ANALYSIS OF THE JUNE 26, 2017 DECISION & ORDER OF ACTING SUPREME COURT JUSTICE DENISE A. HARTMAN

Center for Judicial Accountability, et al. v. Cuomo, et al., Albany Co. #5122-2016

This analysis constitutes a "legal autopsy" of the June 26, 2017 decision and order of Acting Supreme Court Justice Denise A. Hartman, denying, "in its entirety", plaintiffs' March 29, 2017 order to show cause for summary judgment on the sixth cause of action of their verified complaint, for leave to add a supplemental complaint, and for injunctive relief. It supplements plaintiffs' "legal autopsy" of Judge Hartman's December 21, 2016 decision and order, annexed as Exhibit U to their February 15, 2017 order to show cause for her disqualification for interest and for the actual bias manifested by her December 21, 2016 decision.

Just as plaintiffs' Exhibit U analysis demonstrates that Judge Hartman's December 21, 2016 decision is a criminal fraud, falsifying 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 violates 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 analysis demonstrates the same with respect to her June 26, 2017 decision, likewise, "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).

Plaintiffs' Exhibit U analysis identified (at p. 1) that the fraudulence of Judge Hartman's December 21, 2016 decision is most speedily verified, within minutes, by examining plaintiffs' September 30, 2016 reply memorandum of law, constituting a "paper trail" of the record before her. So, here, the fraudulence of Judge Hartman's June 26, 2017 decision is verifiable, within minutes, by examining plaintiffs' May 15, 2017 reply memorandum of law, likewise a "paper trail of the record before her.

ALL the facts, law, and legal argument presented by plaintiffs' May 15, 2017 reply memorandum of law – and by plaintiff Sassower's May 15, 2017 reply affidavit accompanying it – are omitted from Judge Hartman's June 26, 2017 decision. Indeed, the only mention of these two documents in Judge Hartman's decision is in its last page listing of "Papers Considered". That is also the only place where the decision mentions the April 21, 2017 opposition papers of Assistant Attorney General

Helena Lynch, whose fraudulence, from beginning to end and in virtually every line, is particularized by plaintiffs' May 15, 2017 reply memorandum of law in support of requested threshold relief:

(1) for sanctions, and disciplinary and criminal referrals of AAG Lynch and those supervising her in the Attorney General's office, responsible for her litigation fraud;

(2) for the disqualification of defendant Attorney General Schneiderman from representing his co-defendants; and

(3) for the Attorney General's representation of plaintiffs or intervention on their behalf, pursuant to Executive Law §63.1 and State Finance Law Article 7-A.

None of these three threshold issues are adjudicated by Judge Hartman's June 26, 2017 decision, which conceals them all. Ditto, the even more threshold issue presented by plaintiffs' May 15, 2017 reply memorandum of law of Judge Hartman's duty to make disclosure, absent her disqualifying herself. This, based on facts further demonstrating her actual bias subsequent to those embodied by plaintiffs' February 15, 2017 order to show cause. Among these, her denial of the February 15, 2017 order to show cause by a three-paragraph May 5, 2017 decision that concealed plaintiffs' Exhibit U analysis of her December 21, 2016 decision and baldly LIED that she had "no interest in this litigation...or affinity to any party hereto" and that plaintiffs' "allegations of bias and fraud" were "conclusory" and "meritless".

Having so disposed of plaintiffs' Exhibit U analysis and her disqualification for actual bias, by her May 5, 2017 decision, and making no disclosure, Judge Hartman's June 26, 2017 decision relies on her December 21, 2016 decision to deny ALL branches of plaintiffs' March 29, 2017 order to show cause, excepting its first branch for summary judgment on their sixth cause of action – the sole cause of action her December 21, 2016 decision had preserved. As to that sixth cause of action, Judge Hartman's June 26, 2017 decision denies it by additional frauds – the most spectacular of which is her LIE that her December 21, 2016 decision had rejected its sub-cause E – a LIE born of her inability to concoct any other pretense for denying plaintiffs a summary judgment award that would cause her judicial salary to plummet $20,000, immediately. Finally, having relied on her December 21, 2016 decision to deny the second branch of plaintiffs' March 29, 2017 order to show cause for leave to supplement their verified complaint, Judge Hartman denies as "moot" their request that she sign subpoenas duces tecum for legislative records that would further prove what the record before her already establishes resoundingly: plaintiffs' entitlement to summary judgment on the fourth and fifth causes of action of both their September 2, 2016 verified complaint and their proposed March 29, 2017 verified supplemental complaint and injunctive relief based thereon.

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Plaintiffs' May 15, 2017 Memorandum of Law is Dispositive that Judge Hartman's June 26, 2017 Decision is a Criminal Fraud -- Beginning with its Concealment of the Four Threshold Issues She was Duty-Bound to Adjudicate, But Did Not Because Each Threshold Issue Could Only be Adjudicated in Plaintiffs' Favor

One need only read the four-page "Introduction" to plaintiffs' 64-page May 15, 2017 reply memorandum of law to recognize why Judge Hartman's June 26, 2017 decision could not – and did not – confront plaintiffs' May 15, 2017 reply papers, beginning with the four threshold integrity issues pertaining to herself and the Attorney General it summarized. The "Introduction" was as follows:

> "This memorandum of law is submitted in reply to defendants' opposition to plaintiffs' March 29, 2017 order to show cause with preliminary injunction and TRO, filed by Assistant Attorney General Helena Lynch, who identifies herself as 'of counsel' to defendant Attorney General ERIC T. SCHNEIDERMAN, attorney for himself and his co-defendants. It is also submitted in further support of all seven branches of the March 29, 2017 order to show cause, as to which plaintiffs have a *prima facie* summary judgment 'merits' entitlement.
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> The facts, law, and argument mandating the granting of the seven branches of plaintiffs' March 29, 2017 order to show cause, *as a matter of law*, are furnished, concisely, by the March 29, 2017 moving affidavit of plaintiff SASSOWER accompanying it – an affidavit to which AAG Lynch's April 21, 2017 opposition papers make no reference. Instead, and notwithstanding the more than three weeks that the Court gave AAG Lynch to respond to the March 29, 2017 order to show cause and the huge legal and evidentiary resources of the Attorney General's office at her disposal, she has come forward with a paltry, largely repetitive April 21, 2017 affirmation and memorandum of law, whose pervasive fraud is proven by comparing it to plaintiff SASSOWER's March 29, 2017 affidavit, whose accuracy AAG Lynch does not contest.
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> As hereinafter shown, AAG Lynch's opposition is no opposition, *as a matter of law*, and is, from beginning to end, a 'fraud on the court', as that term is defined.[fn1] As such, it continues the *modus operandi* of her predecessor, Assistant Attorney General Adrienne Kerwin, whose identically pervasive litigation fraud, detailed by plaintiffs' September 30, 2016 memorandum of law and covered up by the Court's December 21, 2016 decision, is chronicled by plaintiffs' analysis of the decision, annexed as Exhibit U to their February 15, 2017 order to show cause to disqualify the Court for actual bias and to vacate the decision. As with all evidentiary proof dispositive of the true facts, AAG Lynch's approach to the Exhibit U analysis – twice cited by plaintiff SASSOWER's March 29, 2017 affidavit as establishing plaintiffs' entitlement to the granting of their March 29, 2017 order to show cause (¶¶9, 17) – is to conceal it entirely, while arguing for denial of the March 29, 2017 order to show cause based on the Court's December 21, 2016 decision.

