COURT OF APPEALS
STATE OF NEW YORK

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CENTER FOR JUDICIAL ACCOUNTABILITY, INC.
and ELENA RUTH SASSOWER, individually and
as Director of the Center for Judicial Accountability, Inc.,
acting on their own behalf and on behalf of the People
of the State of New York & the Public Interest,

June 6, 2019

Plaintiffs-Appellants,

SSD23 – APL-2019-00029
(Div. 3rd Dept #527081)

NOTICE OF MOTION FOR LEAVE TO APPEAL Pursuant to Article VI, §3(b)(6) of the New York State Constitution

-against-

ANDREW M. CUOMO, in his official capacity as Governor
of the State of New York, JOHN J. FLANAGAN in his official
capacity as Temporary Senate President, THE NEW YORK
STATE SENATE, CARL E. HEASTIE, in his official capacity
as Assembly Speaker, THE NEW YORK STATE ASSEMBLY,
ERIC T. SCHNEIDERMAN, in his official capacity as Attorney
General of the State of New York, THOMAS P. DiNAPOLI,
in his official capacity as Comptroller of the State of New York,
and JANET M. DiFIORE, in her official capacity as Chief Judge of the
State of New York and chief judicial officer of the Unified Court System,

Defendants-Respondents.

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Upon the annexed application of the unrepresented individual plaintiff-appellant Elena Ruth Sassower, sworn to on June 6, 2019, the exhibits annexed thereto, and upon all the papers and proceedings heretofore had, the unrepresented plaintiff-appellants

will move this Court at 20 Eagle Street, Albany, New York 12207 on Monday, July 8, 2019 at 10:00 a.m. or as soon thereafter as defendant-respondents can be heard for an order:

(1) pursuant to Article VI, §3(b)(6) of the New York State Constitution:

a. "certify[ing]" the Court's "opinion [that] a question of law is involved which ought to be reviewed by the court of appeals";

b. "allow[ing]" the appeal as "required in the interest of substantial justice."

(2) granting such other and further relief as may be just and proper, including $100 motion costs pursuant to CPLR §8202.

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR §2214(b), answering papers, if any, are to be served on plaintiff-appellants seven days before the return date by e-mail and regular mail, *to wit*, July 1, 2019.

Yours, etc.

ELENA RUTH SASSOWER,
unrepresented plaintiff-appellant, individually &
as Director of the Center for Judicial Accountability, Inc.,
and on behalf of the People of the State of New York &
the Public Interest

Dated: White Plains, New York
75th Anniversary of D-Day – June 6, 2019

TO: New York State Attorney General Letitia James
The Capitol
Albany, New York 12224-0341
ATT: Solicitor General Barbara Underwood
Assistant Solicitor General Victor Paladino
Assistant Solicitor General Frederick Brodie

Questions Presented for Review
(22 NYCRR §500.22(b)(4))

Whether this Court, having dismissed, *sua sponte*, the appeal of right, taken pursuant to Article VI, §3(b)(1) of the New York State Constitution "upon the ground that no substantial constitutional question is directly involved", is of the "opinion" that there is an appeal by leave, pursuant to Article VI, §3(b)(6), because the Appellate Division, Third Department's December 27, 2018 Memorandum and Order in this citizen-taxpayer action:

(a) involves "question[s] of law... which ought to be reviewed by the court of appeals"; and/or

(b) is so totally devoid of any semblance of justice as to "require[]' that the appeal "shall be allowed...in the interest of substantial justice."

Procedural History – Timeliness Chain
22 NYCRR §500.22(b)(2)(i)

On December 27, 2018, appellants were served, by mail, with notice of entry (Exhibit B) for the Appellate Division's December 27, 2018 Memorandum and Order. (Exhibit A-1).

On January 26, 2019, appellants served, by mail, their notice of appeal to the Court of Appeals, pursuant to Article VI, §3(b)(1) of the New York State Constitution and CPLR §5601(b)(1) (Exhibit C-1), which was received by the Albany County Clerk's Office on January 30, 2019 (Exhibit C-2). Specified by the notice of appeal

and attached thereto, in addition to the Appellate Division's December 27, 2018 Memorandum and Order (Exhibit A-1), were the Appellate Division's:

> "four Decisions and Orders on Motions, dated and entered August 7, 2018 (Exhibit [A-2]), October 23, 2018 (Exhibit [A-3]), November 13, 2018 (Exhibit [A-4), and December 19, 2018 (Exhibit [A-5]), pertaining to threshold appellate integrity issues and the prohibition of Judiciary Law §14 divesting the justices of jurisdiction (*Oakley v. Aspinwall*, 3 N.Y. 547 (1850))."

