[1]

Justice Hartman's third paragraph then skips any reference to plaintiffs' reply/opposition to AAG Kerwin's dismissal cross-motion – and goes directly to reciting the dispositions made by her decision and encompassed by its ordering paragraphs, other than the final two (at p. 8).

The Decision's Section Entitled "Background"
(p. 3)

Of the two paragraphs under this section heading, the first is the sum total of Justice Hartman's description of plaintiffs' predecessor citizen-taxpayer action and Justice McDonough's decisions therein. Consisting of five sentences, it is crafted to perpetrate fraud and reads:

> "Plaintiffs commenced a similar action in 2014 to challenge the Legislature's 2014-2015 budget. In October 2014, Supreme Court (McDonough, J.) dismissed three of the complaint's four causes of action. With leave of the Court, plaintiffs served and filed a supplemental complaint, which expanded their challenge to include the 2015-2016 budget, adding four new causes of action that mirrored the first four. In August, 2016, the Court dismissed the supplemental complaint and made a number of declarations validating the challenged budgets. The Court denied plaintiffs' motion to serve a second supplemental complaint, which would have added an additional eight causes of action and which included the 2016-2017 budget, explaining that proposed causes of action 9-12 were 'patently devoid of merit' and that proposed causes of action 13-16 arose 'out of materially different facts and legal theories' than those that had been alleged in the 2014 complaint."

[1] Also omitted by this paragraph is the CPLR provision pursuant to which AAG Kerwin sought dismissal for lack of personal jurisdiction, CPLR §3211(a)(8).

Concealed entirely is:

(1) that plaintiffs' "similar action" was – like this action – a citizen-taxpayer action brought under State Finance Law Article 7-A;

(2) that the predecessor citizen-action challenged more than "the Legislature's 2014-2015 budget", but, additionally, the Judiciary's 2014-2015 budget, the Governor's budget bill combining the Legislative and Judiciary budgets, and the succession of constitutional provisions, statutes, and rules by which the Legislative/Judiciary budget bill for 2014-2015was enacted;

(3) the content of the four causes of action of plaintiffs' original complaint – and the basis upon which, in October 2014, three were dismissed and one preserved by Justice McDonough;

(4) the content of the four causes of action of plaintiffs' supplemental complaint pertaining to the 2015-2016 budget that "mirrored the first four" causes of action of their original complaint pertaining to the 2014-2015 budget;

(5) the basis upon which, in August 2016, Justice McDonough dismissed the four causes of action of plaintiffs' supplemental complaint – and his disposition with respect to the preserved fourth cause of action of the original complaint;

(6) the content of Justice McDonough's "declarations validating the challenged budgets";

(7) the content of the "additional eight causes of action" of plaintiffs' second supplemental complaint pertaining to the 2016-2017 budget.

Having thus concealed, in her first paragraph, the content of plaintiffs' 16 causes of action in their predecessor citizen-taxpayer action, Justice Hartman then conceals, in her second paragraph, the content of the 10 causes of action of plaintiffs' instant citizen-taxpayer action. It reads:

> "In this action, plaintiffs' first four causes of action are essentially identical to the first four causes of action asserted in the 2014 action, as well as causes of action 9-13 asserted in the proposed second supplemental complaint in that action. Cause of action five in this complaint replicates part of causes of action 12 and 16 from the 2014 proposed second supplemental complaint. And causes of action 6-9 in this complaint correspond to causes of action 13-16 from the 2014 proposed second supplemental complaint. Cause of action 10 in this complaint does not appear to have a counterpart from the 2014 action." (at pp. 3-4).