Evidenced by AAG Lynch's litigation fraud, as likewise the litigation fraud of AAG Kerwin, is 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 or intervening on their behalf, as plaintiffs have repeatedly requested. It also bespeaks their view – and that of supervisory personnel in the Attorney General's office, including defendant Attorney General SCHNEIDERMAN himself – that they can obliterate ALL rules of professional conduct and litigation standards because the Court, having a $60,000-plus salary interest in this citizen-taxpayer action and having worked for 30 years in the Attorney General's office, including under defendant Attorney General SCHNEIDERMAN and, before that, under defendant Governor CUOMO when he was Attorney General, will let them get away with everything. Certainly, no disinterested, impartial tribunal would tolerate the misconduct that AAG Lynch exhibited at the March 29, 2017 oral argument and now again by her April 21, 2017 opposing papers, let alone the 'green light' given to her by supervisory authorities at the Attorney General's office, including defendant SCHNEIDERMAN, in a case of such magnitude and consequence to the People of the State of New York.

Plaintiffs' Exhibit U analysis (at pp. 7-8) identified the four threshold integrity issues that AAG Kerwin's litigation fraud presented the Court, concealed by its December 21, 2016 decision. Likewise, AAG Lynch's litigation fraud presents the Court with four comparable threshold integrity issues:

> (1) its duty, absent its disqualification, to make disclosure of facts bearing upon its willingness to enforce standards of professional conduct upon the Attorney General's office, and, in particular, disclosure of its judicial compensation interest in this citizen-taxpayer action and its personal and professional relationships and associations with defendant Attorney General SCHNEIDERMAN and with former Attorney General, now Governor, defendant CUOMO, who appointed it to the bench, and with Attorney General staff;
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> (2) plaintiffs' entitlement to the Attorney General's representation/intervention, pursuant to Executive Law §63.1 and State Finance Law Article 7-A;
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> (3) plaintiffs' entitlement to the disqualification of defendant Attorney General Schneiderman from representing his co-defendants;
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> (4) plaintiffs' entitlement to sanctions, and disciplinary and criminal referrals of AAG Lynch and those supervising her in the Attorney General's office, responsible for her litigation fraud.

The law pertaining to each of these threshold integrity issues is furnished at the close of this memorandum in a section entitled 'Plaintiffs' Requested Affirmative Relief to Safeguard the Integrity of these Judicial Proceedings'. With the exception of pages 52-55 pertaining to the Court's duty to make disclosure, absent its disqualifying itself, this section largely repeats, *verbatim*, the same section in plaintiffs' September 30, 2016 memorandum of law pertaining to AAG Kerwin's litigation fraud, unaddressed by the Court's December 21, 2016 decision. It is identically applicable to AAG Lynch's litigation fraud. As for the Court's duty to make disclosure, absent its disqualifying itself, it is even more applicable now, in light of the Court's completely conclusory, three-paragraph May 5, 2017 decision, which, without identifying plaintiffs' Exhibit U analysis or contesting its accuracy, including as to the dispositive significance of plaintiffs' September 30, 2016 memorandum of law, denied plaintiffs' February 15, 2017 order to show cause for its disqualification and vacatur of its December 21, 2016 decision, concealing plaintiffs' request for disclosure, of which it made none.

As was true with AAG Kerwin's litigation fraud, so here: AAG Lynch's litigation fraud reinforces plaintiffs' entitlement to all seven branches of their March 29, 2017 order to show cause under applicable legal principles that plaintiffs have again and again set forth, including by their September 30, 2016 memorandum of law (at p. 4) and by their Exhibit U analysis (at pp. 5-6), *to wit*:

> '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);
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> '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)."

The Decision's Coverpage (at p. 1)

The decision begins with a coverpage (p. 1) containing the case caption and, beneath it, a section entitled "Appearances". It lists two:

> "ELENA RUTH SASSOWER", identified as "Plaintiff pro se", with an address listed as "PO Box 8101, White Plains, New York 10602";
>
> "ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL OF THE STATE OF NEW YORK – Adrienne J. Kerwin, of Counsel", identified as "Attorney for Defendants".

This contains two material errors:

- It lists an incorrect address for plaintiff Sassower – notwithstanding this identical error was pointed out at page 8 of plaintiffs' Exhibit U analysis of Judge Hartman's December 21, 2016 decision;
- It incorrectly identifies AAG Kerwin as "of Counsel" – notwithstanding the "of Counsel" AAG was Helena Lynch, who appeared at oral argument on March 29, 2017 and interposed opposition papers on April 21, 2017.[1]

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

Page 2 of the decision is headed with the name "Hartman, J.", followed by three paragraphs furnishing thumb-nail descriptions of the case, the order to show cause before Judge Hartman, and the grounds upon which her June 26, 2017 decision denies relief.

Suffice to say that among its inaccuracies is its first sentence in stating: "Plaintiff Elena Ruth Sassower, pro se, commenced this action primarily challenging the constitutionality of the Legislature's 2016-2017 budget bills". In fact, the "action" – which neither here nor elsewhere does Judge Hartman reveal to be a citizen-taxpayer action – was commenced by two plaintiffs, plaintiff Sassower and plaintiff Center for Judicial Accountability, Inc., both unrepresented and seeking a threshold determination by Judge Hartman of their entitlement to representation by the Attorney General, pursuant to the citizen-taxpayer action statute, State Finance Law §123 *et seq*, which expressly contemplates the Attorney General's involvement as plaintiff, or on behalf of plaintiffs (§123-a(3); §123-c-(3); §123-d; §123-e(2)), and, additionally, pursuant to Executive Law §63.1, which predicates the Attorney General's representation on the "interests of the state". This threshold issue, focally presented by plaintiffs' September 30, 2016 memorandum of law, was concealed by

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[1] The facts pertaining to AAG Lynch's assignment – which followed upon plaintiff Sassower's complaint to supervisory authorities at the Attorney General's office about AAG Kerwin litigation fraud, whose most recent manifestation, at that time, was her March 22, 2017 opposition papers to plaintiffs' February 15, 2017 order to show cause – are recited at ¶¶11-12 of plaintiff Sassower's May 15, 2017 affidavit in reply and in further support of plaintiffs' March 29, 2017 order to show cause.

Judge Hartman's December 21, 2016 decision, without adjudication, while, simultaneously, it dismissed the corporate plaintiff from the action because it had no attorney. Plaintiffs' Exhibit U analysis detailed this (at pp. 12-13) – and their May 15, 2017 reply memorandum of law reiterated their entitlement to such threshold determination of the Attorney General's duty to represent them and/or intervene on their behalf – there being no legitimate "merits defense" to any of the ten causes of action of their September 2, 2016 verified complaint.

The Decision's Section Entitled "Procedural History and Background" (at pp. 3-4)

None of the three paragraphs of so-called "Procedural History and Background" identify that plaintiffs' March 29, 2017 order to show cause sought a TRO and that oral argument was had on March 29, 2017, at which time Judge Hartman struck the TRO, *without reasons*, and denied, also *without reasons*, plaintiffs' request for a hearing on the preliminary injunction either then or on March 31, 2017 – and that these and related facts were particularized by plaintiff Sassower's May 15, 2017 reply affidavit as further evidence of Judge Hartman's actual bias, requiring her disqualification and, absent that, disclosure.

The first paragraph in this section (at p. 3) is three sentences long. The first sentence describes Judge Hartman's December 21, 2016 decision. The second sentence describes her May 5, 2017 decision. And the third sentence describes her May 5, 2017 amended decision, which was the same as her December 21, 2016 decision except that it was amended to include a recitation of "Paper Considered".

