CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

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Elena Ruth Sassower, Director

December 19, 2024

New York Court of Appeals Clerk Heather Davis
20 Eagle Street
Albany, New York 12207-1095

RE: APL 2024-150 – *Center for Judicial Accountability, et al. v. JCOPE, et al.*
Reply in Further Support of Appeal of Right

Dear Clerk Davis:

This follows my notification to Assistant Deputy Clerk Wood, on December 4th, by a voice mail message, that Attorney General James' two letters of that date that I had just received, signed by Assistant Solicitor General Kiernan, responding to your two November 6th *sua sponte* jurisdictional inquiry letters for APL 2024-150 (appeal of right) and APL 2024-149 (direct appeal of right), were each "frauds on the court" – and that I wished the opportunity to reply.

Assistant Deputy Clerk Wood promptly called me back, early the next morning, and, at my request, gave me until December 19th to reply.

As I told Assistant Deputy Clerk Wood I would do and then subsequently told her I had done, I so-informed ASG Kiernan. My e-mail to him, sent at 10:42 a.m. on December 5th, stated:

> "This is to give you NOTICE of what you and your superiors already know, that Respondent AG James' December 4th letter pertaining to appellants' appeal of right in *CJA v. JCOPE, et al.* (APL #2024-00150) and Respondent AG James' December 4th letter pertaining to appellants' direct appeal of right in *CJA v. Commission on Legislative, Judicial & Executive Compensation…Wilson, Zayas, et al.* (APL #2024-00149) – both of which you signed – are 'frauds on the court'.

> IMMEDIATELY upon opening and reading your two December 4th letters, which I did not do until sending you appellants' two above-attached December 3rd letters, I telephoned the Court of Appeals to so-advise and to make arrangements with respect thereto.
>
> This morning, in response to the voice mail message I had left, I got a return call and obtained two weeks, until December 19th, to reply to your letters.
>
> Be advised that unless your letters are withdrawn – and appellants' December 3rd letters anticipated the frauds you would and did utilize – appellants will be seeking sanctions and other relief against you and your culpable superiors.
>
> **Please forward this e-mail to your superiors – specifically Respondent AG James and Deputy Solicitor General Andrea Oser, whose names are on the December 4th letters, as well as Solicitor General Barabara Underwood, whose name curiously is not** – and confirm, by no later than a week from today, December 12th, that you are withdrawing the letters and, if not, the reasons, responsive to appellants' December 3rd letters and the substantiating 'legal autopsy'/analyses on which they are based, so that I may be guided accordingly." (capitalization, hyperlinking, underlining, and bold in the original).

I received no response to this e-mail

Here then are the specifics of the fraud of Respondent AG James' December 4th letter for APL 2024-150, the appeal of right in *CJA v. JCOPE, et al.*, signed by ASG Kiernan, her "of counsel" at the Appellate Division in the case. For simplicity, the letter will be referred-to as his.

Answering your November 6th jurisdictional inquiry, ASG Kiernan offers up four explanatory paragraphs why "This Court should dismiss the appeal…sua sponte for lack of jurisdiction".

The first explanatory paragraph (at p. 1), a single sentence, states:

> "*First*, insofar as appellants seek review of the Appellate Division's order denying reargument, the Appellate Division's order is not final. *See Caran v. Hilton Hotels Corp.*, 3 N.Y.3d 693 (2004)." (underlining added).

This is fraud. The referred-to "order", the Appellate Division's October 10, 2024 "Decision and Order on Motion" (AD3-NYSCEF #62), additionally denied the further branches of appellants' July 4, 2024 motion (AD3-NYSCEF #52), which were for leave to appeal to the Court of Appeals and vacatur for "lack of jurisdiction" and for "fraud, misrepresentation, or other misconduct of an adverse party", upon transfer to federal court or certification of the question – and ASG Kiernan does not contend that the order is "not final" with respect to the Appellate Division's denial of those branches.

Moreover, as to reargument, the order is also final as the reargument it denied was of the Appellate Division's affirmance of the Supreme Court "judgment" dismissing the case. In this regard, ASG Kiernan's citation to *Caran v. Hilton Hotels Corp*., prefaced by an inferential "*See*",[1] is a deceit as it does not indicate whether the Appellate Division's denial of reargument was of a final disposition, as at bar.

ASG Kiernan's second explanatory paragraph (at p. 1) consists of two sentences. The first reads:

> "…insofar as appellants seek review of the Appellate Division's memorandum and order affirming Supreme Court's judgment, no substantial constitutional question is directly involved to support an appeal as of right under C.P.L.R. 5601(b)(1). "

This is fraud.

First, the standard for an appeal of right, pursuant to Article VI, §3(b)(1) of the New York State Constitution – to which ASG Kiernan makes no mention – and which is

[1] According to The Bluebook: A Uniform System of Citation (18th edition, at p. 46), "*see*" is used "when the proposition is not directly stated by the cited authority but obviously follows from it; there is an inferential step between the authority cited and the proposition it supports."

mirrored in CPLR §5601(b)(1) – is that there is "directly involved the construction of the constitution of the state or of the United States". The cited to requirement of "substantiality" is a subversion of both the constitution and the statute – and was so identified by the "whistle-blowing" dissent of then Associate Judge Robert Smith in *Kachalsky v. Cacace*,14 N.Y.3d 743 (2010), with which ASG Kiernan may be presumed to be familiar as it was highlighted by my March 26, 2019 letter in support of an appeal of right in *CJA v. Cuomo…DiFiore*, which I physically made a part of the record herein (AD3-NYSCEF #59) as an exhibit to my July 28, 2024 reply affirmation in further support of appellants' July 4, 2024 motion (AD-3NYSCEF #52).

Second, "the Appellate Division's memorandum and order affirming Supreme Court's judgment" each obliterated the "rule of law" and all cognizable standards, falsifying the record, *in toto*, to deprive appellants of summary judgment on their ten causes of action to which they were entitled – and such is the basis for Points I, II, and III of appellants' October 21, 2024 preliminary appeal statement (at pp. 5-7), laying out the grounds of their appeal of right.

As to Point I (at p. 5), the ground is explicitly that appellants were totally denied due process, and it cites and links to *Valz v. Sheepshead Bay*, 249 NY 122, 132 (1923), wherein the Court stated "Where the question of whether a judgment is the result of due process is the decisive question upon an appeal, the appeal lies to this court as a matter of right".[2]

ASG Kiernan skips this Point I, not denying or disputing its accuracy in any respect, because it is true and dispositive. Nor does he confront appellants' Point II (at pp. 5-6) as to their "*prima facie* entitlement to summary judgment on each of their ten causes of action", with five entitling them to declarations of unconstitutionality, other than, inferentially, and by frauds.

[2] So, too, was *Valz v. Sheepshead Bay* highlighted by appellants' March 26, 2019 letter in support of their appeal of right in *CJA v. Cuomo…DiFiore*, also in support of their first ground: due process.

Thus, he states, in the second sentence of his second explanatory paragraph (at p. 1):

> "Preliminarily, we note that appellants did not raise their constitutional claims on appeal in the Appellate Division, and thus that court did not address those claims.

This is another fraud – one ASG Kiernan apparently seeks to distance himself from by using the plural "we". Indeed, ASG Kiernan here regurgitates the twin frauds that appellants' July 4, 2024 motion exposed by its Exhibit A "legal autopsy"/analysis of the Appellate Division's June 20, 2024 Memorandum and Order (NYSCEF #54, at pp. 13-16) under the title heading:

"The Memorandum Replicates the Fraud
of Respondents' Brief and Oral Argument
by Affirming Justice Gandin's November 23, 2022 'Judgment'
on the Falsehood that Appellants Did Not Specifically Challenge the 'Merits'
of its Dismissal of their Verified Petition"

It summarized that:

(1) ASG Kiernan's November 15, 2023 Respondents' Brief (AD3-NYSCEF #12, at pp. 1, 6, 9) had originated the fraud that appellants had not challenged the Supreme Court decision of Justice Gandin on the merits and therefore had abandoned and not preserved any such challenge;

(2) that appellants demonstrated this fraud by their November 25, 2023 motion to strike the Respondents' Brief as a "fraud on the court" (AD3-NYSCEF #13, at pp. 5, 8-9, 14);

(3) that the Appellate Division denied the motion, without decision, facts, or law, by a December 28, 2023 "Decision and Order on Motion" (AD3-NYSCEF #22);

(4) that ASG Kiernan then repeated this fraud in his 30-second oral argument before the Appellate Division on April 22, 2024 (VIDEO, at 13 mins), stating:

> "Supreme Court properly dismissed petitioners' claims for lack of standing, for mootness, and for failure to state a cause of action and petitioners have not preserved any challenge to those rulings on appeal. There is no evidence of fraud in the record. Nor is there any evidence that Supreme Court was biased or any other ground for disqualification."

(5) that appellants objected to this fraud by their May 1, 2024 motion to sanction ASG Kiernan and culpable attorneys and parties (AD3-NYSCEF #41);

(6) that the Appellate Division also denied that motion, without decision, facts, or law, by a June 3, 2024 "Decision and Order on Motion" (AD3-NYSCEF #50);[3] and

(7) that 2-1/2 weeks later the Appellate Division adopted this fraud, by its own twist to it, in its June 20, 2024 Memorandum and Order (AD3-NYSCEF #51, p. 3).

The accuracy of this section, like every other section of appellants' 26-page, single-spaced "legal autopsy"/analysis of the June 20, 2024 Memorandum and Order (AD3-NYSCEF #54) was uncontested by ASG Kiernan – and my July 28, 2024 reply affirmation in further support of appellants' July 4, 2024 motion (AD3-NYSCEF #58) demonstrated this, specifically highlighting (at pp. 6-7) ASG Kiernan's failure to confront this section, stating:

> "ASG Kiernan does not dispute the accuracy of this section in any respect, instead concealing, *in toto*, ALL its facts, law, and legal argument and substituting his conclusory assertion that it does 'not warrant reargument', when it does so, overwhelmingly." (italics and capitalization in the original).

ASG Kiernan's third and fourth explanatory paragraphs (at pp. 2) inferentially respond to appellants' Point II listing of the five causes of action to which appellants

[3] Recounted at pp. 2-4 of the "legal autopsy"/analysis.

are entitled to summary judgment declarations of unconstitutionality – the sixth, seventh, eighth, ninth, and tenth.

Thus his third explanatory paragraph (at p. 2), consisting of three sentences, states, by its first sentence:

> "As Supreme Court held, appellants' sixth, seventh, eighth, and ninth causes of action – challenging the constitutionality of the 2022-2023 budget and the Ethics Commission Reform Act, see L. 2022, ch. 56, part QQQ – rely on conclusory allegations of procedural violations, fraud, and larceny."