This is materially fraudulent, as the first four causes of action herein are NOT "essentially identical" to causes of action in plaintiffs' predecessor citizen-taxpayer action. This is obvious from the first four causes of action of the September 2, 2016 verified complaint. Each lead off with four paragraphs (¶¶24-27, ¶¶35-38, ¶¶41-44, ¶¶49-52) identifying that Justice McDonough committed fraud with respect to the corresponding causes of action of plaintiffs' predecessor citizen-taxpayer action and each furnish, in substantiation, plaintiffs' Exhibit G analysis of Justice McDonough's August 1, 2016 decision. Yet here and elsewhere in Justice Hartman's decision, this prominent, material difference between the first four causes of action of the September 2, 2016 verified complaint and the corresponding causes of action of the predecessor citizen-taxpayer action is ENTIRELY concealed.[2]

The Decision's Section Entitled "The Complaint's Assertion of Claims on Behalf of the Center for Judicial Accountability Dismissed" (p. 4)

In a single three-sentence paragraph under this section heading, Justice Hartman states:

> "CPLR 321(a) requires corporations to appear by attorney. Plaintiff Elena Ruth Sassower is not an attorney. Accordingly, the complaint is dismissed to the extent that it seeks to assert causes of action on behalf of the Center for Judicial Accountability (*see Pelaez v Silverstone*, 19 NY3d 954 [2012]; *Boente v Peter C. Kurth Off. of Architecture & Planning, P.C.*, 113 AD3d 803, 804 [2d Dept 2014])."

In other words, Justice Hartman is inferring that the non-attorney plaintiff Sassower is appearing for plaintiff CJA. This is false and, by its inference, follows upon what AAG Kerwin had directly purported in her dismissal cross-motion (at p. 4):

> "As a non-attorney, plaintiff Sassower cannot represent the interests of the corporate plaintiff in this action…The complaint alleges that plaintiff CJA appears through its Director, plaintiff Sassower…"

Plaintiffs' September 30, 2016 memorandum of law (at p. 36) had rebutted this, as follows:

> "AAG Kerwin's assertion that 'The complaint alleges that plaintiff CJA appears through its Director, plaintiff Sassower' is false, as she knows in supplying no annotating reference to the complaint. It is also a shameful, altogether improper objection, in view of plaintiff Sassower's repeated assertion and request for the Attorney General's representation and intervention for plaintiffs pursuant to Executive Law §63.1, to which there has been no response – as AAG Kerwin also knows in concealing such material fact. Certainly, it is reasonable to infer that

[2] The second paragraph is also erroneous in three separate places. The referred-to "causes of action 9-13" in the first sentence should be "9-12" and the references in the second and third sentences to "the 2014 proposed second supplemental complaint" should have identified the year as 2016.

among the reasons AAG Kerwin conceals that this action is a citizen-taxpayer action pursuant to State Finance Law Article 7-A is because its provisions plainly contemplate that the Attorney General will involve himself as plaintiff or on behalf of plaintiffs to ensure a merits determination of wrongful, illegal, and unconstitutional expenditures of taxpayer monies.

Certainly, too, AAG Kerwin well knows that no purpose would be served by dismissal of 'any claims alleged in the complaint on behalf of plaintiff CJA'. Perfectly evident from the complaint is that there are no claims alleged that would not continue by plaintiff Sassower, who, like CJA, is additionally acting 'on behalf of the People of the State of New York & the Public Interest', in the absence of the participation of the Attorney General and Comptroller, whose duty it is to safeguard public monies. *Cf.*, *Cass v. New York*, 88 A.D.2d 305, 308 (3rd Dept. 1982) [dismissal of action against the state as being 'a result of little practical consequence since the two State officers [Comptroller and Chief Administrator of the Courts] remain as parties defendant']."

It is without identifying or adjudicating the threshold issue of plaintiffs' entitlement to the Attorney General's representation/intervention that Justice Hartman dismisses the claims of the unrepresented corporate plaintiff on the implied fraud that the individual plaintiff is representing or seeking to represent it – without so much as identifying plaintiffs' response to AAG Kerwin's more explicit deceit.

The Decision's Section Entitled: "Personal Jurisdiction"
(p. 4)

In a single three-sentence paragraph under this section heading, Justice Hartman states:

"The Office of the Attorney General argues that the Court lacks personal jurisdiction over defendants Andrew M. Cuomo, Temporary Senate President John J. Flanagan, the New York State Senate, and Chief Judge Janet M. DiFiore because plaintiff herself made service upon them. 'Although CPLR 2103(a) requires service to be made by a person who is not a party to the action, a violation of this provision is a mere irregularity which does not vitiate service' where, as here, no resulting prejudice is shown' (*Neroni v. Follender*, 137 AD3d 1336, 1337 [3d Dept. 2016] [internal quotation marks omitted]). Accordingly, the motion to dismiss for lack of personal jurisdiction is denied." (at p. 4, underlining added).