On May 7, 2019, appellants were served, by mail, with notice of entry (Exhibit D-1) for the Court of Appeals' May 2, 2019 Order (Exhibit D-2) *sua sponte* dismissing appellant Sassower's appeal of right:

> "upon the ground that no substantial constitutional question is directly involved and, from the remaining Appellate Division orders, upon the ground that such orders do not finally determine the action within the meaning of the Constitution."

On June 1, 2019, appellants served, by mail, their May 31, 2019 motion for reargument/renewal & vacatur of the May 2, 2019 Order, determination/certification of threshold questions, disclosure/disqualification & other relief, returnable on July 8, 2019, simultaneous with this motion. The affidavit of service is attached thereto – and that motion, in its entirety, germane and impacting on this motion, is incorporated by reference.[1]

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[1] All the threshold issues on that motion are threshold issues on this motion, beginning with whether the Court's associate judges can constitutionally "sit" and "take any part" in this case, absent their invocation of "Rule of Necessity" and whether the jurisdictional bar of Judiciary Law §14 precludes them from invoking such judge-made rule to give to themselves the jurisdiction the statute removes from them.

On June 7, 2019, appellants served, by mail, this June 6, 2019 motion for leave to appeal pursuant to Article VI, §3(b)(6) of the New York State Constitution and CPLR §5602(a)(1)(i). The affidavit of service is attached herewith.

Jurisdiction
22 NYCRR §500.22(b)(3)

This Court's jurisdiction to review the Appellate Division's December 27, 2018 Memorandum and Order (Exhibit A-1) is pursuant to Article VI, §3(b)(6) of the New York State Constitution. Also conferring jurisdiction is CPLR §5602, additionally relevant because it states:

> "Permission by the court of appeals for leave to appeal shall be pursuant to rules authorized by the court which shall provide that leave to appeal be granted upon the approval of two judges of the court of appeals." (at ¶a).[2]

The Court's jurisdiction to review the Appellate Division's four Decisions and Orders on Motion (Exhibits A-2, A-3, A-4, A-5) is pursuant to CPLR §5501(a)(1),

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2 This Court's Rule 500.22 entitled "Motions for Permission to Appeal in Civil Cases" does not so-provide – and has not since it first appeared in 2006, replacing what had been Rule 500.11(d) entitled "Permission to Appeal in Civil Cases". For 20 years, Rule 500.11(d) had included the sentence:

> "In accordance with the Court's longstanding practice, leave to appeal will be granted upon the concurrence of two judges."

This was required by Chapter 300 of the Laws of 1985, which became the current CPLR §5602 – and was a condition for the changes in the Court's jurisdiction, to a more discretionary docket, which the Court had sought and which Chapter 300 made.

stating: "An appeal from a final judgment brings up for review…any non-final…order which necessarily affects the final judgment". All four of them do.

Why the Questions Presented Merit Review **(22 NYCRR §500.22(b)(4))**

All the reasons mandating an appeal of right, pursuant to Article VI, §3(b)(1) of the New York State Constitution and CPLR §5601(b)(1) – which this Court's May 2, 2019 Order dismissed *sua sponte* (Exhibit D-2) – mandate an appeal by leave pursuant to Article VI, §3(b)(6) of the New York State Constitution. And establishing this are appellants' March 26, 2019 and April 11, 2019 letters to Court Clerk John Asiello in support of their appeal of right.

In the interest of economy, appellants incorporate by reference their March 26, 2019 and April 11, 2019 letters, substantiated by their exhibits, annexed and free-standing, and by the full copy of the record before the Appellate Division, including of their four motions whose purpose was to safeguard the integrity of the appellate proceedings.[3] These present many, many "question[s] of law" that not merely "ought to be reviewed by the court of appeals", but are the Court's duty to review because

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[3] CJA's website, www.judgewatch.org, posts the complete record of this citizen-taxpayer action and its predecessor, accessible from the prominent homepage link: "CJA's Citizen-Taxpayer Actions to End NYS' Corrupt Budget 'Process' and Unconstitutional 'Three-Men-in-a-Room' Governance". The direct link to the webpage for this motion, from which referred-to legal authorities and evidence can be accessed, is here: http://judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/ct-appeals/6-6-19-leave.htm.

they meet the standard that propelled the 1985 CPLR changes to Article VI, §3(b)(1) permitted by Article VI, §3(b)(8) "wherein no question involving the construction of the constitution of the state or of the United States is directly involved", *to wit*, they go to the Court's core function of settling and developing the law in matters of statewide importance.

Additionally, from the "legal autopsy"/analysis of the Appellate Division's December 27, 2018 Memorandum, accompanying appellants' March 26, 2019 letter, the Court can speedily discern that the Memorandum is utterly devoid of any semblance of justice. This triggers the mandatory leave to appeal that Article VI, §3(b)(6) commands "when required in the interest of substantial justice".