This is fraud. Not only does this NOT accurately summarize what "Supreme Court held" with respect to these four causes of action, but Justice Gandin's fraud, by his November 23, 2022 "Decision, Order and Judgment" dismissing them (Albany-NYSCEF #111, at pp. 4-5) was particularized by appellants' "legal autopsy"/analysis of it (Albany-NYSCEF #121). Quoting what the "Decision, Order and Judgment" had stated in a lengthy single paragraph:

> "As a matter of law, Sassower's sixth, seventh, eighth and ninth causes of action challenging the constitutionality of ECRA, the state budget and legislative and judicial budget bill fail to state a cause of action. A legislative enactment is entitled to a 'strong presumption of constitutionality and…will be declared unconstitutional by the courts only when it can be shown beyond reasonable doubt that it conflicts with the Constitution after every reasonable mode of reconciliation of the statute with the Constitution has been resorted to, and reconciliation has been found impossible'. *Harkenrider v. Hochul*, 38 NY3d 494, 509 (2022) (internal quotation marks omitted). 'A party mounting a facial constitutional challenge bears the substantial burden of demonstrating that in any degree and in every conceivable application, the law suffers wholesale constitutional impairment. *Moran Towing Corp. v. Urbach*, 99 NY2d 443, 448 (2003) (internal quotation marks omitted). Here, Sassower alleges both procedural and substantive illegality in the budget approval process. Sassower's challenge to the constitutionality of 'three people in the room' budget negotiations has previously been rejected by the Appellate Division, Third Department. See *Ctr. for Jud.*

> *Accountability, Inc., supra*. To the extent that she asserts that the budget was unconstitutionally enacted, the petition makes only conclusory, unsupported allegations that unnamed members of the legislature violated various provisions of the state constitution. Moreover, '[t]he manner in which bills are voted out of committee is entirely determined by internal rules of proceedings, which article III, §9 of the Constitution vests in each house of the Legislature.' *Urban Justice Ctr. v. Pataki*, 38 AD3d 20, 30 (1st Dept 2006). '[I]t is not the province of the courts to direct the legislature how to do its work, particularly when the internal practices of the Legislature are involved.' *Id.*, at 27 (internal quotation marks omitted). With respect to Sassower's substantive challenges to specific approvals for funding contained within the state budget and budget bills and the methodology employed to arrive at those figures, no court may substitute its judgment for that of the legislature in this regard. *Id*., quoting *Saxton v. Carey*, 44 NY2d 545, 549 (1978) ('It is not 'a proper function of the courts to police the degree of itemization necessary in the State budget,' a task for which the courts 'are neither constituted, suited, nor, indeed, designed,' but rather 'is a decision which is best left to the Legislature'').",

appellants' "legal autopsy"/analysis (Albany-NYSCEF #121, at pp. 28-29) stated:

> "This paragraph is another fraud, dismissing four of petitioners' causes of action (¶¶78-105) without identifying ANY of their presumed-true allegations, by falsifying what minuscule reference to them it makes, and by inapposite law – essentially replicating, even more dramatically, the fraud of AAG Rodriguez' dismissal cross-motion, exposed by petitioners' Exhibit A 'legal autopsy'/analysis (#88, at pp. 23-27). Thus,
>
> - It conceals that petitioners' constitutional challenge to ECRA pertains to its enactment through the budget, except possibly inferentially;
>
> - It is a LIE that petitioners challenge by 'only conclusory, unsupported allegations…' the constitutionality of the budget – and Justice Gandin

does not cite to any paragraph of their sixth, seventh, eighth and ninth causes of action, or furnish any example, of what he contends to be 'conclusory' or 'unsupported' – or as deficient because it does not specify the names of 'members of the legislature [who] violated various provisions of the state constitution';

- It is a LIE that petitioners challenge the 'constitutionality of 'three people in the room' budget negotiations' – and Judge Gandin does not cite to any paragraph of their sixth, seventh, eighth, and ninth causes of action for his assertion that they are;

- It is a LIE to cite to the Appellate Division, Third Department decision '*Ctr. for Jud. Accountability, Inc., supra*.' as upholding the constitutionality of ''three person in a room' budget negotiations' as such decision is a judicial fraud, so-pleaded by the petition (¶87(8)), with evidence: petitioners' analysis of the decision which they presented to the Court of Appeals by their March 26, 2019 letter in support of an appeal of right, whose accuracy was uncontested, and by the petition's exhibits, most importantly their March 5, 2021 complaint to JCOPE (#11), with its included February 7, 2021 judicial misconduct complaint against the Court of Appeals judges and Third Department justices pertaining to the fraudulent *CJA v. Cuomo…DiFiore* appellate decision (#12);

- It is a LIE to cite to the Appellate Division, First Department decision '*Urban Justice Ctr. v. Pataki*, 38 AD3d 20, 30' (2006), as the plaintiffs in that case were challenging legislative rules, whereas here petitioners seek enforcement of legislative rules that

respondents Senate and Assembly have violated;

- It is a LIE to cite to the Court of Appeals decision '*Saxton v. Carey*, 44 NY2d 545, 549 (1978)', as the plaintiffs in that case were challenging the lack of itemization in the budget, which petitioners here do not challenge." (hyperlinking and capitalization in the original).

The accuracy of this "legal autopsy"/analysis of Justice Gandin's dismissal of appellants' sixth, seventh, eighth, and ninth causes of action, as, likewise of the balance of his November 23, 2022 "Decision, Order and Judgment", is uncontested – and appellants stated this, repeatedly – and to reinforce the importance of this "legal autopsy"/analysis, spanning 31-single-spaced pages, made it Exhibit C to their July 4, 2024 motion (AD3-NYSCEF #56), to which Exhibit A was their 26-page, single-spaced "legal autopsy"/analysis of the Appellate Division's June 20, 2024 Memorandum and Order (AD3-NYSCEF #54).

The second sentence of ASG Kiernan's third explanatory paragraph (at p. 2) then purports, with respect to appellants' sixth, seventh, eighth, and ninth causes of action:

> "These causes of action state no constitutional claim, let alone a substantial constitutional question warranting this Court's review."

This is further fraud – and only the most cursory examination of these four causes of action (Albany-NYSCEF #1, ¶¶78-105) is necessary to discern, immediately, that each presents MONUMENTAL "constitutional claims", not just "a substantial constitutional question warranting this Court's review". This, apart from meeting the Article VI, §3(b)(1) and CPLR §5601(b)(1) criteria of "directly involv[ing] the construction of the constitution of the state or of the United States".

ASG Kiernan's final third sentence of this third explanatory paragraph (p. 2) then continues:

> Notably, unlike *Cuomo v. New York State Commission on Ethics and Lobbying in Government* (APL-2024-0076), this appeal raises no separation-of-powers challenge to the Ethics Commission Reform Act."

Fraud, again – and now repeating, virtually *verbatim*, the November 15, 2023 Respondents Brief he signed (AD3-NYSCEF #12), which had stated (at p. 12), by a footnote:

> "Unlike *Cuomo v. New York State Commission on Ethics & Lobbying in Government*, currently on appeal in this Court (A.D. No. CV-23-1778), this appeal presents no separation-of-powers issue."

Appellants rebutted this by their "legal autopsy"/analysis of the Respondents' Brief (AD3-NYSCEF #15, at p. 16), which was Exhibit A to their November 25, 2023 motion to strike it as a "fraud on the court"(AD3-NYSCEF #13), stating:

> "This, too, is fraud. Appellants' sixth and seventh causes of action [R.81-84; R-84-87] involve a multitude of 'separation of powers issue[s]' pertaining to the duties of, and limitations on, the Governor and Legislature in fashioning and enacting the state budget, prescribed by Article VII of the New York State Constitution, ALL eviscerated by their collusion with each other – and with the Judiciary – so-alleged by those two causes of action, without contest from AG James by her Brief, or below.
>
> > As to the purpose of this fraudulent footnote, it presumably is to perpetrate further fraud, namely:
> >
> > > (1) to mislead the Court into believing that Appellants' sixth and seventh causes of action do not – as they do – moot *Cuomo v. COELIG*; and
> > >
> > > (2) to mislead the Court into believing that the two appeals should not be heard together, as they plainly should.[fn1]" (underlining and hyperlinking in the original).

ASG Kiernan did not deny this in opposing appellants' November 25, 2023 motion – and appellants pointed this out in their January 12, 2024 motion for the Appellate Division to hear the *CJA v. JCOPE, et al.* appeals (CV-23-0115) together with the

Cuomo v. COELIG appeal (CV-23-1778) – to which ASG Kiernan scant response (AD3-NYSCEF #34) was:

> "3. Respondents do not take a position on petitioners' motion. Respondents note, however, that this case does not raise the separation-of powers question presented in *Cuomo v. New York State Commission on Ethics & Lobbying in Governmen*t, A.D. No. CV-23-1778. Thus, the requested calendar preference is not necessary."

By a January 22, 2024 reply affirmation (AD3-NYSCEF #35), appellants stated:

> "9. As for ASG Kiernan's 'note' implying that CJA's appeal raises a different 'separation-of-powers question' than that of the COELIG appeal and, therefore, 'the calendar preference is not necessary', this conceals that both pertain to ECRA and that CJA's 'question' as to ECRA's enactment moots COELIG's, which ASG Kiernan does not deny…." (underlining added).

Nevertheless, the Appellate Division denied both the November 25, 2023 motion and January 12, 2024 motion, without decision, facts, or law.

Suffice to say that ASG Kiernan's December 4th letter, in addition to skipping over, completely, appellants' Point I due process ground for their appeal of right, also skips over, completely, their Point III ground, pertaining to:

> "Appellants' entitlement to summary judgment on their sixth cause of action for a declaration that 'the ethics commission reform act of 2022' is unconstitutional, *by its enactment*, moot[ing] the constitutional challenge to the statute, *as written* – the sole issue before the Court in *Cuomo v. COELIG* (APL-2024-00076) – absent invocation of exceptions to mootness…"

To further reinforce appellants' Point II appeal of right for summary judgment on their sixth cause of action, declaring the "ethics commission reform act of 2022" unconstitutional by its enactment, as well as their Point III pertaining to *Cuomo v. COELIG*, appellants annex hereto and incorporate their December 16, 2024 *amicus curiae* brief to this Court to prevent fraud in the *Cuomo v. COELIG* appeal that is presently before it.[4]

ASG Kiernan's fourth and final explanatory paragraph is his longest – five sentences – and is devoted exclusively to appellants' tenth cause of action (AD3-NYSCEF #61), implicitly responding to appellants' Point II for a summary judgment declaration with respect thereto. It states:

> "Finally, appellants' tenth cause of action – challenging Public Officers Law §108(2)(b) – also raises no substantial constitutional question. The Constitution requires sessions of the Legislature to be open to the public, 'except when the public welfare shall require secrecy.' N.Y. Const. Art. III, §10. Public Officers Law §108(2)(b) does not contravene this provision: it merely exempts 'private meeting(s) of legislators from the Open Meetings Law. Such private discussions plainly do not constitute legislative sessions within the meaning of the Constitution. Thus, appellants' challenge to Public Officers Law §108(2)(b) raises no substantial constitutional question warranting this Court's review."

This is more fraud – and largely replicates ASG Kiernan's November 15, 2023 Respondents' Brief (AD3-NYSCEF #12, at p. 13) and, as there, conceals that appellants' tenth cause of action challenges the constitutionality of Public Officers Law §108.2(b), both "*as Written and as Applied*", and as to both, because it "Enables the Legislature to Discuss '**Public Business'** in Closed-Door Party Conferences" (bold added). As stated by its ¶¶111-112:

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[4] Appellants' December 16, 2024 motion for leave to file their *amicus curiae* brief is returnable December 30, 2024.

"111. Entitled 'Exemptions', Public Officers Law §108 is part of Article VII 'The Open Meetings Law' and reads, in pertinent part:

> 'Nothing contained in this article shall be construed as extending the provisions hereof to… 2. a. deliberations of political committees, conferences and caucuses. b. for purposes of this section, the deliberations of political committees, conferences and caucuses means a private meeting of members of the senate or assembly of the state of New York, or of the legislative body of a county, city, town or village, who are members or adherents of the same political party, without regard to (i) the subject matter under discussion, including discussions of public business, (ii) the majority or minority status of such political committees, conferences and caucuses or (iii) whether such political committees, conferences and caucuses invite staff or guests to participate in their deliberations'. (underlining added).

112. Such statutory provision – Public Officers Law §108.2(b) – as relates to the SENATE and ASSEMBLY, is flagrantly unconstitutional, *as written*, as NO statutory provision can override a constitutional provision. The openness of SENATE and ASSEMBLY proceedings is mandated by Article III, §10 of the New York State Constitution and does not rest on or depend on anything 'contained' in the Open Meetings Law article." (underlining and capitalization in the original).