Apart from the fact that the record before Judge Hartman establishes the fraudulence of these three decisions, Judge Hartman's one-sentence description of her December 21, 2016 decision is also materially false in purporting that it "dismissed nine of the ten causes of action asserted in the complaint for failure to state a cause of action". This is a re-write of the facts.

The closest the December 21, 2016 decision came to dismissing nine of plaintiffs' ten causes of action for failure to state a cause of action was by its ordering paragraph (at p. 8) which granted AAG Kerwin's September 15, 2016 cross-motion to dismiss for failure to state a cause of action with respect thereto. It reads:

> "**ORDERED** that the motion to dismiss for failure to state a cause of action is granted with respect to causes of action one through five and seven through ten and those causes of action are dismissed".

Yet, this ordering paragraph CONFLICTS with the three explanatory paragraphs of the December 21, 2016 decision reciting the basis upon which Judge Hartman was dismissing those nine causes of action (at pp. 5-6). According to these explanatory paragraphs, whose particulars are dissected by plaintiffs' Exhibit U analysis (at pp. 14-20):

Judge Hartman's dismissal of the first four causes of action (¶¶23-53) was not for failure to state a cause of action, but as barred because they were allegedly "identical" to the four causes of action of plaintiffs' March 23, 2016 proposed verified second supplemental complaint in the prior citizen-taxpayer action that Judge Roger McDonough had deemed "patently devoid of merit" by reason of his dismissals of comparable causes of action in plaintiffs' March 28, 2014 verified complaint and March 31, 2015 verified supplemental complaint. However of the eight causes of action in those pleadings, Judge McDonough had dismissed three on grounds of "documentary evidence", exclusively – these being plaintiffs' third, fourth, and seventh causes of action; – had dismissed four based on both "documentary evidence" and "non-justiciability" – these being the first, second, fifth, and sixth causes of action; – and had dismissed one based on "documentary evidence" and failure to state a cause of action – this being the eighth cause of action. The fraudulence of these dismissals, including because the unidentified "documentary evidence" upon which ALL eight causes of action were dismissed does NOT exist, is detailed plaintiffs' analysis of Judge McDonough's August 1, 2016 decision (at pp. 21-29), annexed as Exhibit G to their September 2, 2016 verified complaint.[2]

Judge Hartman's dismissal of the fifth cause of action (¶¶54-58) pertaining to violations of Article VII, §§4, 5, and 6 of the New York State Constitution was because it allegedly "restate[ed] arguments and claims" that Judge McDonough had "already rejected" in his prior decisions. This is false. As highlighted by plaintiffs' Exhibit U analysis (at p. 15), there were no decisions of Judge McDonough that ever "rejected" violations of Article VII, §§4, 5, and 6. Such violations were never even alleged by the eight causes of action he dismissed, let alone "rejected" as failing to state a cause of action.

Judge Hartman's dismissal of the seventh and eighth causes of action (¶¶69-80) was on the ground that the Commission on Legislative, Judicial and Executive Compensation was "not a party to this action". Not only is this not failure to state a cause of action, but AAG Kerwin's September 15, 2016 cross-motion did not seek dismissal based on the Commission not being a party – which would have been pursuant to CPLR §3211(a)(10): "the court should not proceed in the absence of a person who should be a party". As highlighted by plaintiffs' Exhibit U analysis (at p. 16), this was Judge Hartman's own *sua sponte* ground for dismissal, which she popped into her December 21, 2016 decision without citation to ANY legal authority – because dismissal on such ground "is only a last resort" where the absent party is a "necessary party", which she did not claim the Commission to be, nor claim any prejudice to defendants by reason of the non-joinder[3] – just as AAG Kerwin never had.

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[2] Inasmuch as Judge McDonough predicated his dismissals of the pleadings in the prior citizen-taxpayer action on purported "documentary evidence", Judge Hartman's dismissals of the first four causes of action of plaintiffs' September 2, 2016 verified complaint as "patently devoid of merit" based on Judge McDonough's dismissals required her to find that plaintiffs, likewise, had failed to furnish "documentary evidence" in support of their first four causes of action. This she did not do – nor could she inasmuch as AAG Kerwin's September 15, 2016 dismissal cross-motion did not move pursuant to CPLR §3211(a)(1), "a defense is founded upon documentary evidence".

[3] *Chamber of Commerce v. Pataki*, 100 NY2d 801 (2003), quoting Siegel, NY Practice "Dismissal of the action for nonjoinder of a given person is a possibility under the CPLR, but it is only a last resort". Also

Nor did Judge Hartman identify that the Commission could not be joined since, pursuant to the statute establishing the Commission – Chapter 60, Part E of the Laws of 2015 – it was by then no longer in existence;

Judge Hartman's dismissal of the ninth cause of action (¶¶81-84), challenging the constitutionality of behind-closed-doors, three-men-in-a-room budget dealmaking, including the amending of bills, is the ONLY cause of action of plaintiffs' September 2, 2016 verified complaint that she dismissed on the express grounds that it failed to state a cause of action. In the words of her December 21, 2016 decision:

> "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 negotiations (*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 NY3d 958 [2007])."

Plaintiffs' rebuttal to this was succinctly presented by their Exhibit U analysis (at p. 19), whose factual and legal accuracy is uncontested by Judge Hartman, as likewise by defendants:

> "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.
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> 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

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see CPLR §2001, "At any stage of an action, the court may permit a mistake, omission, defect or irregularity to be corrected, upon such terms as may be just, or, if a substantial right of a party is not prejudiced, the mistake, omission, defect or irregularity shall be disregarded."

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." (underlining in plaintiffs' Exhibit U analysis).

Judge Hartman's dismissal of the tenth cause of action (¶¶85-110) was, inferentially, on grounds arguably constituting failure to state a cause of action, as follows (at p. 6):

"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 Builders., LP v Empire Zone Designation Bd.*, 95 AD3d 1381, 1383 [3d Dept 2012])."

Here, too, plaintiffs' Exhibit U analysis (at pp. 18-19) had furnished a rebuttal, stating that Judge Hartman's dismissal of the tenth cause of action was fraudulent, accomplished by concealing ALL the allegations of their tenth cause of action, other than that it includes a "reference to fiscal year 2014-2015". The particulars were, as follows:

"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)." (underlining in the original).

As for Judge Hartman's one-sentence description of her May 5, 2017 decision, it is materially misleading in stating that it "denied plaintiff's motion to disqualify and to renew and reargue the

December 21, 2016 decision". It conceals whose disqualification had been sought, which was Judge Hartman's – and its grounds: the actual bias manifested by her December 21, 2016 decision – and that it had alternatively requested, if disqualification were denied, disclosure – relief her May 5, 2017 decision had concealed and not made.

The second paragraph in this section (at pp. 3-4) opens with the sentence: "Plaintiff now moves for summary judgment on the sole surviving cause of action" – creating a false impression, by the word "now", that plaintiffs made their motion subsequent to the May 5, 2017 date in the predecessor paragraph, rather than, as they did, on March 29, 2017. The balance of this second paragraph then gives a cursory description of Chapter 60, Part E, of the Law of 2015, challenged by plaintiffs' sole cause of action to survive Judge Hartman's December 21, 2016 decision: their sixth cause of action. However, it materially omits that the Commission on Legislative, Judicial and Executive Compensation, established by Chapter 60, Part E of the Laws of 2015, is a temporary body, which, pursuant to the statute's §2, ¶1, is established "On the first of June of every fourth year, commencing June 1, 2015" and, pursuant to its §3, ¶8, is "deemed dissolved" "Upon the making of its report as provided in subdivision seven of this section" – *to wit*, "not later than the thirty-first of December of the year in which the commission is established for judicial compensation and the fifteenth of November the following year for legislative and executive compensation".