As the Court does not appear to have rendered any interpretive decision about this mandatory leave to appeal, contained within the last sentence of Article VI, §3(b)(6), here's some rudimentary analysis:

Article VI, §3(b)(6) reads:

> "3...b. Appeals to the court of appeals may be taken in the classes of cases hereafter enumerated in this section:
> ...
> In civil cases and proceedings as follows:
> ...
> (6) From a judgment or order entered upon the decision of an appellate division of the supreme court which finally determines an action or special proceeding but which is not appealable under paragraph (1) of this subdivision where the appellate division or the court of appeals shall certify that in its opinion a question of law is involved which ought to be reviewed by the court of

> appeals. Such an appeal may be allowed upon application (a) to the appellate division, and in case of refusal, to the court of appeals, or (b) directly to the court of appeals. Such an appeal shall be allowed when required in the interest of substantial justice." (underlining added).

The rules of construction pertaining to the New York State Constitution are the same as for statutes and written instruments:

> "The starting point for any constitutional question must be the language of the constitution itself. The same general rules that govern the construction and interpretation of statutes and written instruments generally apply to, and control in, the interpretation of written constitutions.
> ... there is no room for application of rules of construction so as to alter a constitutional provision that is not ambiguous..."

20 New York Jurisprudence 2nd, §17 "Mode of construction: applicability of principles of statutory construction".

> "...When the language of a constitutional provision is plain and unambiguous, full effect should be given to the intention of the framers as indicated by the language employed and approved by the people. ....
> The courts should not permit explicit language of the constitution to be rendered meaningless, and, in its construction of clear constitutional and statutory provisions, a court may not read out any requirement."

20 New York Jurisprudence 2nd, §25 "Conformity to language".

The meaning of "shall" is mandatory, as opposed to "may" which is discretionary – and the distinction between them is reinforced because they both appear in Article VI, §3(b)(6):

> "…When different terms are used in various parts of a statute or rule, it is reasonable to assume that a distinction between them is intended. McKinney's Consol. Laws of N.Y., Book 1, Statutes, Sec. 236 at 403…
>
> Generally, it is presumed that the use of the word 'shall' when used in a statute is mandatory, while the word 'may' when used in a statute is permissive only and operates to confer discretion, especially where the word 'shall' appears in close juxtaposition in other parts of the same statute. *Metro Burak, Inc. v. Rosenthal & Rosenthal, Inc.*, 51 A.D.2d 1003, 380 N.Y.S.2d 758 (2nd Dept. 1976); 82 C.J.S. Statutes, Sec. 380."

D'Elia on behalf of Maggie M. v. Douglas B., 524 N.Y.S.2d 616, 620 (Fam. Ct. 1983).

And there are additional principles of construction regarding "Peremptory or permissive language":

> "Language peremptory in form is usually given a peremptory meaning[fn24] and the power of courts to disregard the provisions of a statute as directory only should be exercised with great caution.[fn25] Especially is this true where acts of common justice are involved or where officers are commanded to do an act which concerns public interests or the rights of individuals.[26]"

McKinney's Consolidated Laws of New York Annotated, Book 1 (Statutes), §177, 2019 Cumulative Pocket Part.

Suffice to say in 1967, this Court's newly installed Chief Judge, Stanley Fuld, in advocating for the changes he hoped would be achieved through that year's constitutional convention – and which would be effectuated 18 years later by the 1985 changes to CPLR §5602 that would to give the Court a more discretionary docket, described the Court's caseload, responsibilities, and practices in the 18 years he had been on the Court:

> "Our underlying philosophy has been that, although we should devote ourselves primarily to questions of significance in the development and clarification of the general body of law, we may not shirk our responsibility to remedy plain injustice in individual controversies, even though the immediate decision may not have any impact on the State's jurisprudence.
>
> ...
>
> Concern has been expressed that under a system of discretionary jurisdiction, such as I have suggested, some meritorious appeals might be denied a hearing in the Court of Appeals. The fear seems to be that, on a motion for leave to appeal, a case will not receive as full and thorough a study as it would be accorded on oral argument. I would assure the Bar, however, that all cases passed upon by the Court or its judges, whether on motion for leave or on oral argument, are subjected to careful and searching scrutiny. Indeed, we have a liberal practice under which the affirmative votes of only two of the seven judges of the Court are required for the granting of leave to appeal.
>
> Nor has our Court ever been deaf to a plea of injustice. A number of cases come to mind: one recent example will suffice
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> ...
>
> As this and many other of our cases attest, there need be little fear that the Court will refuse any appeal which merits review. ..." (at pp. 101, 103-104).