As identified by my July 28, 2024 reply affirmation in further support of appellants' July 4, 2024 motion (NYSCEF #58, ¶20), the tenth cause of action (AD3-NYSCEF #61), like the sixth cause of action (AD3-NYSCEF #60), are high among the reasons "I stated at the April 22, 2024 oral argument (NYSCEF #43, VIDEO) that *CJA v. JCOPE, et al.* is 'perhaps even more consequential' than the profoundly consequential

CJA v. Cuomo…DiFiore".[5]

* * *

Pursuant to Article VI, §3(b)(1) of the New York State Constitution and its mirroring CPLR §5601(b)(1), appellants have an overwhelming appeal of right, many times over, from the Appellate Division's June 20, 2024 Memorandum and Order and October 10, 2024 "Decision and Order on Motion" and were AG James not a respondent, flagrantly disqualified for interest, as manifested by her litigation fraud below and before this Court, she would agree and take other actions consistent with her duties pursuant to Executive Law §63.1 and State Finance Law, Article 7-A (§123-a(3); §123-c-(3); §123-d; §123-e(2)).

As stated by my December 3th letter, the foregoing is without prejudice to appellants' threshold objection to the Court doing anything other than transferring this appeal of right and the related direct appeal of right in *CJA v. Commission on Legislative, Judicial and Executive Compensation…Wilson, Zayas, et al.* to federal court because its judges and all Supreme Court and acting Supreme Court justices are divested of jurisdiction by Judiciary Law §14 and "rule of necessity" cannot be invoked by reason thereof – and because of the availability of transfer pursuant to Article IV, §4 of the United States Constitution: "The United States shall guarantee every State in this Union a Republican Form of Government" – or certifying the question to the U.S. Supreme Court.

Thank you.

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[5] The Appellate Division's October 10, 2024 "Decision and Order on Motion", denying, without decision, fact, or law, the July 4, 2024 motion, is the immediately-following docket entry, NYSCEF #62.

s/

Elena Ruth Sassower, unrepresented 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

cc: Attorney General Letitia James
Solicitor General Barbara Underwood
Deputy Solicitor General Andrea Oser
Assistant Solicitor General Beezly Kiernan

APL 2024-0076
Albany County Index #903759-23
Appellate Division, Third Dept. #CV-23-1778

NEW YORK STATE COURT OF APPEALS

ANDREW M. CUOMO,

Respondent,

-against-

NEW YORK STATE COMMISSION ON ETHICS
AND LOBBYING IN GOVERNMENT,

Appellant.

***AMICUS CURIAE* BRIEF TO PREVENT FRAUD ON THE COURT**

Center for Judicial Accountability, Inc. (CJA)
by Elena Ruth Sassower, Director,
acting on her own behalf, on CJA's behalf, &
on behalf of the People of the State of New York
& the Public Interest

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December 16, 2024

20th Anniversary/*Pataki v. Assembly*/*Silver v. Pataki*, 4 NY3d 75
80th Anniversary/Battle of the Bulge (Ardennes, Belgium)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CONSTITUTIONAL PROVISIONS

STATUTES

CASE LAW

Identity and Interest of the *Amicus Curiae*

Amicus Curiae Center for Judicial Accountability, Inc. (CJA) is a non-partisan, non-profit citizens' organization with two inter-related appeals of right presently before the Court – one of which, *CJA, et al. v. JCOPE, et al.* (APL 2024-00150), moots *Cuomo v. COELIG* by its sixth and seventh causes of action and exposes the fraud perpetrated by COELIG, Cuomo, the "good government"/New York City Bar Association *amici*, and by the Appellate Division, Third Department's May 9, 2024 Opinion and Order, the subject of the *Cuomo v. COELIG* appeal.

As demonstrated by this *amicus curiae* brief,[1] the "ethics commission reform act of 2022" is unconstitutional, *by its enactment* – and this Court's duty, on appeal, is to so-elaborate, including by revisiting "*Pataki v New York State Assembly*, 4 NY3d 75, 83 [2004]".

[1] This *amicus curiae* brief, in pdf format with its live hyperlinks, is accessible from CJA's webpage for *Cuomo v. COELIG* at the Court of Appeals – www.judgewatch.org/web-pages/lawsuit-jcope-et-al/ct-of-appeals-cuomo-v-coelig.htm.

***Amicus Curiae* Brief to Prevent Fraud on the Court**

I.
The "ethics commission reform act of 2022" is NOT "a duly enacted statute" – & this Moots Whether It is Constitutional, *As Written,* Absent Invocation of Exceptions to Mootness

The Appellate Division's flimsy, superficial May 9, 2024 Opinion and Order, which cannot be deemed an adequate appellate opinion of a single judge, let alone five, is constructed to conceal every aspect of the enactment of what it refers to only as Executive Law §94, other than, as would be consistent with separation of powers, and Article III, §1 of the New York State Constitution, that its enactment was by "the Legislature":

At ¶2

> "…in 2022 the Legislature enacted a new version of Executive Law §94 in response to the alleged failings of JCOPE in general. This amounted to a sweeping overhaul to the policy of ethics violations by government officials and created defendant as a replacement for JCOPE. …" (underlining added).

At ¶4

> "We affirm. 'Legislative enactments enjoy a strong presumption of constitutionality and parties challenging **a duly enacted statute** face the initial burden of demonstrating the statute's invalidity beyond a reasonable doubt' (*Delgado v State of New York*, 194 AD3d 98, 103 [3d Dept 2021] [internal quotation marks and citations omitted], *affd* 39 NY3d 242 [2022]; *see Center for Jud. Accountability, Inc. v Cuomo*, 167 AD3d 1406, 1409 [3d Dept 2018], *appeal dismissed* 33 NY3d 993 [2019], *lv dismissed & denied* 34 NY3d 961 [2019]). Legislative power in New York is vested in the Senate and Assembly (*see* NY Const, art III, §1), whereas executive power is vested in the governor (*see* NY

Const, art IV, §1). Among other powers, the governor 'shall take care that the laws are faithfully executed' (NY Const, art IV, §3), which 'include[s] the power to enforce and implement legislative enactments' (*Under 21, Catholic Home Bur. for Dependent Children v City of New York*, 65 NY2d 344, 356 [1985]). Thus, separation of powers is 'implied by the separate grants of power to each of the coordinate branches of government' (*Bourquin v Cuomo*, 85 NY2d 781, 784 [1995] [internal quotation marks and citation omitted])." (underlining, bold, and hyperlinking added).[2]

¶¶6, 7, 8, and 9 are exclusively devoted to reciting provisions of Executive Law §94, following which the Appellate Division's Opinion and Order states, in its ¶10:

"We find that by enacting the foregoing scheme for the enforcement of the applicable ethics laws, the Legislature, though well intentioned in its actions, violated the bedrock principles of separation of powers. Despite defendant's assertion to the contrary, this Court may not utilize the Legislature's motive or the beneficial purposes of this legislation to overlook this violation. Even the most advantageous legislation violates the dictates of separation of powers if it results in one branch of government encroaching upon the powers of another for the purpose of expanding its own powers…." (bold and hyperlinking added).

---

[2] In citing to its own decisions in *Delgado v NYS* and *CJA v. Cuomo* for the proposition that a "duly enacted statute" carries an "exceedingly strong presumption of constitutionality", the Appellate Division was substituting the citation COELIG had furnished in its brief (at p. 18), which was to this Court's decision in *White v. Cuomo*, 38 N.Y.3d 209 (N.Y. 2022).

In *White v. Cuomo*, the Court identified (at 217) that in tandem with the "exceedingly strong presumption of constitutionality" is:

> "a 'presumption that the [l]egislature has investigated for and found facts necessary to support the legislation' (*I.L.F.Y. Co. v. Temporary State Hous. Rent Commn.*, 10 N.Y.2d 263, 269…[1961]; *see Lincoln Bldg. Assoc. v. Barr*, 1 N.Y.2d 413, 415…[1956])." (hyperlinking added).

Yet, as apparent from the Court's decision in *Lincoln Bldg. Assoc. v. Barr*, these two presumptions are the same, or at least substantially so:

> "A legislative enactment carries with it a strong presumption of constitutionality, i.e., it is presumed to be supported by facts known to the Legislature… This presumption, however, is not irrebuttable…"

Not revealed by the first ten paragraphs of the Appellate Division's Opinion and Order or by its remaining three is that the statute replacing JCOPE with COELIG – the "ethics commission reform act of 2022" [ECRA], Part QQ of Education, Labor, Housing, and Family Assistance Budget Bill #S.8006-C/A.9006-C (at pp. 151-201) – is **NOT** "a duly enacted statute" and that the evidence of this was furnished to the Appellate Division and to the attorneys for the *Cuomo v. COELIG* parties and *amici* by CJA's January 12, 2024 motion in *Cuomo v. COELIG* (CV-23-1778), requesting that the appeal in *CJA, et al. v. JCOPE, et al.* (CV-23-0115) be heard together with it, and, if denied, that CJA's moving affidavit, with its four exhibits, be deemed an *amicus* submission to prevent fraud (Exhibit 1).[3]

CJA's January 12, 2024 moving affidavit demonstrated, by hyperlinks to the *CJA v. JCOPE, et al.* brief, reply brief, and record on appeal, CJA's open-and-shut entitlement to summary judgment on ALL ten causes of action of its June 6, 2022 verified petition, beginning with the sixth:

> "Declaring Unconstitutional, Unlawful, and Void Part QQ of Education, Labor, Housing, and Family Assistance Budget Bill #S.8006-C/A.9006.C – the 'ethics commission reform act of 2022' – Enacted in

[3] Exhibit 1 and Exhibit 2 herein, constituting the record of CJA's January 12, 2024 motion in *Cuomo v. COELIG*, have been downloaded from the Appellate Division's NYSCEF docket for *Cuomo v. COELIG* CV-23-1778, where the Appellate Division Clerk's Office posted them behind the Appellate Division's February 1, 2024 "Decision and Order on Motion" denying the motion (#31), after initially not posting them, at all and then, upon CJA's protest, posting them as #32 and #33, which it then deleted, upon shuffling them behind the February 1, 2024 "Decision and Order on Motion" with the notation: "*Corrected* Pro Se motion (bookmarked) with exhibits". These same documents, being part of CJA's corresponding January 12, 2024 motion in *CJA v. JCOPE, et al.* CV-23-0115, were there posted, as filed, by CJA, as a party, as #28, #29, #30, #31, #32, #33, #35, #36, #37, and #38.

> Violation of Mandatory Provisions of the New York State Constitution, Statutes, Legislative Rules, and Caselaw".

It described (at ¶8) the sixth cause of action – and the seventh cause of action for identical declarations with respect to the whole of the FY2022-23 state budget – as

> "involv[ing] a multitude of 'separation of powers issue[s]' pertaining to the duties of, and limitations on, the Governor and Legislature in fashioning and enacting the state budget, prescribed by Article VII of the New York State Constitution, ALL eviscerated by their collusion with each other – and with the Judiciary – so-alleged by those two causes of action…"

The *Cuomo v. COELIG* parties and *amici* did not dispute this – nor the further particulars of CJA's moving affidavit as to the fraud they were committing before the Appellate Division by their *Cuomo v. COELIG* briefs, each concealing their knowledge that ECRA was unconstitutionally enacted *via* the budget and by fraud – with the briefs of COELIG and the *amici* additionally fraudulent by their assertions as to ECRA's salutary purpose and its purported rectification of JCOPE's supposed deficiencies, and of COELIG's superiority, including because of its "independent review committee" of New York's 15 law school deans.