Having omitted ALL these time parameters governing the Commission – relevant to plaintiffs' sixth, seventh, and eighth causes of action – this second paragraph not only omits, but falsifies the time parameter for the legislature's overriding the Commission's "force of law" recommendations. Thus, it states:

> "The Commission's recommendations 'have the force of law, and shall supersede, where appropriate, inconsistent provisions of article 7-B of the judiciary law, section 169 of the executive law, and sections 5 and 5-a of the legislative law, unless modified or abrogated by statute prior to **April first of the year as to which such determination applies to legislative and executive compensation'** (§7)." [bold added]. [4]

This is a falsification of §7, accomplished by REMOVING the below material language of §7, highlighted in bold:

> "...Each recommendation made to implement a determination pursuant to section two of this act shall have the force of law, and shall supersede, where appropriate,

[4] Notwithstanding Judge Hartman's substantial quoting of §7, she does not indent it, as she does her immediately preceding quoting from §2.1 that, every four years, the Commission is required to:

> "examine, evaluate and make recommendations with respect to adequate levels of compensation and non-salary benefits for members of the legislature, judges and justices of the state-paid courts of the unified court system, statewide elected officials, and those state officers referred to in section 169 of the executive law".

inconsistent provisions of article 7-B of the judiciary law, section 169 of the executive law, and sections 5 and 5-a of the legislative law, unless modified or abrogated by statute prior to April first of the year as to which such determination applies **to judicial compensation and January first of the year as to which such determination applies** to legislative and executive compensation." [bold added].

Thus, contrary to what this second paragraph purports, April 1st is NOT the relevant date for the Legislature's overriding the Commission's "force of law" legislative and executive compensation recommendations. That date is January 1st – to which this paragraph makes no mention and whose significance it further conceals by omitting that the statute gives the Commission until November 15th to render its report on legislative and executive compensation. In other words, this second paragraph conceals that the legislative window to override or modify the Commission's "force of law" recommendations on legislative and executive compensation is from November 15 to December 31 – a holiday period in which the Legislature is not in session.

The significance of the date the statute fixes for the Commission's report on legislative and executive compensation – and the six-week, holiday period that it gives the Legislature for overriding or modifying its recommendations – was focally presented by plaintiffs' sub-cause A of their sixth cause of action entitled "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'".[5] Its very first paragraph reads:

> "388. On June 3, 2015, five Assembly members, all in the minority, and including the ranking member of the Assembly Committee on Governmental Operations, introduced a bill to amend Chapter 60, Part E, of the Laws of 2015 to remove its provision giving the Commission's salary increase recommendations 'the force of law' and making its report for legislative and executive officers due at the same time as for judicial officers. The bill was A.7997 and its accompanying introducers' memorandum, submitted 'in accordance with Assembly Rule III, Sec 1(f)' (Exhibit 34), stated, in pertinent part:
>
> > 'On March 31, 2015, a 137 page budget bill (S4610-A/A6721-A) was introduced, and was adopted by the Senate late that evening. The Senate bill was adopted by the Assembly after 2:30am on April 1, 2015.
> >
> > This budget bill included, inter alia, legislation to establish a special commission on compensation (hereinafter 'Commission') consisting of seven members, with three appointed by the Governor, one appointed by the Temporary President of the Senate, one

5 Plaintiffs' sub-cause A is ¶¶ 61-62 of their September 2, 2016 verified complaint and rests on ¶¶388-393 of their March 23, 2016 verified second supplemental complaint in their prior citizen-taxpayer action (Exhibit A thereto).

appointed by the Speaker of the Assembly, and two appointed by the Chief Judge of the State of New York. There were no appointments from the Senate minority or the Assembly minority.

This budget bill required the Commission to make its recommendations for judicial compensation not later than December 31, 2015, and for legislative and executive compensation not later than November 15, 2016. The budget bill further stated that such determinations shall have 'the force of law' and shall 'supercede' inconsistent provisions of the Judiciary Law, Executive Law, and the Legislative Law, unless modified or abrogated by statute.

This budget bill would enable legislators to receive substantial salary increases after the next election without incurring any political backlash for voting for those increases.

The budget bill was clear that the salary recommendations for legislators would not be announced until after the next election, too late to encourage potential candidates to run in the election against the incumbents and too late to require incumbents to justify such a salary increase during the election.

By making the salary increases automatic, the legislators would not need to vote on such increases at all, thereby enabling the legislators to avoid the political liability that would result from voting for large and unpopular salary increases for themselves. Indeed, since the Legislature would normally not be in session immediately after an election, there would not even be an opportunity for individual legislators to vote on such salary increase unless both houses of the legislature were called back into special session for this specific purpose. This would enable all the legislators to speak out against the salary recommendations, while knowing that they would not actually need to vote against such increases.'"

Indeed, the last paragraph of plaintiffs' sub-cause A also identified the statute's time-table with respect to legislative and judicial compensation. It reads:

"393. The unconstitutionality of 'the force of law' provision of Chapter 60, Part E, of the Laws of 2015 – and of the timing for the Commission's recommendation for legislative and executive branch officers – requires the striking of the statute, in its entirety – there being no severability provision in the statute. (*St. Joseph Hospital, et al. v. Novello, et al., id.*)."

Judge Hartman's does not identify any severability clause.

The third paragraph in this section (at p. 4) terms the five sections of plaintiffs' sixth cause of action "sub-causes" and summarizes them, as follows:

> "(A) it unconstitutionally gives the Commission recommendations the force of law; (B) it unconstitutionally delegates legislative power without proper safeguards; (C) it violates Article XIII, §7 of the New York State Constitution; (D) it was passed in violation of Article VII, §§2, 3, and 6 of the New York State Constitution; and (E) it was passed as a result of fraud and in violation of due process".

It then concludes with the following two sentences:

> "Plaintiff asserts that, as of the Court's December 21, 2016 decision, the record contained facts and law entitling her to summary judgment. In addition to plaintiffs' moving affidavit and exhibits, the Court has examined the complaint (and the proposed second supplemental complaint from an earlier action that is incorporated therein) to decide this motion."

The referred-to assertion was in ¶3 of plaintiff Sassower's March 29, 2017 moving affidavit, which stated:

> "All the facts and law sufficient for granting plaintiffs summary judgment on their sixth cause of action were before the Court when it rendered its December 21, 2016 decision. This is why, as to the sixth cause of action and the other nine, plaintiffs' September 30, 2016 memorandum of law in opposition to AAG Kerwin's cross-motion to dismiss their complaint, had requested the Court grant summary judgment to plaintiffs pursuant to CPLR §3211(c) – relief the decision concealed when it concealed the existence of plaintiffs' September 30, 2016 opposition papers."

The state of the record with respect to plaintiffs' sixth cause of action, as of the date of Judge Hartman's December 21, 2016 decision, was summarized at pages 27-31 of plaintiffs' September 30, 2016 memorandum of law. It detailed the fraudulence of the five sentences of AAG Kerwin's September 15, 2016 cross-motion to dismiss the sixth cause of action – so paltry that those same five sentences included her argument for dismissal of plaintiffs' seventh and eighth causes of action.