This is false by its assertion that AAG Kerwin argued that "plaintiff herself made service". To the contrary, AAG Kerwin argued that plaintiff Sassower had "attempted" to make service – implying that she had not succeeded in doing so. This fraud by AAG Kerwin was pointed out by plaintiffs' September 30, 2016 memorandum of law (at pp. 17-18) – as likewise AAG Kerwin's concealment of caselaw such as *Neroni v. Follender*, reiterating that service by a party is not grounds for dismissal, absent prejudice – which she had not even claimed. Justice Hartman's decision covers up all AAG

Kerwin's fraud, notwithstanding its determination in plaintiffs' favor.

The Decision's Section Entitled "The First Five Causes of Action Are Dismissed" (p. 5)

In a single three-sentence paragraph under this section heading, Justice Hartman disposes of five of plaintiffs' causes of action as follows:

> "In [his] April 2016 decision, [Justice McDonough] held that causes of action 9-12 in the proposed second supplemental complaint were 'patently devoid of merit,' given [his] dismissal of similar causes of action regarding prior budget years (citing *Lucido v. Mancuso*, 49 AD3d 220, 229 [2d Dept 2008]). Because causes of action 1-4 are identical to those [Justice McDonough] held 'patently devoid of merit,' they are barred (*see Maki v. Bassett Healthcare*, 141 AD3d 979, 981 3d Dept 2016]). Likewise, the fifth cause of action, which alleges violations of New York State Constitution Article VII §§4, 5, 6, must be dismissed because it restates arguments and claims already rejected by [Justice McDonough] in [his] prior decisions." (at p. 5, underlining added)

Apart from the fact that Justice McDonough's referred-to "April 2016" decision was rendered in August 2016 – as Justice Hartman's own "Background" section of her decision reflects (at p. 3) – and the fact that this same "Background" section describes the first four causes of action of the September 2, 2016 verified complaint as "essentially identical" to causes of action 9-12 in the predecessor citizen taxpayer action – Justice Hartman now proclaims the first four causes of action herein as "identical" to 9-12.

This is false. A total of 16 paragraphs – four paragraphs at the outset of each of the first four causes of action of the September 2, 2016 verified complaint (¶¶24-27, ¶¶35-38, ¶¶41-44, ¶¶49-52) identify that each is not barred by Justice McDonough's August 1, 2016 decision – and furnish the reason and substantiating proof, *to wit*, plaintiffs' Exhibit G analysis showing the August 1, 2016 decision to be a "judicial fraud" by a judge duty-bound to have disqualified himself for actual bias born of financial interest, who dismissed plaintiffs' causes of action:

> "by completely disregarding the fundamental standards for dismissal motions, distorting the few allegations he cherry-picked, baldly citing inapplicable law, and resting on 'documentary evidence' that he did not identify – and which does not exist." (¶¶26, 37, 43, 51 of plaintiffs' September 2, 2016 verified complaint, underlining in original).

Justice Hartman's concealment of these prominent, material, and fully-documented allegations of the September 2, 2016 verified complaint (¶¶24-27, ¶¶35-38, ¶¶41-44, ¶¶49-52) reflects her knowledge that they preclude dismissal of the first four causes of action as failing to state a cause of action based on the August 1, 2016 decision. Indeed, her single cited case, the Appellate Division, Third

Department decision in *Maki v. Bassett Healthcare*, 141 AD3d 979, 981 [3d Dept 2016], is not to the contrary. Rather, it recites the governing principal she has ignored:

> "'we proceed to determine the motion 'in accordance with the requirements of CPLR 3211' (*Lockheed Martin Corp. v Atlas Commerce, Inc.*, 283 AD2d at 803), and, in so doing, we ''afford the pleadings a liberal construction, take the allegations of the complaint as true and provide plaintiff the benefit of every possible inference'' (*Stainless Broadcasting Co. v Clear Channel Broadcasting Licenses, L.P.*, 58 A.D.3d 1010, 1012 [2009], quoting *EBC I, Inc. v Goldman, Sachs & Co.*, 5 N.Y.3d 11, 19 [2005])." (at 980-981).