CJA's January 22, 2024 reply affirmation in further support of the motion (Exhibit 2) highlighted that the motion was unopposed and furnished, as exhibits decisive of CJA's entitlement to summary judgment on its sixth and seventh causes of action, two documents from the record:

- CJA's March 18, 2020 letter to then Governor Cuomo, Exhibit A-5 to CJA's June 6, 2022 verified petition, entitled: "Your January 21, 2020 address on the Executive Budget – Part III: GOOD NEWS DURING THIS CORONAVIRUS EMERGENCY – You Can Chuck Six of Your Seven 'Article VII Bills' Because They are Unconstitutional. Here's why based on the Court of Appeals' 2004 plurality, concurring, and dissenting opinions in *Pataki v. Assembly/Silver v. Pataki*, 4 N.Y.3d 75";

- CJA's June 28, 2022 "CPLR §2214(c) NOTICE of Papers to be Furnished to the Court", whose concluding paragraph read:

> "PLEASE ADDITIONALLY TAKE NOTICE that your failure to make such production will entitle petitioners [to] the granting of the relief sought by their June 23, 2022 notice of petition, starting [with] the requested TRO, preliminary injunction, and declaration that Part QQ of Education, Labor, Housing, and Family Assistance Budget Bill S.8006-C/A.9006-C – the 'ethics commission reform act of 2022' – is unconstitutional, unlawful, and void as it was enacted in violation of mandatory provisions of the New York State Constitution, statutes, legislative rules, and caselaw.[fn4]"

Nevertheless, by a February 1, 2024 "Decision and Order on Motion", the Appellate Division denied CJA's unopposed January 12, 2024 motion, without decision, facts or law – and did the same by another February 1, 2024 "Decision and Order on Motion", this in *CJA v. JCOPE, et al.*, where CJA's companion January 12, 2024 motion was also unopposed.

"[fn4] See, *inter alia*, *New York State Bankers Association, Inc. et al. v. Wetzler, as Commissioner of the Department of Taxation and Finance of the State of New York*, 81 NY2d 98, 102 (1993) 'The question concerns not what was enacted or its effect on the budgetary process, but whether there was authority to enact the provision at all. Our precedents clearly compel the conclusion that the controversy is justiciable…'"

Tellingly, the Appellate Division's May 9, 2024 Opinion and Order does NOT purport that ECRA —which it identifies only as Executive Law §94[4] – was "duly enacted". Instead, it omits everything about how it was enacted, *via* the budget[5] – not even mentioning the budget, including at the very end of the Opinion and Order, where, by its footnote 2, it states:

> "Supreme Court… did not overlook that 'the classic separation of powers between the executive and legislative branches is modified to some degree by our [state] Constitution' (*Pataki v New York State Assembly*, 4 NY3d 75, 83 [2004] [internal quotation marks omitted])".

In so-quoting the Court's 2004 decision in *Pataki v. Assembly*, the Appellate Division removes its reference to the budget – the Court having there stated (at p. 83):

> "Article VII, §§1-7 now govern the budget process. Several of these provisions vest certain legislative powers in the Governor, creating a limited exception to the rule stated in article III, §1 of the Constitution: 'The legislative power of this state shall be vested in the senate and assembly.' Thus, the classic 'separation of powers' between the

---

[4] Executive Law §94 was what ECRA enacted and does NOT include §§1 and 2 of Part QQ of Education, Labor, Housing, and Family Assistance Budget Bill #S.8006-C/A.9006-C (at pp. 151-201), which read:

> "Section 1. This act shall be known and may be cited as the 'ethics commission reform act of 2022'.
>
> §2. Section 94 of the executive law is REPEALED and a new section 94 is added to read as follows:" (capitalization in the original).

The text after the "as follows" is "§94. Commission on ethics and lobbying in government. …"

[5] By contrast, the Appellate Division's cited-to *Delgado v NYS* decision refers to the statute there at issue as "**a budget bill**…L 2018, ch 59, §1, part HHH", albeit not identifying the bill: Revenue Budget Bill S.7509-C/A.9509-C, Part HHH (pp. 156-158)]. Its cited-to *CJA v. Cuomo* decision refers to the statute there at issue as "**a supplemental budget bill**…2015 NY Senate-Assembly Bill S4610-A, A6721-A" (at pp. 558-9). [Part E of S.4610/A.6721 (pp. 92-94)].

executive and legislative branches is modified to some degree by our Constitution…".

It is precisely as to "Article VII, §§1-7…govern[ing] the budget process" that the *CJA v. JCOPE, et al*. sixth and seventh causes of action establish ECRA's unconstitutionality *by its enactment*. This renders academic and moots the *Cuomo v. COELIG* constitutional challenge to ECRA, *as written*, absent invocation of exceptions to mootness – and so-asserted by CJA's January 12, 2024 moving affidavit (¶14), without contest from anyone, and by its January 22, 2024 reply affirmation (¶¶6, 8).

As stated by the sixth cause of action (at ¶82) and quoted by CJA's June 28, 2022 CPLR §2214(c) NOTICE (as #1), the "starting point for the declaration that Part QQ [of Education, Labor, Housing and Family Assistance Budget Bill #S.8006-C/A.9006-C – the 'ethics commission reform act of 2022'] was unconstitutionally enacted" is CJA's March 18, 2020 letter to Governor Cuomo. It particularizes how separation of powers has been replaced by collusion of powers by the Governor and Legislature, fraudulently employing "non-appropriation" misnomered "Article VII bills" as a vehicle for packing the budget with non-tax, non-revenue-producing policy legislation. In substantiation, it furnishes (at pp. 5-7, 10-13), a devastating analysis of the Court's 2004 plurality, concurring, and dissenting opinions in *Pataki v. Assembly/Silver v. Pataki*, 4 N.Y.3d 75, seemingly the ONLY analysis to date, a full

20 years later. The analysis starts (at p. 5) with the above-quoted "Article VII, §§1-7 now govern the budget process…".

As for the Appellate Division's crediting of the Legislature's motives as "well intentioned" and the "legislation" as "beneficial" in its above-quoted ¶10 of its Opinion and Order, this is fraud. As stated by CJA's January 12, 2024 moving affidavit (at ¶15),

> "the 'motives' behind ECRA are directly challenged by the *CJA v. JCOPE, et al.* verified petition, expressly asserting that its motive was to insulate complained-against public officers from accountability by removing key provisions of the JCOPE statute, stripping complainants of rights available through mandamus (¶¶6(a)(b)(c), 17, 80), and stripping the Inspector General of jurisdiction" (underlining in the original),[6]

thereupon noting that COELIG's own description of ECRA as "carefully tailored to remedy JCOPE's perceived flaws" hedged that these, in fact, were JCOPE's actual problems because they were NOT and that:

> "the *CJA v. JCOPE, et al.* verified petition expressly asserts that JCOPE's actual problem was not a deficiency in its statute, but in its enforcement (¶¶5, 100) – and that the Senate Ethics Committee's two hearings in 2021 were rigged to prevent an evidentiary presentation on the subject (¶104, & its Exhibits L-1, L-2, L-3, L-4, L-5, L-6) and, on top of this, that:
>
> > '[the Committee's December 17, 2021 report on the first hearing, thus far its only report, omitted petitioners' written statement in support of testimony (Exhibit L-1) and written

[6] The cited to "¶¶6…(c), 17, 80" identify and/or quote CJA's April 13, 2022 complaint to JCOPE against the Governor and Legislature, Exhibit A-1 to the June 6, 2022 verified petition, on which its sixth and seventh causes of action principally rest. The complaint is based on their ulterior motives and self-interest in enacting ECRA to insulate themselves from complaints arising from their corrupting of state governance to benefit themselves, including by "false instrument" pay raises.

> testimony (Exhibit L-2), because, as evident therefrom, they were dispositive and devastating.'" (hyperlinking in the original).

Indeed, CJA's January 12, 2024 moving affidavit resoundingly demonstrated that ECRA, *as applied*, was NOT remotely beneficial by furnishing the Appellate Division with "primary-source, documentary evidence" establishing that ECRA's purportedly salutary provisions were completely worthless and that COELIG, enabled by the "independent review committee" of New York's 15 law school deans, was more corrupt than JCOPE. This evidence, summarized by the moving affidavit, was embodied in its four exhibits:

> Exhibit A: CJA's first complaint to COELIG on its DAY 1, July 8, 2022, explicitly TESTING its functioning by resubmitting to it CJA's seven complaints to JCOPE, plus a new complaint against Attorney General Letitia James for her conflict-of-interest-driven litigation fraud in *CJA v. JCOPE, et al.* (Albany Supreme Court #904235-22)
>
> Exhibit B: CJA's October 6, 2022 supplement to the July 8, 2022 complaint as to AG James' continued conflict-of-interest-driven litigation fraud in *CJA v. JCOPE, et al*;
>
> Exhibit C: CJA's March 29, 2023 testimony at COELIG's first annual hearing, furnishing an overview of COELIG's performance in its first nine months and its enablers: the "independent review committee" of New York's 15 law school deans;
>
> Exhibit D: CJA's October 2, 2023 complaint "against COELIG's Commissioners, Executive Director, General Counsel, & Other High-Ranking Staff", plus resubmission of CJA's July 8, 2022 complaint and October 6, 2022 supplement.

II
The Briefs of the Parties & *Amici* Before this Court

The briefs that Appellant COELIG, its allied *amici*, and Respondent Cuomo have filed with this Court ALL replicate, essentially *verbatim*, the briefs they filed at the Appellate Division, whose frauds and deceits CJA's January 12, 2024 moving affidavit already exposed. Thus,

- before this Court, COELIG's August 14, 2024 brief (at pp. 1, 3, 5-9, 19) replicates its November 27, 2023 brief (at pp. 1, 4-8, 18), notwithstanding CJA's January 12, 2024 moving affidavit (at ¶15) demonstrated its fraud and deceit;

- before this Court, the *amici*'s August 23, 2024 brief (at pp. 1-15) replicates its December 15, 2023 brief (at pp. 1-14), notwithstanding CJA's January 12, 2024 moving affidavit (at ¶¶16-32) demonstrated its fraud and deceit;

- before this Court, Cuomo's October 30, 2024 brief (at pp. 6-7) replicates his December 27, 2023 brief (at pp. 5-6), notwithstanding CJA's January 12, 2024 moving affidavit (at ¶¶33-40) demonstrated the fraud and deceit of Cuomo's:

> "great concern with constitutional separation of powers, while concealing the constitutional separation of powers violations pertaining to the state budget by omitting that that is how the 'ethics commission reform act of 2022' was enacted".

Consequently, CJA's January 12, 2024 moving affidavit rebuts the corresponding portions of these briefs before the Court. Indeed, the only further rebuttal needed is as to the replicated falsehoods and inferences as to COELIG's success and superiority to JCOPE in COELIG's August 14, 2024 brief and November

15, 2024 reply brief – when, as COELIG knows and its attorney AG James knows, COELIG's corruption has been unabated.

This unabated corruption, involving further complaints to COELIG subsequent to the October 2, 2023 complaint, is summarized by CJA's November 13, 2024 testimony before COELIG at its annual hearing, and was, itself, a second complaint "against COELIG's Commissioners, Executive Director, General Counsel, & Other High-Ranking Staff". It is annexed hereto as Exhibit 3.

As with CJA's October 2, 2023 first complaint "against COELIG's Commissioners, Executive Director, General Counsel, & Other High-Ranking Staff", which furnished a devastating analysis of COELIG's Annual Report for 2022, so CJA's November 13, 2024 second complaint against them provides a devastating expose of COELIG's Annual Report for 2023 – as to which, on November 15, 2024, CJA made a supplemental submission, by four FOIL requests. It is annexed hereto as Exhibit 4.