Yet, neither here nor elsewhere in her June 26, 2017 decision does Judge Hartman address the state of the record with respect to the sixth cause of action as of December 21, 2016, laid out at pages 27-31 of plaintiffs' September 30, 2016 reply memorandum of law, whose accuracy she does not deny or dispute. Nor does she address the state of the record with respect to the sixth cause of action as of the date of her June 26, 2017 decision, laid out at pages 19-23 of plaintiffs' May 15, 2017 reply memorandum of law, detailing the fraudulence of AAG Lynch's April 21, 2017 opposition to their requested summary judgment – and whose accuracy Judge Hartman also does not deny or dispute. Instead, and because the state of the record so overwhelmingly establishes plaintiffs' entitlement to

summary judgment on their sixth cause of action, *as a matter of law*, her June 26, 2017 decision conceals it entirely.

The Decision's Section Entitled "Motion for Summary Judgment" (at pp. 5-10)

This section begins (at p. 5) with a prefatory paragraph reciting the rudimentary standards for summary judgment – and for facially challenging a statute's constitutionality:

> "The party moving for summary judgment bears the burden of submitting evidence in admissible form demonstrating entitlement to judgment as a matter of law. Once the moving party has met its burden, the burden shifts to the party opposing summary judgment to submit evidence in admissible form that establishes that a material issue of fact exists (*Nomura Asset Capital Corp. v. Cadwalader, Wickersham & Taft LLP*, 26 NY3d 40, 49 [2015]; *Staunton v. Brooks*, 129 AD3d 1371, 1372 [3d Dept 2015]). To succeed in a facial challenge to the constitutionality of a statute, a plaintiff must 'surmount the presumption of constitutionality accorded to legislative enactments by proof beyond a reasonable doubt' (*Moran Towing Corp. v Urbach*, 99 NY2d 443, 448 [2003] [internal quotation marks omitted]). To succeed, the plaintiff 'must establish that no set of circumstances exists under which the Act would be valid' (*id.* [internal quotation marks omitted])."

This recitation by Judge Hartman is to conceal her fraud – to make it appear that her dispositions of the five sub-causes of plaintiffs' sixth cause of action have been guided by the recited standards, when they have not, even remotely.

The above-recited standards required Judge Hartman to identify the "evidence in admissible form" that plaintiffs had submitted. This she does not do as to ANY of the sub-causes – because such would reveal that plaintiffs met their "burden" as to each – and require her to identify what "evidence in admissible form" defendants had submitted, which was NONE, entitling plaintiffs to summary judgment not only by reason thereof, but by virtue of their fraud in connection therewith, chronicled at pages 19-23 of plaintiffs' May 15, 2017 reply memorandum of law, to which she makes <u>no</u> reference.

The Decision's "Sub-Causes A and B – Separation of Powers Claims" (at pp. 5-7)

To make less obvious that she has neither facts nor law to justify denying summary judgment to plaintiffs on their separate first and second sub-causes of their sixth cause of action[6], Judge Hartman combines them under a single heading "Sub-Causes A and B – Separation of Powers Claims".

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[6] As hereinabove recited (at fn. 5), <u>Plaintiffs' sub-cause A</u>, entitled "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'", is ¶¶ 61-62 of their September 2, 2016 verified complaint and rests on ¶¶388-393 of their March 23, 2016 verified second supplemental complaint in their prior citizen-taxpayer action (Exhibit A thereto).

There are four paragraphs under this section heading – with the concluding sentence in the fourth paragraph reading:

> "Accordingly, plaintiff has not established her entitlement to judgment as a matter of law on either of her separation of powers sub-causes of action" (at p 7).

Judge Hartman's first paragraph (at pp. 5-6) recites legal principle – divorced from any subsequent showing as to how they are applicable to denying plaintiffs summary judgment on either of those two sub-causes. This first paragraph reads:

> "Plaintiffs first two sub-causes allege that the legislation that created the Commission violates separation of powers principles. 'Derived from the separation of powers doctrine, the principle that the legislative branch may not delegate all of its lawmaking powers to the executive branch has been applied with the utmost reluctance (*Boreali v Axelrod*, 71 NY2d 1, 9 [1987]). Thus, although 'the Legislature cannot pass on its law-making functions to other bodies[,] there is no constitutional prohibition against the delegation of power, with reasonable safeguards and standards, to an agency or commission to administer the law as enacted by the Legislature' (*id.* at 10; *see Matter of Retired Public Employees Assn. v Cuomo*, 123 AD3d 92, 97 [3d Dept 2014] [rejecting claim that legislature unconstitutionally delegated its legislative powers to the Civil Service Commission)."

Judge Hartman's second and third paragraphs (at pp. 6-7) pertain to sub-cause A and read:

> "Plaintiff argues nonetheless that the Legislature cannot constitutionally give a commission's findings and regulations the 'force of law.' Plaintiff's reliance on the dissent in *St. Joseph's Hospital v. Novello* (43 AD3d 139 [4th Dept 2007]) is misplaced. There, the majority of the court upheld a statute that created a commission to make and report its recommendations for, among other things, closing healthcare facilities. The commission's recommendations had the force of law unless the governor declined to approve them, or if each house of the Legislature adopted a resolution rejecting them. The court upheld the delegation of powers, reasoning that 'even if the legislative veto provision were unconstitutional, that provision does not invalidate the remainder of the Legislation' because it would be severable (*id.* at 146). The dissent was of the opinion that the legislative veto provision violated the Presentment Clause and separation of powers doctrine and was not severable (*id.* at 151-154).
>
> The legislation at issue here does not provide for a legislative veto. Rather,

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Plaintiffs' sub-cause B, entitled "Chapter 60, Part E of the Laws of 2015 Unconstitutionally Delegates Legislative Power Without Safeguarding Provisions", is ¶¶ 63-65 of plaintiffs' September 2, 2016 verified complaint and rests on ¶¶394-402 of their March 23, 2016 verified second supplemental complaint in their prior citizen-taxpayer action (Exhibit A thereto).

> the Commission's recommendations will take effect unless the Legislature and Executive follow the usual constitutional process for enacting a statute. Thus, neither the majority opinion nor the dissent in that case supports plaintiff's contention that the 2015 legislation violates the separation of powers doctrine because it improperly gives Commission recommendations the force of law."

This is multiply false. Plaintiffs' sub-cause A has nothing to do with whether the legislature can constitutionally give "findings and regulations" of a commission the "force of law". At issue are <u>not</u> "findings and regulations", but salary recommendations that will have the "force of law" and "supersede...inconsistent provisions...of law".

That this is unconstitutional was the subject of Assembly bill A.7997 to repeal the "force of law" provision of Chapter 60, Part E of the Laws of 2015– laying out six respects why, *as written*, it is unconstitutional, violating five separate provisions of the New York State Constitution – Article III, §1; Article III, §13; Article III, §14; Article IV, §7; Article III, §6. Plaintiffs' sub-cause A rested on the introducers' memo to the bill – an "admission against interest" – and, additionally, the New York City Bar Association's devastating *amicus curiae* brief to the Court of Appeals in *McKinney v. Commissioner of the New York State Department of Health* – a case challenging the same statute as challenged in *St. Joseph's Hospital v. Novello*. Yet because these two documents evidentiarily "support[] plaintiff's contention that the 2015 legislation violates the separation of powers doctrine because it improperly gives commission recommendations the force of law" – and so much so that Judge Hartman is unable to distort Assembly bill A.7997, its introducers' memo, and the City Bar's *amicus curiae* brief to purport otherwise – she conceals them, just as AAG Kerwin and AAG Lynch had done.