Justice Hartman's concealment of the allegations of the first four causes of action replicates AAG Kerwin's identical concealment by her dismissal cross-motion, objected to by plaintiffs. And, tellingly, Justice Hartman does not reveal either the grounds upon which AAG Kerwin had cross-moved to dismiss the first four causes of action – nor plaintiffs' response by their September 30, 2016 memorandum of law (at pp. 15-16).

Likewise founded on fraud and concealment is Justice Hartman's dismissal of plaintiffs' fifth cause of action (¶¶54-58). She identifies NONE of its allegations, other than that it pertains to violations of Article VII, §§4, 5, and 6 of the New York State Constitution, which is its title. These violation, particularized by ¶57 of the fifth cause of action as:

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

do NOT "restate[] arguments and claims already rejected by [Justice McDonough] in [his] prior decisions" – and Justice Hartman does NOT identify which of Justice McDonough's "prior decisions" she is talking about. Apart from the fact that plaintiffs' Exhibit G analysis detailed the fraudulence of all Justice McDonough's decisions, plaintiffs never alleged violations of Article VII, §§4, 5, and 6 until their March 23, 2016 second supplemental complaint and such were not "rejected" by Justice McDonough's August 1, 2016 decision, which did not even mention these

constitutional provisions. And here, too, Justice Hartman neither identifies AAG Kerwin's arguments pertaining to the fifth cause of action – nor that their deceitfulness had been exposed and objected to by plaintiffs' September 30, 2016 memorandum of law (at pp. 19-20).

The Decision's Section Entitled "Causes of Action Seven Through Ten Are Dismissed" (pp. 5-6)

In two paragraphs under this section heading, Justice Hartman dismisses four additional causes of action of plaintiffs' September 2, 2016 verified complaint – likewise through falsehood and concealment. The first two sentences read:

> "Causes of action seven and eight both challenge the actions of the Commission on Legislative, Judicial and Executive compensation, which is not a party to this action. Accordingly, these causes of action must be dismissed." (at p. 5).

Justice Hartman's description that plaintiffs' seventh and eighth causes of action (¶¶69-76, ¶¶77-80) "both challenge the actions of the Commission on Legislative, Judicial, and Executive compensation" is false. The seventh cause of action (¶¶69-76) is explicitly – and by its title – a challenge to the constitutionality of Chapter 60, Part E, of the Laws of 2015 "As Applied" – and the "first and overarching ground" of this unconstitutionality, highlighted at ¶71 of plaintiffs' complaint, is as follows:

> "Defendants' refusal to discharge ANY oversight duties with respect to the constitutionality and operations of a statute they enacted without legislative due process renders the statute unconstitutional, *as applied*. Especially is this so, where their refusal to discharge oversight is in face of DISPOSITIVE evidentiary proof of the statute's unconstitutionality, *as written and as applied* – such as plaintiffs furnished them (Exhibits 38, 37, 39, 40, 41, 42, 43, 44, 46, 47, 48)." (underlining and capitalization in plaintiffs' ¶71).

Obvious from such key ground of unconstitutionality, *as applied*, is that it does not require that the Commission on Legislative, Judicial and Executive Compensation be a party – which is why the decision does not identify ¶71. For that matter, Justice Hartman does not identify ANY of the allegations of the seventh cause of action (¶¶69-76) – or ANY of the allegations of the eighth causes of action (¶¶77-80) in purporting, without legal authority, that these two causes of action "must be dismissed" because the Commission is not a party. Indeed, such legally-unsupported ground for dismissal is Justice Hartman's own – having not been advanced by AAG Kerwin.

Here, too, Justice Hartman does not refer to AAG Kerwin's argument in cross-moving to dismiss the seventh and eighth causes of action—which she had combined with her argument for dismissing the sixth cause of action (¶¶59-68). Plaintiffs' September 30, 2016 memorandum of law (at pp. 27-31) particularized the fraudulence of AAG Kerwin's for dismissal of these three causes of action – but here, too, AAG Kerwin gets a "free pass".