Chief Judge Fuld's January 27, 1967 address at the annual meeting of the New York State Bar Association, printed in New York State Bar Journal, Volume 39, April 1967, under the title "*The Court of Appeals and the 1967 Constitutional Convention*".

The Court's Rule 500.22 makes no mention of the "interest of substantial justice" ground for the granting of leave – and the 2005 edition of Powers of the New York Court of Appeals by Arthur Karger reflects as much. Under the §10:3 heading "Appeal by leave of Court of Appeals from final determination", with a footnote 17

citing Judge Fuld's above New York State Bar Journal article, Karger struggles with his own interpretation, as follows:

> "...the primary, though not the sole, function of the Court of Appeals is conceived to be that of declaring and developing an authoritative body of decisional law for the guidance of the lower courts, the bar and the public, rather than merely correcting errors committed by the courts below.[fn17]
>
> Indeed, the Court stated in an early case that leave to appeal would not be granted unless that case involved a question of public interest or conflict between departments or an error of law 'which, if permitted to pass uncorrected, will be likely to introduce confusion into the body of law.'[fn18] However, that [1896] case was decided long before the adoption in 1925 of the revised Judiciary Article of the State Constitution from which the present Judiciary Article was basically derived.[fn19] That Article made clear that the Court of Appeals sits, not only to settle and develop the law, but also to correct errors committed in individual cases, even to the extent of reviewing questions of fact in certain situations pursuant to enlarged powers conferred on it in that regard by the new Article.[20]
>
> The precise procedure for making a motion in the Court of Appeals for leave to appeal to that Court is set forth in section 500.11(d) of its Rules of Practice. That section requires the movant to show, *inter alia*, 'why the questions presented merit review by the court,' and it then specifies, as examples of such a showing, that the questions 'are novel or of public importance, or involve a conflict with decisions of this court, or there is a conflict among the Appellate Divisions.'[fn21]
>
> The movant should therefore attempt to show, if possible, that the case involves questions of the kind mentioned in the foregoing rule. However, the rule does not provide that the examples mentioned therein are the only instances in which leave to appeal may be granted, and leave would appear to be warranted if a strong showing is made of reversible error on the part of the Appellate Division, even in the absence of any novel or important question of law.
>
> Thus, the constitutional provisions governing the granting of leave to appeal to the Court of Appeals from a final determination of the Appellate Division provide that '[s]uch an appeal shall be allowed when required in the interest of substantial justice.'[fn22] Moreover, a showing of reversible error of law in the particular case would itself come directly

> within the ambit of one of the examples specified in the rule if the error represented 'a conflict with prior decisions' of the Court of Appeals.
>
> Though the power of review of the Court of Appeals is in general limited to questions of law, it is authorized to review questions of fact where the Appellate Division, on reversing or modifying a final or interlocutory determination, has expressly or impliedly found new facts and a final determination pursuant thereto is entered.[fn23] It is uncertain what approach the Court of Appeals would take on a motion for leave to appeal in such a case if the only showing in support of the motion, though very strong, related to error on the part of the Appellate Division in deciding the questions of fact.
>
> CPLR 5602(a) provides, by way of codification of the Court's prior practice, that leave to appeal shall be granted upon the approval of two of the Judges of the Court of Appeals." (at pp. 331-332).

At bar, this is not an appeal where the "only showing" is "error on the part of the Appellate Division in deciding the questions of fact". There are, however, an avalanche of factual "errors" demonstrated by appellants' "legal autopsy"/analysis of the December 27, 2018 Memorandum, as for instance:

(1) its factual "error" (Exhibit A-1, at p. 3) that Judge Hartman's decisions "do not evince any instance of fraudulent conduct, concealment or misrepresentation", when appellants' "legal autopsy"/analyses of her decisions [R.554-577; R.1002-1007; R.1293-1319; R.9-30] PROVES each to be a judicial fraud, obliterating ALL cognizable adjudicative standards to grant respondents relief to which they were not entitled, *as a matter of law*, and to deny appellants' relief to which they were entitled, *as a matter of law*;[4]

(2) its concealment, without adjudication (Exhibit A-1, at p. 4) of the fact of Attorney General's litigation fraud before Judge Hartman, PROVEN by ALL appellants' reply/opposition submissions [*inter*

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[4] Appellants' "legal autopsy"/analysis of the Appellate Division Memorandum (at pp. 10-11).

alia, R.474-514; R.922-973; R.1014-1038; R.1328-1375], which Judge Hartman also concealed, without adjudication;[5]