Indeed, Judge Hartman conceals the ENTIRE content of plaintiffs' sub-cause A, other than a single aspect, which she distorts so as to claim "Plaintiff's reliance on the dissent in *St. Joseph's Hospital v. Novello* is misplaced". It is not "misplaced" – as Judge Hartman well knows in concealing what "plaintiff's reliance" consisted of. This was stated at plaintiffs' ¶390, as follows:

> "390. In *St. Joseph Hospital, et al. v. Novello, et al.*, 43 A.D.3d 139 (2007), a case challenging a statute that gave 'force of law' effect to a special commission's recommendations – Chapter 63, Part E, of the Laws of 2005 – then Appellate Division, Fourth Department Justice Eugene Fahey, writing in dissent, deemed the statute unconstitutional, violating the presentment clause and separation of powers:
>
> > 'It is apparent that the Legislation inverts the usual procedure utilized for the passage of a bill. According to the usual procedure, a bill is presented to the Governor for his or her signature or veto after passage by the Senate and the Assembly. Should the Governor sign the bill, it becomes law; should the bill be vetoed, the veto may be overridden by a two-thirds vote of the Legislature. Here, the Legislation creates a process that allows the recommendations of the

> Commission to become law without ever being presented to the Governor after the action of the Legislature.' *Id*, 152."

As clear from this quote, dissenting judge – now Court of Appeals Associate Justice – Fahey did not limit himself to the so-called "legislative veto" aspect of the commission statute that was challenged in *St. Joseph Hospital v. Novello*. Rather, "the constitutional infirmity that concerned the dissent" was, in the first instance, the "force of law" provision that "inverts the usual [legislative] procedure" because it "creates a process that allows the recommendations of the Commission to become law without ever being presented to the Governor after the action of the Legislature" – and this is recognized by the New York City Bar's *amicus curiae* brief in *McKinney v. Commissioner of the New York State Department of Health* – the subject of plaintiffs' ¶391. The pertinent portion of the City Bar's *amicus curiae* brief containing the excerpt of Judge Fahey's dissent in *St. Joseph Hospital v. Novello* so-reflects. It reads:

> "Even if one assumes, arguendo, that the legislature could pass a bill through legislative inaction, the Berger Commission recommendations would violate the presentment clause of the State Constitution, which provides that '[e]very bill which shall have passed the senate and assembly shall, before it becomes a law, be presented to the governor.' N.Y. Const. art. IV, §7. As explained recently in *St. Joseph Hosp. v. Novello*, the Enabling Legislation 'inverts the usual [legislative] procedure' because it 'creates a process that allows the recommendations of the Commission to become law without ever being presented to the Governor after the action of the Legislature.' *St. Joseph's Hosp. v. Novello*, 840 N.Y.S.2d 263, 273, 2007 WL 2044870, at *8 (4th Dep't 2007)(Fahey, J., dissenting)." (at p. 31, underlining added).

This "presentment clause" violation is the constitutional infirmity "at issue here". However, at bar the situation is more egregious because the "force of law" Commission recommendations supersede statutory law. Additionally, and as alleged at plaintiffs' ¶393, Chapter 60, Part E, of the Laws of 2015 contains no severability provision – an allegation that Judge Hartman also conceals.

Moreover, the so-called "usual constitutional process for enacting a statute" does not exist in any meaningful sense because, as reflected by ¶33 of plaintiffs' September 2, 2016 verified complaint, rank-and-file legislators are impeded from advancing legislation through committee and onto the Senate and Assembly floor by legislative rules that vest autocratic power in the Temporary Senate President and Assembly Speaker, who additionally have amplified their control, unconstitutionally, through the legislative budget.

Judge Hartman's fourth and final paragraph (at p. 7) pertains to plaintiffs' sub-cause B. It so completely conceals the ENTIRE CONTENT of plaintiffs' sub-cause B that it does not even identify that sub-cause B pertains to specified deficiencies in safeguarding provisions, including the "defined guidelines for the Commission to consider". It reads:

> "Nor has plaintiff established that the statute otherwise unconstitutionally delegates legislative powers to the Commission. Although the Commission is entitled to make binding recommendations regarding the pay of public officers and officials, plaintiff has not shown that, by granting such power to the Commission, the Legislature has ceded its 'fundamental legislative or policymaking authority' (*Med. Socy. v Serio*, 100 NY2d 854, 864 [2003]). The Commission bill provides a specific task and defined guidelines for the Commission to consider in furtherance of that task (L 2015, ch 60, Part E 3; *see McKinney v Commr. of the N.Y. State Dept. of Health*, 41 AD3d 252, 253 [1st Dept 2007], *lv denied* 9 NY3d 815 [2007]). Accordingly, plaintiff has not established her entitlement to judgment as a matter of law on either of her separation of powers sub-causes of action." (at p. 7)

Suffice to say that Judge Hartman's concealment and failure to confront the insufficiency of the safeguarding provisions specified by plaintiffs' sub-cause B, *to wit*, the Commission's insufficient size and lack of geographic and political diversity; the inadequacy of the six enumerated factors that the Commission is required to take into account, and specifically, the absence from the factors of corruption and the statutory linkage between judicial salaries and district attorney salaries, replicates the comparable concealment and failure to confront these deficiencies by AAG Kerwin and AAG Lynch – as to which plaintiffs had furnished Judge Hartman with the pertinent details by their May 15, 2017 memorandum of law (at pp. 19-23) and, prior thereto, by their September 30, 2016 memorandum of law (pp. 27-31).

The Decision's "Sub-Cause C – Article XIII, Section 7" (at pp. 7-9)

Sub-cause C[7] is the only sub-cause to which Judge Hartman gives reasoned argument for denying plaintiffs summary judgment. She conceals, however, that her argument is entirely *sua sponte*, having not been advanced by AAG Lynch who furnished NO argument in opposition to this sub-cause, just as none was ever furnished by AAG Kerwin prior thereto – or by any assistant attorney general defending against the identical sub-cause of action in plaintiffs' March 28, 2012 verified complaint in their declaratory judgment action, which their first citizen-taxpayer action incorporated. That being said, Judge Hartman does not support her reasoned argument with either treatise authority or caselaw for the proposition that Article XIII, §7 does not bar increasing the salary of state judges because it is a more general provision than Article VI, §25, which contains no proscription on increasing judicial compensation, unlike the more specific provision pertaining to legislators, Article

[7] Plaintiffs' sub-cause C, entitled "Chapter 60, Part E, of the Law of 2015 Violates Article XIII, §7 of the New York State Constitution", is ¶¶66 of their September 2, 2016 verified complaint and rests on ¶¶403-406 of their March 23, 2016 verified second supplemental complaint in their prior citizen-taxpayer action (Exhibit A thereto).

III, §6, which proscribes increases as to them. Nor does Judge Hartman confront that the Court of Appeals avoided the applicability of Article XIII, §7 to judges in deciding *Maron v. Silver*, 14 NY3d 230 (2010) – as pointed out by plaintiffs' incorporated ¶¶404-405 of sub-cause C.

Finally, Judge Hartman concludes her argument by expanding plaintiffs' sub-cause C challenge beyond judicial salaries to the salaries of other constitutional officers, in order to cite to a proposition having no relevance and which she distorts. She states (at p. 9):

> "And to the extent that plaintiff argues that the 2015 legislation creating the Commission unconstitutionally provides for a pay raise to legislators or the State's constitutional officers during the terms in which they have been elected or appointed, given that no pay raise has been recommended or effected, she has not established that 'no set of circumstances exists under which the Act would be valid' (*Moran Towing*, 99 NY2d at 448)."