Finally, as an update to CJA's first June 12, 2022 letter to the "independent review committee" of 15 law school deans and CJA's subsequent two August 4, 2022 letters (#1, #2), featured by CJA's January 12, 2024 moving affidavit (at ¶¶21, 25-28) in its expose of the fraud of the "good government"/New York City Bar *amici*, annexed hereto, as Exhibit 5, is CJA's August 6, 2024 letter to the seven new law school dean members of the "independent review committee" entitled:

> "Have Your Predecessor Law School Deans & the IRC's Other Law School Deans Apprised You of What Has Been Going On? – & IRC's Ethical, Professional, and Civic Responsibilities Going Forward…"

The *cc*'s on the letter, to whom it was e-mailed, were the seven predecessor law school deans and the IRC's eight original and current law school deans – and the only response from the IRC was the same as it had been to the predecessor correspondence, to ignore it and flagrantly violate ECRA's Executive Law §94.3, starting with subsection (j),[7] with respect to the proposed COELIG nominee that it approved ten days later, on August 16, 2024 – and the two subsequent proposed renominations of COELIG members, which it approved on September 6, 2024 and November 8, 2024.

[7] ECRA's Executive Law §94.3(j) reads:

> "Upon the receipt of the selection members' appointments, members of the independent review committee shall disclose to the independent review committee any personal, professional, financial, or other direct or indirect relationships a member of the independent review committee may have with an appointee. If the independent review committee determines a conflict of interest exists, such independent review committee member shall, in writing, notify the other members of the independent review committee of the possible conflict. The member may recuse themself from all subsequent involvement in the consideration of and action upon the appointment. If, after disclosure, the member does not recuse themself from the matter, the independent review committee, by majority vote finding the disclosed information creates a substantial conflict of interest, may remove the conflicted member from further consideration of and action upon the appointment."

III
"The Final Nails in COELIG's Coffin"

CJA's culminating November 13, 2024 complaint to and against COELIG (Exhibit 3, Exhibit 4), CJA's correspondence with the IRC law school deans (here), and CJA's "comment" to COELIG's "selection members", *to wit*, Governor Hochul, the Senate and Assembly Majority and Minority Leaders, Attorney General James, and Comptroller DiNapoli, with respect to their "proposed nominees" to COELIG (here) are all "final nails in COELIG's coffin", proving, resoundingly, that apart from ECRA being unconstitutional, *by its enactment,* through the budget and by fraud, it is a herculean hoax and unconstitutional, *as applied*.

As stated by the ninth cause of action of the *CJA v. JCOPE, et al.* June 6, 2022 verified complaint:

> "103. It is unconstitutional – and a larceny of taxpayer monies – for taxpayers to fund ethics entities which are not doing the job for which they are paid – and which these entities conceal by false pretenses…" (at p. 44).

s/

_____

Elena Ruth Sassower, Director
Center for Judicial Accountability, Inc. (CJA),
acting on her own behalf, on CJA's behalf,
& on behalf of the People of the State of New York & the Public Interest

December 16, 2024
20th Anniversary/*Pataki v. Assembly*/*Silver v. Pataki*, 4 NY3d 75
80th Anniversary/Battle of the Bulge (Ardennes, Belgium)

TABLE OF EXHIBITS

Certificate of Compliance with Court Rule 500.13(c)(1)

Pursuant to this Court's Rule 500.13(c)(1), I certify that the word count for this *Amicus Curiae* Brief, according to the computer used to prepare it, is 3,881 words, which includes everything from its first page to its last.

Elena Ruth Sassower, Director
Center for Judicial Accountability, Inc. (CJA),
acting on her own behalf, on CJA's behalf,
& on behalf of the People of the State of New York & the Public Interest

Dated: White Plains, New York
December 16, 2024

SUPREME COURT OF STATE OF NEW YORK
APPELLATE DIVISION, THIRD DEPARTMENT

---------- x

ANDREW M. CUOMO,

Plaintiff-Respondent,

-against-

NEW YORK STATE COMMISSION ON ETHICS AND LOBBYING IN GOVERNMENT,

Defendant-Appellant.

----------x

AD Docket #: CV-23-1778

January 12, 2024

NOTICE OF MOTION for Appeals to be Heard Together, or for Leave to File *Amicus Curiae* Submission to Prevent Fraud

PLEASE TAKE NOTICE that upon the accompanying affidavit of Elena Ruth Sassower, individual petitioner-appellant in *Center for Judicial Accountability, et al. v. JCOPE, et al.* (CV-23-0115), sworn to on January 12, 2024, Elena Ruth Sassower will make a motion before this Court at the Robert Abrams Building for Law and Justice on State Street, Albany, New York 12223, on Monday, January 22, 2024, or as soon thereafter as the parties or their counsel can be heard, for an order:

(1) granting a preference to the appeal in *Center for Judicial Accountability, et al. v. JCOPE, et al.* (CV-23-0115) so that it can be heard together with the appeal herein, by the same appellate panel, as both appeals pertain to the constitutionality of Chapter 56, Part QQ, of the Laws of 2022: "the ethics commission reform act of 2022" – and to prevent fraud; and, if denied:

(2) granting Elena Ruth Sassower leave to file her moving affidavit, with exhibits, as an *amicus curiae* submission for the same reasons as mandate granting the preference;

(3) granting such other and further relief as may be just and proper.

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR §2214(b), answering papers, if any, are to be served on Elena Ruth Sassower on January 19, 2024.

ELENA RUTH SASSOWER, unrepresented petitioner-appellant in *CJA v. JCOPE, et al.*, 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

10 Stewart Place, Apartment 2D-E
White Plains, New York 10603
914-421-1200
elena@judgewatch.org

TO: Attorney for Defendant-Appellant COELIG:
Attorney General Letitia James
ATT: Assistant Solicitor General Dustin Brockner
Attorneys for Plaintiff-Respondent Cuomo:
Howell, Shuster & Goldberg, LLP
Rita M. Glavin, Esq.

Dated: White Plains, New York
January 12, 2024

SUPREME COURT OF STATE OF NEW YORK
APPELLATE DIVISION, THIRD DEPARTMENT

---------- x

ANDREW M. CUOMO,

Plaintiff-Respondent,

-against-

NEW YORK STATE JOINT COMMISSION ON ETHICS
AND LOBBYING IN GOVERNMENT
PUBLIC ETHICS,

Defendant-Appellant.

----------x

AD Docket #: CV-23-1778

January 12, 2024

Moving Affidavit in Support of Motion for Appeals to be Heard Together or for Leave to File *Amicus Curiae* Submission

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss:

ELENA RUTH SASSOWER, being duly sworn, deposes and says:

1. I am the unrepresented individual petitioner-appellant in *Center for Judicial Accountability, et al., v. New York State Joint Commission on Public Ethics, et al.* (CV-23-0115) – a hybrid Article 78 proceeding, declaratory judgment action, and citizen-taxpayer action expressly brought "on behalf of the People of the State of New York & the Public Interest" against ten respondent-respondents that also include the Legislative Ethics Commission (LEC), the State Inspector General, Governor Hochul, the Senate and Assembly, Attorney General James, and the Comptroller. CJA's appeal was perfected on August 15, 2023 (#9), was fully submitted on January 8, 2024, by the filing of appellants' Reply Brief (#25), and is presently scheduled for the Court's April term (#24).

2. I am fully familiar with all the facts, papers, and proceedings of *CJA v. JCOPE, et al.*, below and before this Court, and sufficiently familiar, for purposes of this motion, with the facts,

papers and proceedings in the above-captioned appeal (CV-23-1778) by the Commission on Ethics and Lobbying in Government (COELIG) – the ethics entity that replaced the Joint Commission on Public Ethics (JCOPE) pursuant to the "ethics commission reform act of 2022" [ECRA]. I submit this affidavit in support of the relief sought by my accompanying notice of motion.

3. For the convenience of all, a Table of Contents follows:

TABLE OF CONTENTS

* * *

The Sole Issue on this Appeal, the Constitutionality of ECRA *as Written*, is Mooted by the Appeal in *CJA v. JCOPE, et al.*, Establishing ECRA to be Unconstitutional *by its Enactment through the Budget and by Fraud* – & it is the FIRST REASON Why these Appeals Must be Heard Together

4. The sole issue on COELIG's appeal is the constitutionality, *as written*, of the "ethics commission reform act of 2024" – Chapter 56, Part QQ, of the Laws of 2022 – which former Governor Cuomo challenged by his April 25, 2023 verified complaint [R.39-358] and his July 24, 2023 amended verified complaint [R.615-936] and which, on September 11, 2023, the lower court struck down [R.5-30].

5. The sole issue on the *CJA v. JCOPE, et al.* appeal – aside from the threshold issues pertaining to the integrity of the judicial process below and before this Court involving Attorney General James – is CJA's[1] entitlement to summary judgment on each of the ten causes of action of its June 6, 2022 verified petition [R.50-421] and September 1, 2022 verified amendment [R.651-654], "starting with [the] sixth cause of action, as to which [CJA was] entitled to a TRO/preliminary injunction to prevent the 'ethics commission reform act of 2022' from taking effect on July 8, 2022" (CJA Appellants' Brief, "Conclusion", p. 36).

6. Obviously, if the "ethics commission reform act of 2022" must be struck down because, as stated in the title of the sixth cause of action [R.81-84], it is "Unconstitutional, Unlawful and Void" because it was "Enacted in Violation of Mandatory Provisions of the New York State Constitution, Statutes and Legislative Rules, and Caselaw", the question of the statute's constitutionality, *as written*, becomes academic.

7. The *CJA v. JCOPE, et al.* record is dispositive that ECRA must be declared unconstitutional, *by its enactment* – and its examination is made easy by CJA's Appellants' Brief

[1] To avoid confusion between the appellants in *CJA v. JCOPE, et al.* and the appellant in *Cuomo v. COELIG*, the appellants in *CJA v. JCOPE, et al.* are here referred to as CJA.

(#9) and Reply Brief (#25), *via* the "legal autopsy"[2]/analyses on which they rest, establishing that Attorney General James, a respondent representing herself and her fellow respondents, had no legitimate defense to CJA's sixth cause of action, or to the other nine, corrupted the judicial process below, with great success, and has continued to do the same before this Court, with great success.

8. These "legal autopsy"/analyses provide a roadmap of the record of the sixth cause of action [R.81-84]. In chronological order, they are:

(1) [R.671-699] – CJA's September 15, 2022 "legal autopsy"/analysis of AG James' August 18, 2022 cross-motion in opposition to CJA's July 6, 2022 order to show cause for a TRO/preliminary injunction to prevent ECRA from taking effect on July 8, 2022, based on the sixth cause of action, and to dismiss the petition's ten causes of action – quoting, in full, AG James' cross-motion/dismissal response to the sixth cause of action and eviscerating it, totally [at R.693-696]. This "legal autopsy"/analysis was Exhibit A to CJA's September 15, 2022 motion for sanctions and other relief against AG James and for summary judgment to CJA on its ten causes of action, starting with the sixth [R.741-744];

(2) [R.856-886] – CJA's December 16, 2022 "legal autopsy"/analysis of the lower court's November 23, 2022 decision granting AG James' August 18, 2022 supposed "motion" and denying CJA's September 15, 2022 supposed "cross-motion" – quoting, in full, the lower court's dismissal of the sixth cause of action and eviscerating it, totally [at R.882-884]. This "legal autopsy"/analysis was Exhibit 1 to CJA's December 16, 2022 motion for reargument/vacatur and for other relief [R.849-851] and is additionally annexed to CJA's December 16, 2022 notice of appeal of the November 23, 2022 decision to this Court [R.1-43];

(3) [R.48-49] – CJA's February 23, 2023 "legal autopsy"/analysis of the lower court's February 15, 2023 decision denying CJA's December 16, 2022 reargument/vacatur motion, eviscerating it, totally. It is annexed to CJA's February 23, 2023 notice of appeal of the February 23, 2023 decision to this Court [R.44-49];

(4) (#15) – CJA's November 25, 2023 "legal autopsy"/analysis of AG James' November 15, 2023 Respondents' Brief, eviscerating it, totally – including its single sentence for affirmance of the lower court's dismissal of CJA's sixth, seventh, eighth and ninth causes of action, annotated by a footnote stating:

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[2] The term "legal autopsy" is taken from the law review article "*Legal Autopsies: Assessing the Performance of Judges and Lawyers Through the Window of Leading Contract Cases*", 73 Albany Law Review 1 (2009), by Gerald Caplan, recognizing that the legitimacy of judicial decisions can only be determined by comparison with the record ('…Performance assessment cannot occur without close examination of the trial record, briefs, oral argument and the like…' (p. 53)).