(3) its factual "error", by its unidentified modification (Exhibit A-1, at p. 8) of Judge Hartman's dismissal of appellants' eighth cause of action, which had been on her *sua sponte* ground, unsupported by any law, that the Commission on Legislative, Judicial and Executive Compensation was not a party, by its own *sua sponte* factual finding that "the record shows that the Commission [on Legislative, Judicial and Executive Compensation] considered the requisite statutory factors" – a factual finding not only "erroneous" because it is UNSUPPORTED by "the record", but REBUTTED by "the record";[6]

(4) its factual "error", in affirming Judge Hartman's "prior dismissal of section E of the sixth cause of action" (Exhibit A-1, at p. 7 (at fn. 3)) when such "prior dismissal" does NOT in fact exit;[7]

(5) its factual "error" in affirming Judge Hartman's judgment (Exhibit A-1, at p. 9) whose single decretal paragraph has NOTHING to do with any challenge made by appellants' sixth cause of action.[8]

This is also not an "individual case" involving private parties and with no public impact – as was the "recent example" Judge Fuld described in January 1967 to the New York State Bar Association in support of his assertion "Nor has our Court ever been deaf to a plea of injustice". Nor is this a case where the "reversible error[s] of law" do not "'conflict with prior decisions' of the Court of Appeals". Consequently,

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5 Appellants' "legal autopsy"/analysis of the Appellate Division Memorandum (at pp. 11-13).

6 Appellants' "legal autopsy"/analysis of the Appellate Division Memorandum (at pp. 26-27).

7 Appellants' "legal autopsy"/analysis of the Appellate Division Memorandum (at pp. 18-19).

8 Appellants' "legal autopsy"/analysis of the Appellate Division Memorandum (at p. 32).

none of these scenarios negate the appeal which Article VI, §3(b)(6) mandates "in the interest of substantial justice".

Indeed, before the Court on this appeal is, doubtless, one of the most monumental cases to come before it, ever: a citizen-taxpayer action, expressly "on behalf of the People of the State of New York & the public interest", suing New York State's highest constitutional officers of its three governmental branches for corruption, on a record establishing that appellants have an open-and-shut, *prima facie* entitlement to declarations that the state budget and commission-based judicial salary increases it embeds are unconstitutional, unlawful, and fraudulent – and where the "reversible error[s] of law" of the Appellate Division are so profound that, except where there are no "prior decisions" of this Court on a given subject – as, for instance, the "interest of the state" predicate for the Attorney General's litigation posture pursuant to Executive Law §63.1 – the so-called "errors of law" are ALL in diametric conflict with ALL "prior decisions" of this Court. As illustrative of an endless list[9]:

- *Oakley v. Aspinwall*, 3 NY 547 (1850) [R.515], and *Wilcox v. Supreme Council of Royal Arcanum*, 210 NY 370 (1914),[10] pertaining to Judiciary Law §14 and the duty of

[9] The below cited "prior decisions" were ALL before the Appellate Division – sometimes many times. The single bracketed or footnoted record citations that follow are to the first time appellants cited them in the record.

[10] Appellants October 15, 2018 e-mail to Appellate Division, annexed as Exhibit L to appellant Sassower's November 13, 2018 reply affidavit in support of 3rd motion to the Appellate Division (October 23, 2018 notice of motion).

disclosure/disqualification it imposes on an interested judge, who it divests of jurisdiction to "sit" and "take any part", **repudiated** by the Appellate Division, both with respect to itself and Judge Hartman (Exhibit A-1, p. 3);[11]

- Matter of Rowe, 80 NY2d 336, 340 (1992) [R.524], that "the courts are charged with the responsibility of insisting that lawyers exercise the highest standards of ethical conduct", and Greene v. Greene, 47 NY2d 447, 451 (1979) [R.519] pertaining to attorney conflict of interest, **repudiated** by the Appellate Division's concealment of the Attorney General's litigation fraud and conflicts of interest, both before it and before Judge Hartman;[12]

- EBC I, Inc. v. Goldman, Sachs & Co., 5 NY3d 11, 19 (2005) [R.568] reiterating the BASIC controlling standards that govern dismissal for failure to state a cause of action pursuant to CPLR §3211(a)(7), **repudiated** by the Appellate Division's so-called "affirmances", sometimes actually *sub silentio* modifications, of Judge Hartman's dismissals of nine of appellants' ten causes of action;[13]

- Zuckerman v. City of New York, 49 NY2d 557 (1980) [R.929], reiterating the BASIC controlling standards governing summary judgment pursuant to CPLR §3212, **repudiated** by the Appellate Division's affirmance of Judge Hartman's granting of summary judgment to respondents on appellants' sixth cause of action – excepting its section E, whose NON-EXISTENT dismissal by Judge Hartman the Appellate Division affirmed in a completely conclusory single-sentence footnote;[14]

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[11] Appellants' "legal autopsy"/analysis of the Appellate Division Memorandum (at pp. 2-3,7-9).