Plaintiffs' sub-cause C makes no such argument. It does NOT challenge the constitutionality of "the Act" beyond judges – and this is clear from its content, culminating in its concluding ¶406 reading:

> "Because Chapter 60, Part E, of the Laws of 2010, *as written*, allows the Commission to effectuate salary increases for judges during their terms, it violates Article XIII, §7 and is unconstitutional."

The Decision's Sub-Cause D – Article VII, Sections 2, 3, and 6" (at p. 9)

The single paragraph of this section, purporting to address plaintiffs' sub-cause D[8], reads:

> "Plaintiff has also failed to satisfy her summary judgment burden with respect to her argument that the budget bills resulting in the enactment of the bill creating the Commission (S4610/A6721 2015) violated New York State Constitution Article VII, Sections 2, 3, and 6. Plaintiff has not established that the violations she claims are justiciable or that she is entitled to any relief. The fact that the State Constitution requires the Governor to submit a budget and budget bills before February 1st does not mean that a citizen has standing to seek a court order invalidating legislation passed in violation of that requirement. Likewise, whether the Commission's enabling legislation represents an expenditure or provides revenue, or 'relate[s] specifically to some particular appropriation in the bill' may be political questions and not judiciable in this action (*see Pataki v. N.Y. State Assembly*, 4 NY3d 75, 95-97 [2004])."

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[8] Plaintiffs' sub-cause D, entitled "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", is ¶67 of their September 2, 2016 verified complaint and rests on ¶¶407-412 of their March 23, 2016 verified second supplemental complaint in their prior citizen-taxpayer action (Exhibit A thereto).

These grounds for denying plaintiffs summary judgment on this sub-cause are entirely *sua sponte*, having not been advanced by AAG Lynch who was so unable to concoct any defense to this sub-cause that her April 21, 2017 opposition papers purported that it had not been preserved by Judge Hartman's December 21, 2016 decision – a fraud exposed by plaintiffs' May 15, 2017 reply memorandum of law (at pp. 19-20).

Notably, Judge Hartman does not identify that her grounds for denying plaintiffs' summary judgment on sub-cause D are *sua sponte*. Nor does she actually state that a citizen lacks standing to challenge violations of Article VII, §§2 and 3 pertaining to the budget or that violations of Article VII, §6 are "political questions and not judiciable in this action".

That standing is NOT at issue may further explain why – to conceal that fact – Judge Hartman's June 26, 2017 decision does not disclose that this is a citizen-taxpayer action, either here or elsewhere.

The "legislative purpose" provision of the citizen-taxpayer statute, State Finance Law Article §123 – enacted following the Court of Appeals decision in *Boryszewski v. Bridges'*, 37 N.Y.2d 361 (1975), which itself is clear on the subject of standing – is unequivocal in eliminating any question of standing in stating:

> "It is the purpose of the legislature to recognize that each individual citizen and taxpayer of the state has an interest in the proper disposition of all state funds and properties. Whenever this interest is or may be threatened by an illegal or unconstitutional act of a state officer or employee, the need for relief is so urgent that any citizen-taxpayer should have and hereafter does have a right to seek the remedies provided for herein."

Indeed, State Finance Law §123 is quoted by plaintiffs' September 2, 2016 verified complaint, on its first page, as a preface, just as it is the first page preface to plaintiffs' March 28, 2014 verified complaint in the predecessor citizen-taxpayer action where, also quoted, is *Korn v. Gulotta*, 72 NY2d 363, 372-373 (1988):

> "A budget is a statement of the financial position of the government, for a definite period of time, based upon an estimate of proposed expenditures and anticipated revenues...The method by which public budgets are prepared is governed by the State Constitution and the applicable State statutes. The requirements contained in those documents are not particularly burdensome and permit the executive and the legislative officials considerable freedom of action in implementing governmental operations and programs and providing for the revenues to fund them. The legal requirements they contain, however, are grounded in the general principles of fiscal responsibility and the accountability that underpins the regulation of all public conduct and they must be followed." (underlining in plaintiffs' March 28, 2014 verified complaint).

Korn v. Gulotta – a case brought by a private citizen wherein the Court of Appeals and the lower courts invalidated the Nassau County budget – establishes that plaintiffs have standing. Likewise, *New York State Bankers Association v. Wetzler*, 81 NY2d 98 (1993), wherein the Court of Appeals and lower courts invalidated a provision of the state budget upon the suit of private citizens constituted as a bankers association. And nothing could be clearer than the 2002 Supreme Court decision in *Silver v. Pataki*, 192 Misc.2d 117, 125, whose quote with respect to *New York State Bankers Association v. Wetzler*, that it:

> "illustrates that the traditional form of budget adoption by agreement of the Legislature and the Governor can give third parties rights when constitutionally prescribed procedures are not strictly followed, and raises the specter that other provisions in appropriation bills enacted in past years may be vulnerable to challenge."

was furnished both by plaintiffs' May 15, 2017 reply memorandum of law (at pp. 41) and by plaintiff Sassower's May 15, 2017 reply affidavit (at ¶22). Thus may be seen why Judge Hartman does NOT actually state that plaintiff Sassower lacks standing to challenge the Article VII, §§2 and 3 violations of sub-cause D – for which she offers not the slightest legal authority nor suggestion as to who would have standing.[9] Her inference is utter fraud.

As for Judge Hartman's citation to the Court of Appeals decision in *Silver v. Pataki*, 4 NY3d 75, 95-97 [2004], for her pretense that violation of the anti-rider provision of Article VII, §6 "may be political questions and not judiciable in this action" – making NO determination thereof – such is also utter fraud, as the Court of Appeals' plurality opinion therein held same to be justiciable – including in the cited pages 95-97 and the culminating penultimate paragraph at page 99 so-reflects:

> "We therefore leave for another day the question of what judicially enforceable limits, if any, beyond the anti-rider clause of article VII, §6 the Constitution imposes on the content of appropriation bills." (underlining added).

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[9] As the Court of Appeals stated in *Boryszewki*, at 364:

> "We are now prepared to recognize standing where, as in the present case, the failure to accord such standing would be in effect to erect an impenetrable barrier to any judicial scrutiny of legislative action. In the present instance it must be considered unlikely that the officials of State government who would otherwise be the only ones having standing to seek review would vigorously attack legislation under which each is or may be a personal beneficiary. Moreover, it may even properly be thought that the responsibility of the Attorney-General and of other State officials is to uphold and effectively to support action taken by the legislative and executive branches of government. As Judge Fuld wrote generally in *St. Clair* [*v. Yonkers Raceway*, 13 NY2d 72, 79 (1963)]... 'The suggestion *** that the Attorney-General and other state officials may be relied upon to attack the constitutional validity of state legislation is both unreal in fact and dubious in theory'. His estimate of the situation has been verified in the years since *St. Clair*."

The Decision's "Sub-Cause E – Fraud and Due Process" (at p. 10)

Judge Hartman disposes of plaintiffs' sub-cause E[10] as follows:

> "The final allegation in plaintiff's sixth cause of action is that the budget bills creating the Commission were enacted fraudulently and in violation of due process. These allegations have already been rejected by the Court in its Amended Decision and Order dated December 21, 2016.

This is outright fraud. The December 21, 2016 decision does not "reject[]" sub-cause E – and Judge Hartman does not identify where and by what language her December 21, 2016 decision does so. Indeed, her summarizations of her December 21, 2016 decision, at the outset of the June 26, 2017 decision (at p. 2) and at the outset of her May 5, 2017 decision (at p. 1), also do not purport that the sixth cause of action was not fully preserved by her December 21, 2016 decision. That she here makes such bald claim is completely contrived – and replicates AAG Lynch's deceit, by her April 21, 2017 opposition papers, that only the first and third of the sub-causes had been preserved, exposed by pages 16-18 of plaintiffs' May 15, 2017 reply memorandum of law, to which Judge Hartman makes no reference. Such deceit is because – as the allegations of sub-cause E plainly reveal – plaintiffs' have a summary judgment entitlement to a declaration of unconstitutionality based thereon.