The next four sentences (at pp. 5-6) dispatch plaintiffs' ninth cause of action (¶¶ 81-84) as follows:

> "The ninth cause of action challenges the constitutionality of 'three-men-in-a-room' budget negotiation. As defendants point out, the negotiation of the 2016-2017 budget is moot, because the budget has passed (*see N.Y. Pub. Interest Research Group, Inc. v Regan*, 91 AD2d 774 [3d Dept 1982], *lv denied* 58 NY2d 610 [1983]). Assuming without deciding that the exception for issues capable of repetition but evading review applies, plaintiff has failed to state a cause of action. Taking all the allegations in the complaint as true, plaintiff has not alleged a violation of law. None of the authority cited by plaintiff prohibits the Governor and leaders of the Senate and Assembly from holding budget negotiation (*see Pataki v. N.Y. State Assembly*, 4 NY3d 75, 85 [2004]; *Urban Justice Ctr. v. Pataki*, 38 AD3d 20, 27-30 [1st Dept 2006], *appeal dismissed, lv denied* 8 NY 3d 958 [2007])."

This is one of only three places in the decision where Justice Hartman refers to AAG Kerwin's argument – giving it knee-jerk acceptance, without mention of plaintiffs' refutation by their September 30, 2016 memorandum of law (at pp. 20-26). Plaintiffs' refutation included the following:

> "AAG Kerwin asserts:
>
> > 'Any claims as to how the 2016-17 budget was negotiated are moot, since the budget was subsequently enacted…' (at p. 7).
>
> This is false. The enactment of the budget on or about April 1, 2016 does not change the fact that there are yet six months left to fiscal year 2016-2017 against which a citizen-taxpayer lies for declarations that it was unconstitutionally and unlawfully procured, that its disbursement of state funds is unconstitutional and illegal, and for such injunctive relief as is appropriate to the circumstances. Moreover, the recognized exceptions to mootness are all here present: (1) likelihood of repetition; (2) a phenomenon typically evading review; (3) involves a novel issue or significant or important questions not previously passed upon; (4) involves a matter of widespread public interest or importance or of ongoing public interest; *Winner v. Cuomo*, 176 A.D.2d 60 (3rd Dept. 1992); *Schulz v. Silver*, 212 A.D.2d 293 (3rd Dept. 1995); 43 New York Jurisprudence §25 'Exceptions to mootness doctrine'.
>
> That AAG Kerwin pretends that the ninth cause of action is moot reflects that she has no answer, whatever, to its showing that three-men-in-a-room, budget deal-making is unconstitutional, either *as unwritten* or *as applied*. Indeed, she confronts virtually none of the allegations of the ninth cause of action." (September 30, 2016 memorandum of law, at pp. 20-21, underlining in the original).

Apart from the fact that as of the December 21, 2016 date of the decision, there were more than three full months to fiscal year 2016-2017 in which state monies were to be disbursed, Justice Hartman dismisses plaintiffs' ninth cause of action without identifying ANY of its allegations. Indeed, her assertion that it "challenges three men in a room budget negotiation" is false – replicating AAG Kerwin's deceit in her dismissal cross-motion.

As highlighted by plaintiffs' September 30, 2016 memorandum of law, plaintiffs' ninth cause of action (¶¶ 81-84) does not challenge budget "negotiation" by the Governor, Temporary Senate President, and Assembly Speaker. It challenges their budget dealmaking that includes the amending of budget bills – the unconstitutionality of which is compounded by the fact that they do it behind-closed-doors. Both are alleged by plaintiffs' ninth cause of action to unbalance the constitutional design – and, as set forth by the ninth cause of action, citing and quoting from the Court of Appeals' decision in *King v. Cuomo*, 81 N.Y.2d 247 (1993) – on which plaintiffs' ninth cause of action principally relies – and *Campaign for Fiscal Equity, Inc. v. Marino*, 87 N.Y.2d 235 (1995), also cited and quoted by plaintiffs' ninth cause of action – the standard for determining constitutionality of a practice is whether it unbalances the constitutional design. These two cases make plain that because the Constitution does not prohibit a practice does not make it constitutional – contrary to AAG Kerwin's deceit on her cross-motion – adopted by Justice Hartman.