[12] Appellants' "legal autopsy"/analysis of the Appellate Division Memorandum (at pp. 11-13).

[13] Appellants' "legal autopsy"/analysis of the Appellate Division Memorandum (at pp. 20-29).

[14] Appellants' "legal autopsy"/analysis of the Appellate Division Memorandum (at pp. 13-20).

- *King v. Cuomo*, 81 NY2d 247 (1993) [R.215-217], and *Campaign for Fiscal Equity, Inc. v. Marino*, 87 NY.2d 235 (1995) [R.217-218], articulating that the standard for determining whether a practice is unconstitutional is NOT whether it is prohibited, but whether it unbalances the constitutional design, **repudiated** by the Appellate Division's affirmance of Judge Hartman's dismissal of appellants' ninth cause of action as failing to state a cause of action because "'three-men-in-a-room' budget negotiations between the Governor and the Legislature" is not prohibited by the New York Constitution – thereby ALSO replicating Judge Hartman's falsification of the cause of action itself, identified by appellants' ninth cause of action as "three-men-in-a-room" budget deal-making", including "amending of budget bills" [R.214, R.219];[15]

- *Pataki v. NYS Assembly/Silver v. Pataki*, 4 NY3d 75, 96 (2006) [R.196], and *New York State Bankers Association v. Wetzler*, 81 NY2d 98 (1993) [R.792], reiterating and reinforcing the UNEQUIVOCAL restrictions that Article VII, §4 of the New York State Constitution places on the Legislature's alterations of "an appropriation bill submitted by the governor" – previously articulated by the Court in *People v. Tremaine*, 252 NY 27 (1929), and *People v. Tremaine*, 281 NY 1 (1939) – **repudiated** by the Appellate Division's "affirmance" of Judge Hartman's dismissal of appellants' fifth cause of action —which it accomplished by *sub silentio* modifying the grounds upon which Judge Hartman had dismissed it, concealing that the fifth cause of action challenged the Legislature's alterations of the Governor's "appropriation bills", and misrepresenting that "Article VII, §4 does not apply to appropriations for the Judiciary";[16]

- *People v. Bleakley*, 69 NY2d 490, 494 (1989), identifying the "linchpin of our constitutional and statutory design [is] intended to afford each litigant at least one appellate review of the facts", **repudiated** by the Appellate Division's failure to identify the

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[15] Appellants' "legal autopsy"/analysis of the Appellate Division Memorandum (at pp. 27-28).

[16] Appellants' "legal autopsy"/analysis of the Appellate Division Memorandum (at pp. 23-24).

> "new facts" on which, by *sub silentio* modifications, it "affirmed" Judge Hartman's grounds for dismissing appellants' fifth, seventh and eighth causes of action, and, additionally, the first through fourth causes of action.[17]

As the most cursory examination of appellants' ten causes of action reveal [R.99-130 (R.159-224); R-731-741], ALL are of statewide significance, involving government accountability and vast sums of taxpayer money. They particularize tens of "novel" issues never previously addressed by this Court, presented on a fully-developed, perfectly-preserved record, in a posture of summary judgment for appellants for the declarations of unconstitutionality and unlawfulness they seek pertaining to:

- the Legislature's proposed budget;
- the Judiciary proposed budget;
- the Governor's legislative/judiciary budget bill combining them;
- The start-to-finish budget "process" of the Legislature, which, over and beyond its flagrant unconstitutionality, is permeated with fraud, including its purported "amending" of budget bills, done by staff, operating behind-closed-doors, without a single legislator voting to amend, either at legislative committee meetings or on the Senate or Assembly floor;
- the legislature's behind-closed-doors political conferences that substitute for open legislative committee action;

[17] Appellants' "legal autopsy"/analysis of the Appellate Division Memorandum (at pp. 29-31).

- the three men-in-a-room, behind-closed-doors budget-deal-making, including their amending of budget bills and introduction of new budget bills;

- the policy inserted into budget bills by the Governor and, thereafter, by the "three-men-in-a-room";

- the unconstitutionality and unlawfulness of Part E, Chapter 60 of the Laws of 2015 (establishing the Commission on Legislative, Judicial and Executive Compensation), *as written and by its enactment*, that was inserted by the "three-men-in-a-room" into a new budget bill and then rushed through the Legislature on a "message of necessity" having no applicability to it;

- the unconstitutionality and unlawfulness of Part E, Chapter 60 of the Laws of 2015, *as applied* – including its December 24, 2015 Report with its judicial salary increase recommendations;

- the Governor's aid to localities budget bill – and its items pertaining to district attorney salary reimbursement to the counties.