> "Unlike *Cuomo v. New York State Commission on Ethics & Lobbying in Government*, currently on appeal in this Court (A.D. No. CV-23-1778), this appeal presents no separation-of-powers issue."

To this, CJA's "legal autopsy"/analysis (at p. 16) was:

> "This, too, is fraud. Appellants' sixth and seventh causes of action [R.81-84; R-84-87] involve a multitude of 'separation of powers issue[s]' pertaining to the duties of, and limitations on, the Governor and Legislature in fashioning and enacting the state budget, prescribed by Article VII of the New York State Constitution, ALL eviscerated by their collusion with each other – and with the Judiciary – so-alleged by those two causes of action, without contest from AG James by her Brief, or below.
>
> As to the purpose of this fraudulent footnote, it presumably is to perpetrate further fraud, namely:
>
> > (1) to mislead the Court into believing that Appellants' sixth and seventh causes of action do not – as they do – moot *Cuomo v. COELIG*; and
> >
> > (2) to mislead the Court into believing that the two appeals should not be heard together, as they plainly should.[fn1]"

9. CJA's "legal autopsy"/analysis of AG James' Respondents' Brief (#15) was Exhibit A to CJA's November 25, 2023 motion to strike it as a "fraud on the court" and for other relief (#13). AG James' scant December 11, 2023 opposition (#18) did not deny or dispute the above-quoted assertion as to the purpose of the footnote – and was so "frivolous" that CJA's December 13, 2023 reply affidavit (#19) sought additional maximum sanctions and costs against her pursuant to 22 NYCRR §130-1.1. *et seq*.

10. On December 28, 2023, without reasons, this Court, by an order unsigned by any of the four justices constituting the purported motion panel (#22), denied CJA's November 25, 2023 motion. Three of these justices – this Court's Presiding Justice Garry, Associate Justice Clark, and Associate Justice Pritzker – were on the purported motion panel that issued the October 10, 2023 scheduling order for this appeal (#8), unsigned by any of them.

11. Later that day, in this appeal, Assistant Solicitor General Dustin Brockner made a motion (#23) for a two-week extension to file COELIG's reply brief to former Governor Cuomo's December 27, 2023 Respondent's Brief (#22), stating, in pertinent part:

> "a short extension will ensure there is enough time to prepare a brief that is sufficiently comprehensive and has been reviewed by office supervisors as well as the client." (¶8, underlining added).

12. On January 2, 2024, I telephoned the Clerk's Office to verify that CJA had until January 8, 2024 to file its reply brief and inquired whether the fully submitted appeal would then be assigned to the same panel as this appeal, noting that pursuant to the Court's October 10, 2023 order herein, COELIG's reply brief was also due on January 8, 2024, but that AG James' office had made a motion for a two-week extension.[3] I was told that it would not be so-assigned because the October 10, 2023 order gave this appeal an accelerated schedule, including in setting it down for the February term, that appeals are otherwise not heard for two or three months after they are fully submitted, that CJA's appeal would not be heard until probably the April term,[4] and that if I wanted it heard together with this appeal I needed to make a motion for such relief, setting forth the reasons.

13. This I here do and, simultaneously, in *CJA v. JCOPE, et al*. (##26-33), resting on this affidavit and its below four exhibits.

14. The FIRST REASON these appeals must be heard together is, as above-recited, because the record before this Court on the sixth and seventh causes of action of the *CJA v. JCOPE, et al.* appeal [R.81-84; R-84-87], separately and together, are dispositive that ECRA must be

[3] ASG Brockner's motion for an extension was essentially denied by this Court's order by "Egan Jr., J.P., Aarons, Reynold Fitgerald and Fisher, JJ., concur", though purporting to be granting same. Though also purporting to be "Decided and Entered: January 4, 2024", it was not posted on NYSCEF until 4:26 pm on January 10, 2024 (#28). It also disposed of the two motions made by would-be *amici*: granting the December 15, 2023 motion of the New York City Bar Association, *et al*., to file an *amicus curiae* brief (#17, #18) and denying the November 30, 2023 motion of Gary Lavine, Esq. to file an *amicus curiae* brief (#15).

[4] Indeed, on January 8, 2024, even before I filed Appellants' Reply Brief (#25), the Court had issued a "Scheduling Memorandum" (#24) that "This appeal has now been fully perfected and the matter has been scheduled for the **April 2024** Term."

declared unconstitutional, *by its enactment through the budget and by fraud*. This moots AG James' appeal as to ECRA's constitutionality, *as written*, absent invocation of exceptions to mootness.

The SECOND REASON these Appeals Must be Heard Together:
***CJA v. JCOPE, et al.* Exposes Material Frauds by COELIG & AG James – & Such is Further Proven by CJA's Subsequent Interaction with COELIG Based Thereon**

15. The SECOND REASON these appeals must be heard together is that the *CJA v. JCOPE, et al.* appeal enables this Court to discern the material frauds of AG James' November 27, 2023 Appellant's Brief (#12), largely exported from her September 21, 2023 order to show cause, signed by Associate Justice Clark on September 22, 2023 (#3). Thus:

- both make it appear that the there is nothing noteworthy about the ECRA statute's enactment through the budget[en1] and, in fact that it was "Duly enacted", thereby boosting its constitutionality. As stated by the very first sentence of the Brief's "Argument" (at p. 18):

  > "Duly enacted statutes enjoy an exceedingly strong presumption of constitutionality and must be upheld unless shown to be unconstitutional beyond a reasonable doubt, *White v. Cuomo*, 38 N.Y.3d 209, 216-17 (2022)" – repeating, but more emphatically, the same from ASG Brockner's OSC/aff: ¶33: "The Commission is also likely to prevail on appeal. Duly enacted statutes enjoy an 'exceedingly strong presumption of constitutionality' and should be upheld unless shown to be unconstitutional beyond a reasonable doubt. *White v. Cuomo*, 38 N.Y.3d 209, 216-17 (2022) (internal quotation marks omitted)".

  Yet, as above stated, the record before this Court on the sixth and seventh causes of action of *CJA v. JCOPE, et al.* [R.81-84; R-84-87] establish that ECRA was not "Duly enacted" and must be declared unconstitutional, *by its enactment through the budget and by fraud*.

- both purport that the ECRA statute arose from the highest motives grounded in "New York State['s]…compelling interest in the fair and impartial enforcement of its ethics and lobbying laws" and the "State's public policy to 'prevent even the appearance of the slightest taint of impropriety from infecting the decision-making process in our government"[en2], lending to its constitutionality. As stated by the very first sentence of the Brief's "Argument", at its Point A (at p. 23):

  > "When analyzing a separation-of-powers claim, courts consider the 'motive behind the legislation.' *Cohen v. State*, 94 N.Y.2d 1, 14 (1999)" – repeating, but more emphatically, the same from ASG Brockner's OSC/aff: ¶37

> "…courts may consider the 'motive[s] behind the legislation' when analyzing a separation-of-powers claim. 94 N.Y.2d 1."

Yet, the "motives" behind ECRA are directly challenged by the *CJA v. JCOPE, et al.* verified petition, expressly asserting that its motive was to insulate complained-against public officers from accountability by removing key provisions of the JCOPE statute, stripping complainants of rights available through mandamus (¶¶6(a)(b)(c), 17, 80), and stripping the Inspector General of jurisdiction.

- both purport that the ECRA statute "was carefully tailored to remedy JCOPE's perceived flaws"[en3]– hedging that these, in fact, were JCOPE's actual problems, while, at the same time giving them credence by referencing a "December 2021 New York Senate Report" of a Senate Ethics Committee hearing at which witnesses testified against JCOPE's "special voting requirement" and how its commissioners were appointed,[en4] thereafter changed by ECRA.

  Yet, the *CJA v. JCOPE, et al.* verified petition expressly asserts that JCOPE's actual problem was not a deficiency in its statute, but in its enforcement (¶¶5, 100) – and that the Senate Ethics Committee's two hearings in 2021 were rigged to prevent an evidentiary presentation on the subject (¶104, & its Exhibits L-1, L-2, L-3, L-4, L-5, L-6) and, on top of this, that:

  > "[the Committee's December 17, 2021 report on the first hearing, thus far its only report, omitted petitioners' written statement in support of testimony (Exhibit L-1) and written testimony (Exhibit L-2), because, as evident therefrom, they were dispositive and devastating."

Additionally, and requiring expansion of the record for purposes of factual rebuttal:

- both give the appearance that ECRA, *as applied*, has been successful,[en5] most importantly, the procedure for appointing commissioners, utilizing an Independent Review Committee (IRC) of law school deans,[en6] and COELIG's investigations and enforcement functions.[en7] This appearance, which is false, is buttressed by Exhibit C to ASG Brockner's affirmation in support of COELIG's September 21, 2023 order to show cause, which is the affirmation of COELIG Executive Director Sanford Berland. Its ¶10 concludes with the sentence:

  > "In 2022, 155 tips, complaints, referrals and reports were received and processed by the Commission; 128 investigative matters were closed; and the year ended with 156 open or pending investigative matters, including matters carried over from the predecessor agency",

  and its final two paragraphs, ¶13 and ¶14, read:

  > "13. Exhaustive detail with respect to all aspects of the Commission's operations and activity can be found in the Commission's first Annual Report, which can be accessed at https://ethics.ny.gov/2022-annual-report.

14. It is vital to the public interest that the Commission be able to continue to perform all of its statutorily mandated functions, which are essential to the integrity of state government, during the pendency of the Commission's appeal. Accordingly, I request that the Commission's application to stay the order of the Supreme Court, which profoundly, and to the public's detriment, impairs the Commission's ability to perform those functions, be granted in all respects, and that the Commission be granted such other, further and additional relief as may be deemed necessary and appropriate." (hyperlink made live, underlining added).

The perjury of these – enabling the false inferences of ASG Brockner's OSC/affirmation and Appellant's Brief that ECRA is a success – is proven by CJA's explicit TESTING of the COELIG statute, *as applied*, from its Day 1, July 8, 2022, established by the following primary-source, documentary evidence, annexed as exhibits:

EXHIBIT A: CJA's July 8, 2022 complaint to COELIG – entitled: "TESTING the 'ethics commission reform act' Commission on its DAY 1: Re-filing the seven complaints previously filed with JCOPE, plus a new eighth complaint against Attorney General Letitia James for litigation fraud in *CJA, et al. v. JCOPE, et al.* (Albany Co. #904235-22) – arising from the same conflict of interest Public Officers Law §74 violations as were the subject of CJA's March 5, 2021 complaint, unredressed by JCOPE".

The referred-to previously-filed seven complaints to JCOPE are the first seven exhibits of the *CJA v. JCOPE, et al.* verified petition [R.101-345];

EXHIBIT B: CJA's October 6, 2022 supplement/letter to COELIG – entitled:
"(1) SUPPLEMENT to CJA's July 8, 2022 complaint against Attorney General Letitia James for litigation fraud in CJA, et al. v. JCOPE, et al (Albany Co. #904235-22) – arising from the same conflict of interest Public Officers Law §74 violations as were the subject of CJA's March 5, 2021 complaint, unaddressed by JCOPE…"

This furnished COELIG with CJA's September 15, 2022 sanctions/summary judgment motion, including its Exhibit A "legal autopsy"/analysis that [R.671-699] – and the record thereon – the same as would be recited by CJA's "legal autopsy"/analysis of the lower court's November 23, 2022 decision [R.856-886].