As with AAG Kerwin, Justice Hartman's decision does not address, makes no showing, and does not even baldly claim, that three-men-in-a-room "budget negotiations and amending of budget bills" – all taking place out of public view – is consistent with the text of Article VII, §§3 and 4 – or Article III, §10 of the New York State Constitution, 'The doors of each house shall be kept open', and Senate and Assembly rules consistent therewith: Senate Rule XI, §1; Assembly Rule II, §1; and Public Officers Law, Article VI. Similarly, the decision does not address, makes no showing, and does not even baldly claim, that three-men-in-a-room governance accords with the constitutional design, including as to size, reflected by Zephyr Teachout's law review article '*The Anti-Corruption Principle*', Cornell Law Review, Vol 94: 341-413 – legal authority to which plaintiffs' ninth cause of action also cites. As such, Justice Hartman's dismissal of the ninth cause of action is fraudulent.

Justice Hartman's dismissal of the tenth cause of action (¶¶ 85-110), by four sentences (at p. 6), is as follows:

> "The tenth cause of action must also be dismissed. Plaintiff's itemization arguments are non-justiciable (*Pataki*, 4 NY3d at 96; *Urban Justice Ctr.*, 38 AD3d at 30). And the district attorney salary appropriation plaintiff challenges specifically supersedes any law to the contrary. Lastly, the reference to fiscal year 2014-2015 rather than 2016-2017 is a typographical error that does not invalidate the challenged legislation (*see Matter of Morris Bldrs., LP v Empire Zone Designation Bd.*, 95 AD3d 1381, 1383 [3d Dept 2012])." (at p. 6).

This, too, is fraudulent – as Justice Hartman well knows in not identifying ANY of the allegations of plaintiffs' tenth cause of action, other than that it includes a "reference to fiscal year 2014-2015".

Thus, Justice Hartman's claim that "Plaintiff's itemization arguments are non-justiciable" is not only *sua sponte* – having not been advanced by AAG Kerwin – but fictional. Plaintiffs made no itemization arguments and the decision furnishes no detail as to what it is talking about. As for Justice Hartman's claim that "the district attorney salary appropriation plaintiff challenges specifically supersedes any law to the contrary", her decision furnishes no law for the proposition that an appropriation can lawfully or constitutionally do so – and such contradicts plaintiffs' tenth cause of action that it cannot (¶¶92, 96-104). As for Justice Hartman's claim that "reference to fiscal year 2014-2015 rather than 2016-2017 is a typographical error that does not invalidate the challenged legislation", such disposes of the least of the several grounds of the cause of action, indeed, only ¶¶ 90-91, leaving the balance, all concealed, not only stating a cause of action, but establishing an entitlement to summary judgment by its three recited FOIL requests – and so identified by plaintiffs' September 30, 2016 memorandum of law (at pp. 32-35).

The Decision's Section Entitled "Cause of Action Six States a Claim" (pp. 6-7)

Having disposed of nine of plaintiffs' ten causes of action, *seriatim*, except for the sixth cause of action, the decision turns to the sixth. It is only here, after dismissing nine causes of action for failing to state a cause of action, that Justice Hartman recites the adjudicative standard for such dismissals, which she had not observed as to any of the nine:

> "'When considering these pre-answer motions to dismiss the complaint for failure to state a cause of action, we must give the pleadings a liberal construction, accept the allegations as true and accord the plaintiffs every possible favorable inference' (*Chanko v. Am. Broadcasting Cos. Inc.*, 27 NY3d 46, 52 [2016]). The key question before the court on a CPLR 3211(a)(7) motion to dismiss is 'whether the facts alleged fit within any cognizable legal theory (*Loch Sheldrake Beach & Tennis Inc. v. Akulich*, 141 AD3d 809, 814 [3d Dept 2016])." (at pp. 6-7).

She thereupon states:

> "Plaintiff argues that the 2015 legislation that created the Commission on Legislative, Judicial & Executive Compensation (Commission) violates the New York State Constitution (see Chapter 60, Law of 2015 [Part E]). In particular, she argues that the provision therein that gives the Commission's recommendations the 'force of law' violates the separation of powers doctrine and improperly delegates legislative function to the Commission. She further argues that the legislation violates Article XIII, §7 of the New York State Constitution, which states that the compensation of public officers 'shall not be increased or diminished during the term for which he or she shall have been elected or appointed' Plaintiff raises additional challenges to the form and timing of the bill by which the legislation was introduced, among other things.