These causes of action additionally expose deficiencies in this Court's "settled law" relating to the budget, demonstrating the necessity that the Court revisit its decisions so as to refine and, in some respects, overturn them. First and foremost, the Court's controversial 2004 plurality decision in *Silver v. Pataki/ Pataki v. Assembly and Senate*, 4 NY3d 75, on which appellants' fourth cause of action [R.106-108 (R.170-167) R.735-736], fifth cause of action [R.108-109 (R.177-186, R.214-219), R.737], and ninth cause of action [R.115 (R.214-219), R.740] pivotally rely for summary judgment.[18]

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[18] Suffice to here quote from the second paragraph of appellants' March 29, 2017 verified

As reflected by appellants' March 26, 2019 letter, by its conclusion entitled "New York's Constitution Has Been Undone by Collusion of Powers" (at pp. 21-22), the Court's 2004 *Silver v Pataki* decision inexplicably:

- did not clarify that the meaning of "proposed legislation, if any" of Article VII, §3 is the same as in Article VII, §2: "proposed legislation, if any, which the governor may deem necessary to provide moneys and revenues sufficient to meet such proposed expenditures [of the budget]" – in other words, does not authorize inclusion of "policy" unconnected with revenue; and
- did not declare that the Governor's so-called "non-appropriation" Article VII budget bills, excepting his purported revenue bill, are unconstitutional, as they plainly are because they unbalance the separation of powers, constitutional design.

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supplemental complaint [R.672], as follows:

> "112. Virtually all the constitutional, statutory, and rule violations detailed by plaintiffs' September 2, 2016 verified complaint pertaining to the budget for fiscal year 2016-2017 – and by their incorporated pleadings pertaining to the budgets for fiscal years 2016-2017, 2014-2015 and 2015-2016 – are replicated with respect to the budget for fiscal year 2017-2018. Indeed, the constitutional violations are not only replicated, but the legislative defendants have so brazenly repudiated Article VII, §§4, 5, 6 of the New York State Constitution – and the controlling consolidated Court of Appeals decision in the budget lawsuits to which they were parties: *Silver v. Pataki* and *Pataki v. Assembly*, 4 N.Y.3d 75 (2004) – that nothing more is required for summary judgment to plaintiffs on their reiterated fifth cause of action (¶¶54-58)[fn] than to compare defendant Governor's budget bills for fiscal year 2017-2018 with the legislative defendants' 'amended' budget bills. And facilitating the comparison are the legislative defendants' one-house budget resolutions and their accompanying summary/report of recommended budget changes, already embodied in their 'amended' budget bills – as well as their own press releases and public statements." (underlining in the original; also R.852).

No less inexplicable is the decision's failure to have interpreted the clause in Article VII, §4: "Such an appropriation bill shall when passed by both houses be a law immediately without further action by the governor" so as to enunciate what is obvious from its plain language – and what appellants' fifth cause of action and the record thereon highlights [R.108-109 (R.177-186, R.214-219), R.737, R.829, R.800-803], namely, that New York has a rolling budget, enacted bill by bill, upon the Senate and Assembly each amending and passing the Governor's "appropriation bills", consistent with Article VII, §4 and reconciling their differences.

Then, too, there is the decision's inexplicable failure to address the constitutionality of the "notwithstanding...any other law to the contrary" provisions in the budget bills [R.164-167, R-116-117], although this was an important issue at the November 16, 2004 oral argument before the Court.[19]

All four of these aspects of unconstitutionality embraced by the Court's 2004 *Silver v. Pataki* decision are issues in this citizen-taxpayer action appeal.

Other "settled law" of this Court relating to the budget, whose need for revisiting and modification is established by the record herein, are *Hidley v. Rockefeller*, 28 NY2d 439 (1971) [R.164-165] and *Saxton v. Carey*, 44 NY2d 545 (1978) [R.1140-1142], both pertaining to itemization and interchange/transfer provisions. Each decision proceeds on the catastrophically false premise of a checks

and balances/separation of powers between the Legislative and Executive branches, rather than, as here proven, a collusion of powers between them, aided and abetted by the Judiciary, to effect a larceny of taxpayer monies, whose sums, whether "itemized" or cumulative, they all conceal.

Then, too, there is the "unsettled law" concerning the constitutionality of the Legislature's "force of law" delegation of legislative powers to the Commission on Legislative, Judicial and Executive Compensation by Part E of Chapter 60 of the Laws of 2015, the subject of the first two sections of appellants' sixth cause of action [R.109-111 (R.187-193)], detailed by appellants' March 26, 2019 letter (at pp. 9-19) and reinforced by the supervening events recited by their April 11, 2019 letter (at pp. 13-15) and by their May 31, 2019 reargument/disqualification motion (at ¶27 & its fn. 13).