EXHIBIT C: CJA's testimony at COELIG's March 29, 2023 hearing, identifying to the commissioners that I would be filing a complaint:

> "against you, to you, for your "substantial neglect of duty" and "misconduct in office"[en] from your first meeting last September 12th to date – 6-1/2 months later – arising from your willful violations of Public Officers Law §74, proscribing conflicts of interest that is your duty to enforce as to others,[en] and of Executive Law §94.10(b)

> explicitly mandating that you each disclose personal, professional, and financial conflicts of interest with respect to complaints – and recuse yourselves or be recused by vote of your fellow commissioners.[en] (underlining and hyperlinks in the original).

The testimony summarized, with evidence,[5] COELIG's corruption by its unsigned November 17, 2022 letter that the Commission had "voted to close" CJA's July 8, 2022 complaint, its corruption with respect to FOIL, the commissioners' corrupt retention of JCOPE Executive Director Berland who, without any search, they had made COELIG's executive director, retaining other corrupt top JCOPE staff, all of this enabled by a corrupt IRC, whose 15 law school deans had known, since CJA's June 12, 2022 letter to them [R.565-568] ,"that *CJA v. JCOPE* is dispositive that the budget-born statute establishing this Commission must be voided, *as a matter of law*", and who, thereafter, in tandem with ECRA's "selection members", corrupted the appointments process for commissioners – with the full knowledge of the then prospective commissioners who I had *cc*'d on CJA's August 4, 2022 and August 22, 2022 e-mails to the IRC's law school deans.

The testimony concluded, as follows:

> "I conclude with a procedural suggestion with respect to your letters 'closing' complaints on alleged votes by the Commission – and other dispositions that are not, in fact, by votes of the Commission, namely that your letters indicate 30 days in which a complainant may seek reconsideration, similar to what is provided by the Appellate Division Rules pertaining to its attorney grievance procedures.[en] Certainly, inasmuch as your dispositions of FOIL requests include, as required, that there is 30 days within which to seek an appeal, there should be an appeal/reconsideration procedure for complaints.
>
> Consistent therewith, that is what I now request, from you, with respect to your unsigned November 17th letter of your 'Investigations Division'."

EXHIBIT D: CJA's October 2, 2023 complaint/TEST to COELIG – entitled:

"(1) Updating & Now Filing CJA's March 29, 2023 ethics complaint vs COELIG's Commissioners, Executive Director, General Counsel, & Other High-Ranking Staff, for 'substantial neglect of duty' and 'misconduct in office', born of flagrant violations of mandatory conflict-of-interest protocols;

(2) Officially TESTING the Commission's unofficial reconsideration/ renewal remedy by resubmitting CJA's July 8, 2022 complaint and October 6, 2022 supplement".

The complaint stated that this was the complaint that my March 29, 2023 testimony identified I would be filing, but explained:

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[5] This included – and so-identified by its first endnote – a dedicated webpage on CJA's website "with EVIDENTIARY links under the heading 'PAPER TRAIL' of Correspondence: What the Commissioners Knew, & When".

"I deferred actually filing such complaint, so as to give you the opportunity to take steps to rectify the violations that my March 29, 2023 testimony summarized and evidentiarily-established. This you have not done and the final straw, prior to your September meetings, was your issuance on August 28, 2023 of your misnomered 2022 Annual Report, which is largely a first-year report, and whose material fraudulence is proven, resoundingly, by my testimony.

Had you made findings of fact and conclusions of law with respect to my testimony, as was your duty to have done – and *pronto* – you could not have rendered your 'false instrument' Annual Report, constituting a Penal Law §175.35 violation by you, nor have stolen from the taxpayers scores of thousands of dollars in *per diems* to which you knew yourselves to be not entitled, violating further Penal Laws, such as:

Penal Law §195 ('official misconduct');
Penal Law §496 ('corrupting the government') –
part of the 'Public Trust Act';
Penal Law §20.00 ('criminal liability for conduct of another').
Penal Law §195.20 ('defrauding the government');
Penal Law §155.40 ('grand larceny in the second degree');
Penal Law §190.65 ('scheme to defraud in the first degree');

Indeed, with respect to *per diems*, you went way beyond availing yourselves of the fraud of its rate, which Executive Law §94.4(f) ties to the salary of a Supreme Court justice. What you did was to *sub silentio* convert Executive Law §94.4(f) into an hourly compensation provision by falsely purporting that this is what the statute provides, without securing an independent legal opinion because, as you knew, such would not sustain your self-serving interpretation.

I, therefore, now update and herewith file the complaint indicated by my March 29, 2023 testimony to span to the present date and to include the below 'specific and credible evidence'. Pursuant to Executive Law §§94.10(d) and (f), 'specific and credible evidence' is the predicate for investigation, signified and commenced by 15-day letters. Such are here required to be sent to each of you, to Executive Director Berland, to General Counsel St. John, and to other high-level complicit staff, so that each of you may respond to the evidence of your conflict-driven, fraudulent, and larcenous conduct." (hyperlinks in the original).

The indicated "below 'specific and credible evidence'" included a devastating critique of COELIG's Annual Report – the same as Executive Director Berland had cited at ¶13 of his September 21, 2022 affirmation in support of COELIG's order to show cause to this Court. The false and misleading nature of the "155 tips, complaints, referrals and reports…received and processed" – to which Berland's

affirmation cited (¶10) and, based thereon, ASG Brockner's affirmation, twice (at ¶¶5, 27) is particularized at pp. 11-14.[6]

The THIRD REASON these Appeals Must be Heard Together:
CJA v. JCOPE, et al.* Exposes Material Frauds by *Amici Curiae
New York City Bar Association & the "Good Government" Groups --
& Such is Further Proven by CJA's Subsequent Interaction with COELIG, Known to Them

16. The third reason these appeals must be heard together is that the *CJA v. JCOPE, et al.* record and the above Exhibits A, B, C, and D enable the Court to discern the material frauds of the December 15, 2023 motion (#17) and *Amicus Curiae* Brief (#18) of the New York City Bar Association, the Committee to Reform the State Constitution, Common Cause-NY, Citizens Union, New York Public Interest Research Group, Reinvent Albany, and the Sexual Harassment Working Group, starting with their purported *bona fides*, which they use, in lieu of evidence, to factually assert that COELIG is "an improvement over JCOPE", "an effective protector against corruption and unethical conduct by our public officials", and not "a 'toothless tiger'", because:

> "the statute eliminated the 'minority veto,' had the Commission appoint its own Chair, included appointees from the Comptroller and Attorney General, had the Commission determine whether the criteria for removal of a Commissioner was satisfied, [] added the protection of the Law School Dean screening process…[a]nd…has the necessary power to impose penalties." (at p. 14).

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[6] The status of the October 2, 2023 complaint/TEST is, as follows: After two months, in the absence of any acknowledgment or response from COELIG, I sent a December 5, 2023 e-mail so-stating and additionally requesting, pursuant to FOIL:

> "the Commission's written procedures/manual for receipt, docketing, acknowledgment, preliminary review, investigation of complaints, notification of disposition to complainants – and reconsideration."

The only response I received was to the FOIL request – a December 6, 2023 e-mail acknowledging receipt and that "The Commission expects to respond to your request on or before January 5, 2024." The response came on January 9, 2024, stating, in pertinent part:

> "Written procedures that align with the Ethics Commission Reform Act are in preparation but, at this time, are not yet final. …As such, the Commission is withholding non-final intra-agency drafts of its written procedures concerning the topics referenced in your request at this time."

17. These three factual assertions: "an improvement over JCOPE", "an effective protector against corruption and unethical conduct by our public officials", and not "a 'toothless tiger'" – on which the *amici* would have the Court rely – are in the last paragraph of their "Statement of the Case" (pp. 6-14), whose two subsections are titled:

> "A. New York Has a Serious Corruption Problem" (pp. 6-9); and
>
> "B. The Failure of Prior Efforts to Deter Corruption and Enforce Ethics Laws, and Hold Bad Actors Accountable" (9-14).

These two subsection are themselves deceits, as is the section that precedes it "Summary of the Argument" by its operative sentence (at p. 4):

> "…the entity responsible for deterring and policing ethics and corruption – JCOPE – was <u>widely perceived</u> to be a failure both because of deficiencies in the underlying statute and the ways in which former Governor Cuomo sought to influence its decisions". (underlining added).

In other words, the City Bar and "good government" groups – notwithstanding they purport, as part of their credentials, to "have studied how JCOPE had performed its responsibilities" (at p. 1) are unable to assert, based on empirical evidence, that JCOPE's "underlying statute" is the cause of JCOPE's shortcomings, which, in fact, these sections and subsections do not present. They make no showing, indeed do not even claim, that the officials who resigned and/or were indicted – to which they refer at the outset of their "Summary of the Argument" (at p. 4), with a listing of presumably their best particulars in their subsection A (at pp. 6-8) – were the subject of complaints mishandled by JCOPE. Their subsection B then leans on "appearance"; "concerns"; and "questions about independence", rather than facts – with such few specifics as they offer up not being deficiencies in the JCOPE statute, *to wit*, "JCOPE's first three Executive Directors had previously served in senior positions working for Governor Cuomo"; "An incident in 2019" involving the leak and "JCOPE's approval of the book deal at issue in this case" (all at p. 11).

18. As to the reference, in subsection B, to "the Moreland Act Commission" (pp. 11-12) – whose proper name is Commission to Investigate Public Corruption – it is not for purposes of making any connection to JCOPE, which was within the Commission's purview, and which it falsely infers was a legitimate entity, but for the former Governor's interference with it.

19. In fact, the Commission to Investigate Public Corruption, to which, from its outset, the "good-government" groups had an inside-track and which they hijacked to advance their own agenda of campaign finance reform, abetted JCOPE's corruption[7] – as did federal prosecutors, who subsections A and B falsely portray as if honest players on the anti-corruption front.

20. The *CJA v. JCOPE, et al.* verified petition, by its exhibits, furnishes the true facts – and the *amici*'s knowledge of them. Among these exhibits, CJA's December 11, 2014 complaint to JCOPE against JCOPE and the five appointing authorities of the JCOPE/LEC Review Commission that was required to be established "No later than June 1, 2014" [R.305-322] – to which the City Bar, Common Cause, and NYPIRG were indicated recipients – a complaint which rested on CJA's June 27, 2013 complaint to JCOPE, with its physically-incorporated April 15, 2013 complaint to U.S. Southern District of New York Attorney Preet Bharara [R.323-346], that I had furnished to the Commission to Investigate Public Corruption at its September 17, 2013 public hearing.

21. Tellingly, subsection B omits any mention of the never-established 2014 JCOPE/LEC Review Commission, as to which the City Bar and the "good government" groups could have, but did not, bring a mandamus proceeding – as CJA's December 11, 2014 complaint suggested be done [R.309]. It also omits any mention of the 2015 JCOPE/LEC Review Commission, before which I testified at its October 14, 2015 hearing, at which, also testifying, was, *inter alia*, the City Bar and

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[7] The chapter-and-verse details are set forth, with evidence, by CJA's April 23, 2014 order to show cause to intervene in the Legislature's declaratory judgment action against the Commission to Investigate Public Corruption (Supreme Court/NY Co. #16094/2013), and March 28, 2014 verified complaint in CJA's 1st citizen-taxpayer action, *CJA v. Cuomo…et al.* (Supreme Court/Albany Co. #1788-14), each identified at fn. 7 of CJA's December 11, 2014 complaint to JCOPE [R.305-322], *infra*.