> Here, on the record before it, the Court cannot say that plaintiffs' claim is not cognizable. Defendants argue that the Appellate Division has already approved of commissions similar to the Commission here (*see McKinney v. Commr. of the N.Y. State Dept. of Health*, 41 AD3d 252 [1st Dept 2007]). But the Court does not consider *McKinney* to be sufficiently analogous to this case to foreclose any and all challenges to the Commission legislation. Nor does *McKinney* address all the arguments raised by plaintiff." (at p. 7).

This is the only place in the decision where Justice Hartman recites any allegations of the cause of action she purports to be addressing. However, she materially understates the record before her, as it establishes not only "cognizab[ility]", but plaintiffs' entitlement to summary judgment on each of the five separate sections of their sixth cause of action, whose content she could have more accurately described by relying on their title headings:

A. Chapter 60, Part E, of the Laws of 2015 Unconstitutionally Delegates Legislative Power by Giving the Commission's Judicial Salary Recommendations 'the Force of Law' (¶¶ 61-62)

B. Chapter 60, Part E, of the Laws of 2015 Unconstitutionally Delegates Legislative Power Without Safeguarding Provisions (¶¶63-65)

C. Chapter 60, Part E, of the Law of 2015 Violates Article XIII, §7 of the New York State Constitution (¶66)

D. Chapter 60, Part E, of the Law of 2015 Violates Article VII, §6 of the New York State Constitution – and, Additionally, Article VII, §§2 and 3 (¶67)

E. Chapter 60, Part E, of the Laws of 2015 is Unconstitutional because Budget Bill #4610-A/A.6721-A was Procured Fraudulently and Without Legislative Due Process (¶68).

Plaintiffs' September 30, 2016 memorandum of law (at pp. 27-31) summarized the record that was before Justice Hartman on the sixth, seventh, and eighth causes of action, which AAG Kerwin sought to have her collectively dismiss based on two judicial decisions – the first being *McKinney* – neither decision having any relevance except to subsections A and B of the sixth cause of action and both decisions, in fact, substantiating those subsections. Plaintiffs demonstrated that AAG Kerwin's dismissal cross-motion had falsified the facts relating to each decision, and, in addition to concealing that plaintiffs' A and B subsections of their sixth cause of action had explicitly cited *McKinney*, in substantiation of their allegations, concealed ALL the approximately 80 allegations of plaintiffs' sixth, seventh, and eighth causes of action.

The Decision's Section Entitled "Motion for Preliminary Injunction Denied" (p. 8)

In a single two-sentence paragraph under this section heading, the decision states:

> "Plaintiff has not demonstrated a likelihood of success on the merits or irreparable harm. Thus, she is not entitled to preliminary relief (*Nobu Next Door, LLC v Fine Arts Hous., Inc.*, 4 NY3d 839, 840 [2005]; *Eklund v Pinkey*, 31 AD3d 908, 909 [3d Dept 2006])."

This is further judicial fraud – established by Justice Hartman's concealment of the totality of what plaintiffs demonstrated by their September 2, 2016 verified complaint, at the September 2, 2016 oral argument of their order to show cause for a preliminary injunction, with TRO, and by their September 30, 2016 memorandum of law and plaintiff Sassower's affidavit accompanying it.

Suffice to note that not only was the title of plaintiffs' September 30, 2016 memorandum of law expressly "in further support of plaintiffs' order to show cause for a preliminary injunction", but its content included a five-page presentation of facts, law, and argument on the subject (at pp. 36-41). As plaintiffs' sixth cause of action is the sole cause of action Justice Hartman preserves, such presentation should have been of especial interest to her, as its focus, in the first instance, was on the sixth cause of action (at p. 37), the very cause of action that plaintiff Sassower had highlighted at the September 2, 2016 oral argument in support of injunctive relief – the transcript of which plaintiff Sassower's affidavit annexed (Exhibit O) and quoted (at p. 5). And, of course, plaintiffs' September 30, 2016 memorandum of law included sections on "likelihood of success on the merits" and "irreparable harm" – as to which, with respect to the latter, plaintiffs had stated:

> "Apart from AAG Kerwin's failure to even claim that in a citizen-taxpayer action, pursuant to State Finance Law §123 *et seq.*, 'irreparable harm' is a criteria for a preliminary injunction, she makes no claim that the massive taxpayer monies being disbursed in the absence of the preliminary injunction sought by plaintiffs' order to show cause can be recovered upon the Court's ultimate judgement in plaintiffs' favor – the ONLY determination the record will support. Most specifically, she makes no claim that the approximately $27.5 millions of dollars in judicial salary increases being disbursed to the judges since April 1, 2016, pursuant to the Commission on Legislative, Judicial and Executive Compensation's December 24, 2015 report – and the monetary non-salary benefits based thereon – *via* the Judiciary reappropriations in Legislative/Judiciary Budget Bill #S.6401-a/A.9001-a – will be returned by them to the public treasury, let alone with a return of the approximately $150 millions of dollars in judicial salary increases the judges received, since April 1, 2012, pursuant to the Commission on Judicial Compensation's August 29, 2011 report – and the monetary non-salary benefits they received based thereon. Nor does she claim that the nearly $4.5 million dollars in district attorney salary reimbursement and financial incentives being disbursed to the counties, pursuant to appropriation and

reappropriation provisions of the Criminal Justice Services' budget in Aid to Localities Budget Bill #S.6403-d/A.9003-d can be recovered. As such, plaintiffs have met the standard for a preliminary injunction under State Finance Law §123-e(2), *to wit*, 'acts which, if committed or continued during the pendency of the action, would be detrimental to the public interest.'" (September 30, 2016 memorandum of law, at pp. 40-41)

The Decision's Ordering Paragraphs
(p. 8)

Justice Hartman concludes her decision with six ordering paragraphs, recapitulating the dispositions she has made. All plaintiffs' causes of action are dismissed for failure to state a cause of action – excepting the sixth. As to the sixth cause of action, the decision states:

"**ORDERED** that defendants have 30 days from the date of this order to answer it;"

This is altogether too long – as this is a citizen-taxpayer action – and, additionally, because defendants have had the sixth cause of action not only since September 2, 2016, when they were served with plaintiffs' verified complaint, but since March 23, 2016, when it was furnished to them as the thirteenth cause of action of plaintiffs' second supplemental complaint in their predecessor citizen-taxpayer action.

As for the final ordering paragraph:

"**ORDERED** that plaintiffs' request for oral argument is denied.",

No fair and impartial tribunal could have failed to schedule oral argument – even without a request from plaintiffs – so as to directly interrogate plaintiffs and AAG Kerwin as to the record, particularized by plaintiffs' September 30, 2016 memorandum of law, dispositive of all issues. In addition to the four threshold, integrity issues, the record established plaintiffs' entitlement to all the declarations laid out by the six final pages of their September 2, 2016 verified complaint (at pp. 38-44). Justice Hartman's decision makes not a single declaration. This, notwithstanding her duty to do, set forth by plaintiffs' September 30, 2016 memorandum of law (at pp. 12-13). There, in response to AAG Kerwin's deceitful cross-motion, plaintiffs stated:

"...once again, AAG Kerwin conceals that because this citizen-taxpayer action seeks declaratory judgments, it cannot be 'dismissed' – as her cross-motion requests. Rather, declarations must issue, *Seymour v. Cuomo*, 180 A.D.2d 215, 217-218 (1992); *Donovan v. Cuomo*, 126 A.D.2d 305, 310 (3rd Dept. 1987). As stated in New York Practice, David D. Siegel, (5th ed. 2011):

'If a plaintiff in an ordinary action loses on the merits, the result is a dismissal of the complaint. In a declaratory action, 'the court should

(4) AAG Kerwin's September 15, 2016 notice of cross-motion, on behalf of defendants;

(5) AAG Kerwin's September 15, 2016 affidavit, with exhibits;

(6) AAG Kerwin's September 15, 2016 memorandum of law on behalf of defendants;

(7) Plaintiff Sassower's September 30, 2016 affidavit, with exhibits;

(8) Plaintiffs' September 30, 2016 memorandum of law.