The three lawsuits there recited as challenging the constitutionality of the "force of law" delegation of legislative power by the materially identical Part HHH of last year's Revenue Budget Bill #S.7509-C/A.9509-C, which established the Committee on Legislative and Executive Compensation (Part HHH of Chapter 59 of the Laws of 2018)[20] – *Delgado, et al. v. State of New York, et al.* (Albany Co. #907537-18); *Schulz,*

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[19] CJA's webpage for this motion posts the VIDEO (*see* fn. 3, *infra*).

[20] Part HHH of Revenue Budget Bill #S.7509-C/A.9509-C (now Part HHH of Chapter 59 of the Laws of 2018) is annexed to appellant's 1st motion to the Appellate Division (filed July 25, 2018) as Exhibit H.

et ano. v. State of New York, et al. (NDNY #1:19-cv-56); *Barclay, et al. v. New York State Committee on Legislative and Executive Compensation, et al.* (Albany Co. #901837-19) – have now been joined by a fourth lawsuit, *Steck, et al, v. DiNapoli, et al.*, (SDNY #1:19-cv-05015), *albeit* its challenge is limited to the Committee's "force of law" recommendations restricting legislators' outside earned income and the requirement of an "on-time budget".[21]

All four lawsuits will terminate upon this Court's discharge of its constitutionally-mandated review responsibilities with respect to appellants' ten causes of action. Absent that discharge, more lawsuits are inevitable – and especially in light of the two further budget-born, "force of law" commissions that are supposed to be now operating with reports due by December 2019:

(1) the second Commission on Legislative, Judicial and Executive Compensation, established by the here-challenged Part E of Chapter 60 of the Laws of 2015, which was budget bill #S.4610-A/A.6721-A [R.1080-1082]; and

(2) the Commission on Public Campaign Financing, established by Part XXX of this year's Revenue Budget Bill #S.1509-C/A.2009-C, now Part XXX of Chapter 59 of the Laws of 2019.[22]

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21 The federal complaint is posted on CJA's webpage for this motion (*see* fn. 3, *infra*).

22 Part XXX of Revenue Budget Bill #S.1509-C/A.2009-C (now Part XXX of Chapter 59 of the Laws of 2019) is annexed to appellants' April 11, 2019 letter as Exhibit B.

In Conclusion – This Court is Paid to Do Its Job

This Court's constitutional function is to uphold and safeguard our State Constitution. Nothing more is asked, on this motion, than that the associate judges discharge that function, for which they are paid, and which, if they do, will wipe out, overnight, the "culture of corruption" plaguing our state – as is eminently clear from the verified pleadings of this citizen-taxpayer action and the record thereon.

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss:

Elena Ruth Sassower, being duly sworn, deposes and says:

1. I am the unrepresented individual plaintiff-appellant in the appeal of this citizen-taxpayer action brought pursuant to State Finance Law Article 7-A (§123 *et seq.*) for declarations that the New York State budget is unconstitutional and unlawful – including the Judiciary budget and the commission-based judicial salary increases it embeds.

2. I am fully familiar with all the facts, papers, and proceedings heretofore had and have written this motion for leave to appeal pursuant to Article VI, §3(b)(6) of the New York State Constitution.

3. It is accurate and true to the best of my knowledge and abilities, and I dedicate it to the memory of my beloved , judicial corruption-fighting father, George Sassower, Esq., a courageous World War II soldier, on this the 75th anniversary of D-Day.

Elena Ruth Sassower, Unrepresented Plaintiff-Appellant

Sworn to before me this
75th Anniversary of D-Day – June 6, 2019

Notary Public

JEANNINE MURATORE
Notary Public, State of New York
No. 04MU6131452
Qualified in Westchester County
Commission Expires August 1, 2021

TABLE OF EXHIBITS

Exhibit A-1:	Appellate Division's December 27, 2018 Memorandum & Order
Exhibit A-2:	Appellate Division's August 7, 2018 Decision & Order on Motion
Exhibit A-3:	Appellate Division's October 23, 2018 Decision & Order on Motion
Exhibit A-4:	Appellate Division's November 13, 2018 Decision & Order on Motion
Exhibit A-5:	Appellate Division's December 19, 2018 Decision & Order on Motion
Exhibit B:	Attorney General's December 27, 2018 Notice of Entry
Exhibit C-1:	Appellants' January 26, 2019 Notice of Appeal
Exhibit C-2:	January 30, 2019 receipt of Albany County Clerk; Appellants' January 29, 2019 letter to Albany County Clerk's Office
Exhibit D-1:	Attorney General's May 2, 2019 Notice of Entry
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