Judge Hartman then continues with a further paragraph,

> "In sum, plaintiff has not demonstrated that she is entitled to judgment as a matter of law on any of the allegations contained in her sixth cause of action. Neither plaintiff's repeated allegations of fraud, deceit, and collusion, nor her refusal to accept prior court decisions on virtually the same issues satisfies her burden on a motion for summary judgment."

Notwithstanding the first sentence of this paragraph seems to address itself to all sub-causes of plaintiffs' sixth cause of action – indeed to all the allegations of the sixth cause of action – the second sentence, by its references to "fraud, deceit and collusion", would seem to relate to the last sub-cause. That being said, apart from Judge Hartman's conclusory falsehood in her immediately preceding paragraph that her December 21, 2016 decision rejected the fifth sub-cause, there are <u>no</u> other "prior court decisions" to have rejected it.

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[10] <u>Plaintiffs' sub-cause E</u> is entitled "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". It is ¶68 of their September 2, 2016 verified complaint and rests on ¶¶413-423 of their March 23, 2016 verified second supplemental complaint in their prior citizen-taxpayer action (Exhibit A thereto).

The Decision's Section Entitled
"Motion for Leave to File Supplemental Complaint" (at p. 10-11)

In a single paragraph which does not identify ANY of the facts, law, and legal argument presented by plaintiffs, Judge Hartman denies the second branch of their March 29, 2017 order to show cause for leave to file a supplemental complaint, as follows:

> "Plaintiff's motion to file a supplemental complaint is denied. '[L]eave to amend a complaint rests within the trial court's discretion and should be freely granted in the absence of prejudice or surprise resulting from the delay except in situations where the proposed amendment is wholly devoid of merit." (*Moon v. Clear Channel Communs., Inc.*, 307 AD2d 628, 629 [3d Dept 2003]). All but one cause of action in the proposed supplemental complaint simply restate for budget year 2017-2018 causes of action that the Court has already determined to be devoid of merit. The remaining proposed cause of action merely restates the facial challenge to the 2015 legislation creating the Commission. It contains no material 'additional or subsequent transaction or occurrences' that would warrant a supplemental pleading (CPLR 3025[b])."

Immediately obvious is that Judge Hartman's cited case is inapposite, *inter alia*, because it involves "leave to amend" – as her quoted excerpt plainly reflects. Second, the sole basis for Judge Hartman's denying plaintiffs leave to supplement is her December 21, 2016 decision dismissing nine causes of action as "devoid of merit". This is fraud.

<u>The record before Judge Hartman with respect to the nine causes of action her December 21, 2016 dismissed establishes plaintiffs' entitlement to summary judgment as to each.</u> This is particularized by plaintiffs' Exhibit U analysis of her December 21, 2016 decision, demonstrating that decision to be a criminal fraud – and Judge Hartman has not contested the accuracy of that analysis in any respect, just as, likewise, neither AAG Lynch nor AAG Kerwin had. Her concealment of the analysis, by her May 5, 2017 decision, reinforces its obvious truth, *as a matter of law*.

<u>Likewise, the record before Judge Hartman on plaintiffs' reiterated nine causes of action of their March 29, 2017 proposed verified supplemental complaint establishes plaintiffs' summary judgment entitlement as to each.</u> This was highlighted and demonstrated by plaintiffs, over and again, beginning with plaintiff Sassower's March 29, 2017 moving affidavit and culminating in her May 15, 2017 reply affidavit and plaintiffs' May 15, 2017 memorandum of law, whose accuracy Judge Hartman's June 26, 2017 decision does not contest, in any respect.

The Decision's Section Entitled
"Requests for Preliminary Relief and Subpoenas Duces Tecum" (at p. 11)

Having denied plaintiffs' second branch of their March 29, 2017 order to show cause for leave to supplement, based on her December 21, 2016 decision, Judge Hartman denies, as moot, plaintiffs' "requests for preliminary declaratory and injunctive relief and subpoenas duces tecum for State Senate and Assembly records". As Judge Hartman's December 21, 2016 decision is a fraud – so-established by plaintiffs' Exhibit U analysis – so, too, her denial of plaintiffs' subpoenas. Such subpoenas would, as she knows, not only further PROVE plaintiffs' entitlement to summary judgment on the fourth and fifth causes of action of their March 29, 2017 proposed supplemental complaint, already documentarily established in the record before her, but, additionally, their entitlement to summary judgment on the fourth and fifth causes of action of their September 2, 2016 verified complaint, fraudulently dismissed by her December 21, 2016 decision.

The Decision's Single Ordering Paragraph (at p. 11)

Judge Hartman's single ordering paragraph reads: "ORDERED that plaintiff's motion brought on by order to show cause dated March 29, 2017, is denied in its entirety". Such disposition cannot be justified, resting, as it does, on the obliteration of ALL cognizable adjudicative standards and the entirety of the record before her, as herein demonstrated.

The Decision's CPLR §2219(a) Recitation of "Papers Considered" (at p. 12)

Justice Hartman ends her decision by a CPLR §2219(a) listing of "Papers Considered", which omits the mountain of documentary proof that plaintiff Sassower brought to the courthouse on March 29, 2017 to substantiate plaintiffs' entitlement to summary judgment on the fourth and fifth causes of action of their March 29, 2017 proposed supplemental complaint – and to the granting of the TRO and preliminary injunction sought by their March 29, 2017 order to show cause by reason thereof. Such mountain of proof is identified by plaintiffs' May 15, 2017 memorandum of law (at p. 27) and at ¶¶7-8 of plaintiff Sassower's May 15, 2017 reply affidavit, which reads, in pertinent part:

> "7. ...annexed is the transcript of the March 29, 2017 oral argument (Exhibit 5). It reflects that over and over again, on March 29, 2017, I reiterated that plaintiffs were entitled to a TRO and preliminary injunction to enjoin further action on the Senate and Assembly 'amended' budget bills because their facial violations of Article VII, §4 of the New York State Constitution and of the controlling consolidated decision of the New York Court of Appeals in *Silver v. Pataki/Pataki v. Assembly & Senate*, 4 NY3d 75 (2004), verifiable by comparing them to the Governor's budget bills, entitled plaintiffs to summary judgment – and that I had brought all such budget bills with me, to the courthouse, for an evidentiary hearing then and there, or, alternatively, for an evidentiary hearing to be held on March 31, 2017.

8. The voluminous budget bills that I brought to the courthouse on March 29, 2017 to establish plaintiffs' *prima facie* entitlement to the injunctive and declaratory relief sought were **three full sets of the Governor's original budget bills, the Senate's budget bills which it purported to have 'amended' on March 13, 2017 and March 20, 2017, the Assembly's budget bills which it purported to have 'amended' on those same dates – plus three sets of the Senate and Assembly 'one-house budget resolutions' – these three sets being for the Court, for the Attorney General, and for myself. I also brought a single set of the Governor's 30-day amended bills.** This is itemized by my March 30, 2017 e-mail to Deputy Attorney General Meg Levine (Exhibit 7-b) – with a copy to AAG Lynch and the Court – in which I further stated that I had left the Attorney General's set in chambers, for pick-up, and had filed in the clerk's office the Court's set, together with the Governor's 30-day amended bills." [bold added].