Citizens Union, with a written submission by NYPIRG. Nor does subsection B identify the November 1, 2015 Report the JCOPE/LEC Review Commission rendered, as to which they could have, but did not, do any analysis, as such would have established it to be a fraudulent cover-up. The particulars of this the *amici* would have been reminded of by my #1 August 4, 2022 letter to the IRC law school deans, with its recitation of the absolute disqualification, for interest, of IRC chair/New York Law School Dean Anthony Crowell, based on his corruption as member, if not as *de facto* chair, of the 2015 JCOPE/LEC Review Commission and its fraudulent November 1, 2015 Report,[8] are ALSO recited by exhibits to the *CJA v. JCOPE, et al.* verified petition:

- CJA's November 2, 2021 complaint to the State Inspector General, against, *inter alia*, the State Inspector General, JCOPE, and the Commission to Investigate Public Corruption [R.361-385];

- CJA's December 17, 2021 complaint to JCOPE particularizing the LEC's abetting role in subverting its JCOPE statutory partner, covered up by the 2015 JCOPE/LEC Review Commission and its November 1, 2015 Report [R.162-184].

22. Also omitted from their "Statement of the Case", with its contextual background for the statute, is anything about the statute's enactment, other than, cryptically, in subsection B, substituting the word "process" for "enactment" (at pp. 12-14):

> " the new Governor and the Legislature sought to create a new entity to replace JCOPE. The Amici were actively involved in providing input into this process.
>
> Both before and during this process, some of the Amici proposed…
>
> In a letter sent on their behalf late in the process, a majority of the Amici proposed…[fn11]" (underlining added).

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[8] This letter to the IRC law school deans entitled "Your Undisclosed Conflicts of Interest – and the Direct Interests of your Chair, New York Law School Dean Crowell, and Hofstra Law School Dean Prudenti in *CJA v. JCOPE, et al.*, Mandating that They IMMEDIATELY Disqualify Themselves from the Independent Review Committee – or that You Disqualify Them IMMEDIATELY" and its accompanying #2 August 4, 2022 letter to them entitled "Violation of Vetting Rules & Investigative Protocols by Selection Members & the Independent Review Committee – Born of Conflicts of Interest" may be presumed to have been read by the *amici* based on my March 29, 2023 testimony (Exhibit C).

Not revealed is that the "process" by which substantive policy legislation was being enacted was taking place entirely behind-closed-doors, *via* the budget – and, indeed, that these *amici* were urging JCOPE's replacement *via* the budget, and that, in doing so, they knew – and had known, for years by CJA's advocacy and interface with them – that the state budget is completely "OFF THE CONSTITUTIONAL RAILS", including by the inclusion of non-fiscal, non-revenue-producing policy.[9]

23. Indeed, only by the link in the annotating footnote reading:

> "*See* March 23, 2022 letter. (available at https://reinventalbany.org/wp-content/uploads/2022/03/Memo-to-Legislature-on-Ethics-Commission-Appointment-March-23-2022.pdf)."

is a bit of the critical truth about ECRA's enactment revealed, reading, in pertinent part:

> "We urge our elected leaders to create a new, independent New York State ethics commission in this year's budget.
>
> We have read the one-house budget bills and we implore you not to pass a budget that keeps the Joint Commission on Public Ethics in place. … JCOPE must be replaced by a new agency and new agencies are best created and funded in the budget.
> …
> We ask you to create in the budget a new ethics commission…"

24. To further conceal that COELIG was enacted *via* the budget, the *Amicus* Brief nowhere even identifies the statute from which this might be gleaned, Part QQ of Chapter 56 of the Laws of 2022, or that this is Part QQ of the Education, Labor, Housing, and Family Assistance Budget Bill S.8006-C/A.9006-C. In fact, their *Amicus* Brief does not even mention the high-sounding name "ethics commission reform act" or the acronym ECRA.[10]

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[9] As illustrative, *see* CJA's outreach to them pertaining to the *CJA v. Cuomo…DiFiore citizen-taxpayer action*: 2017, 2018, and 2019.

[10] Notably, their "Table of Authorities" also does not include Executive Law §94, presumably because it is not anywhere in the *Amicus* Brief.

25. Why would these *amici* conceal that the "ethics commission reform act of 2022" was enacted *via* the budget – or, for that matter, the statute? *CJA v. JCOPE, et al.* has the answer, again by exhibits to the verified petition, revealing that a month before *CJA v. JCOPE, et al*. was commenced I furnished them with what would be Exhibit A to the verified petition: CJA's April 13, 2022 complaint to JCOPE [R.104-120] pertaining to the budget and the "ethics commission reform act of 2022":

- Exhibit J [R.386-389] consisting of two e-mails to which they were *cc*'d: my May 6, 2023 e-mail to JCOPE, and my May 5, 2022 e-mail to the Albany Times Union, it forwarded which, quoting page 11 of the April 13, 2022 complaint:

> "No competent person, unafflicted by conflict of interest, could regard the new Executive Law §94 governing what the Commission on Ethics and Lobbying in Government is to do upon receipt of complaints or what it must include in its annual reports as anything but inferior to the corresponding Executive Law governing JCOPE. Certainly, Governor Hochul, as an attorney, and the many legislators who are attorneys may be presumed to know that removing from Executive Law §94 non-discretionary, mandatory provisions – as they did – would prevent the public from being able to secure its rights by mandamus/Article 78 proceedings, as was done in *Trump v. JCOPE* and *Cox v. JCOPE*, cited and quoted by my March 5, 2021 complaint (at fn. 8, pp. 8-9) in the context of giving NOTICE of my intent to do likewise",

  stated:

> "To that end, I am *cc*'ing the so-called 'good government groups', on which, over all these years, the Times Union has uncritically relied, to the public's detriment – with a request that they assist you by their responses to the complaint – and, in particular, to the analysis appearing at pages 10-14. What, if anything, do they deny or dispute?"

- Exhibit K [R.390-396], to which they were *cc*'d, which was CJA's May 16, 2022 letter to the State Inspector General reciting facts pertaining to the IG's corruption and that under the new ECRA statute, the IG would have no jurisdiction over COELIG, in contrast to the jurisdiction it had had over JCOPE.

26. This is not the end of what the *CJA v. JCOPE, et al.* record reveals about what these *amici* know, but have not disclosed by their *Amicus* Brief. It also includes two of the several e-mails I directly sent to the amicus, not as *cc*'s, following commencement of *CJA v. JCOPE, et al.*, seeking

their expert opinion and assistance – and, most importantly, with respect to the sixth cause of action upon which I was seeking to secure a TRO/preliminary injunction to prevent ECRA from taking effect on July 8, 2022:

- CJA's July 2, 2022 e-mail to the *amici* [R.569-574],identifying and linking to two e-mails I sent them on June 9, 2022 and June 16, 2022 – to which I had received no responses. This now further e-mail forwarded to them my July 2, 2022 e-mail to the 15 law school deans of the IRC [R.560-564] and attached the June 12, 2022 letter I had sent the deans [R.565-568] requesting, "on behalf of the People of the State of New York", for whom the lawsuit had been brought, that they furnish the lower court with their "expert opinion as to the constitutionality and lawfulness of the enactment of the 'ethics commission reform act of 2022' *via* the budget";

- CJA's July 3, 2022 e-mail to the New York City Bar Association [R.575-581], identifying and linking to two e-mails I sent them on June 14, 2022 and June 16th e-mail. … and further stating:

> I have also received no responses to my June 15th e-mail to your general counsel…, entitled 'CLARIFICATION…', to which, *inter alia*, your Governmental Ethics and State Affairs Committee Chair…and its presumed member former City Bar President Evan Davis were *cc*'d, just as, likewise, they were *cc*'d on my June 13th e-mail to her entitled 'Request that the NYC Bar Association discharge [] its ethical, professional, & civic responsibilities: Lawsuit to VOID the 'ethics commission reform act of 2022' and for TRO…'.
>
> What are your responses?"
>
> Below, with the above-attached, is my self-explanatory July 2nd e-mail to the 15 law school deans comprising the 'independent review committee' of the 'ethics commission reform act of 2022', to which you are *cc*'d so that you can also 'discharge some ethical and professional responsibility and civic duty and…come forward with findings of fact and conclusions of law as to the verified petition's sixth cause of action as to the unconstitutionality and unlawfulness of the enactment of the 'ethics commission reform act of 2022''. (links, capitalization, underlining in the original).

27. I *cc*'d the lower court on these July 2-3, 2022 e-mails, and on my corresponding e-mails to the IRC law school deans [R.560-564], and the New York State Bar Association [R.882-883] – all bearing, in the RE: clause, "TIME IS OF THE ESSENCE" – hoping that this might help

prompt their responses, and, thereafter annexed all the e-mails to my July 6, 2022 affidavit in support of CJA's order to show cause for a TRO/preliminary injunction [R.547-588], stating:

> "I have received no responses from any of the recipients of these e-mails – and it should be obvious that if they could deny or dispute the accuracy of the content of my e-mails – or of my June 12th letter to the law school deans it annexed – beginning with the flagrant unconstitutionality and unlawfulness of the enactment of the 'ethics commission reform act of 2022' – the basis of petitioners' *matter of law* entitlement to the TRO/preliminary injunction – they would have done so.[fn]" [R.558].

The annotating footnote read:

> "Although not parties, the relevant principles, applicable to summary judgment, are certainly known to the mostly lawyer recipients: 'failing to respond to a fact attested in the moving papers... will be deemed to admit it', Siegel, New York Practice §281 (1999 ed., p. 442) – citing *Kuehne & Nagel, Inc. v. Baiden*, 36 N.Y.2d 599 (1975), itself citing Siegel, Practice Commentaries, McKinney's Cons. Laws of NY, Book 7B, CPLR 3212:16, p 437): 'If key fact appears in the movant's papers and the opposing party makes no reference to it, he is deemed to have admitted it' id. Undenied allegations will be deemed to be admitted, *Whitmore v. J Jungman, Inc.*, 129 N.Y.S. 776, 777 (S.Ct., NY Co. 1911)."

28. On March 29, 2023, the *amici* testified at COELIG's public hearing at which I testified (Exhibit C) and were, by my testimony, which COELIG posted on its website with theirs, fully updated as to *CJA v. JCOPE, et al*. and how corruptly COELIG had operated, from its inception – as, likewise, the corruption of the appointment/vetting process by the appointing authorities and the IRC, on which they had placed such stock.

29. On September 7, 2023, COELIG held a public meeting whose purpose was to publicly discuss and vote on recommendations from the March 29, 2023 hearing. Based upon my March 29, 2023 testimony, the *amici* would have had no difficulty discerning how corruptly COELIG disposed of two of the three recommendations that it identified as mine. The first of these, transmogrified into something it was not, was disposed of by COELIG's vice-chair, as follows: without dissent from his fellow commissioners:

> "Number 8 is from Elena Sassower, and she asks that the stat, that we void the statute creating the Commission. I think Governor Cuomo is helping us along

> that, her along that way. Anyway, we're waiting for a decision, so I don't think there is anything we can do with that, on so many different levels. So, with your kind permission, I am going to mark that one as rejected." (VIDEO, at 50mins).

30. Needless to say, none of the *amici* concerned themselves that COELIG's November 1, 2023 "roundtable", whose purpose was to further discuss the recommendations that would be part of its legislative agenda, to which they were all invited, did not include me – nor reflect my March 29, 2023 testimony (Exhibit C).

31. And, of course, in offering up their *Amicus* Brief that COELG is "an improvement over JCOPE", "an effective protector against corruption and unethical conduct by our public officials", and not "a 'toothless tiger'", none of them did so based on any analysis of COELIG's misnomered 2022 Annual Report – which, just as CJA did (Exhibit D), they could have easily done, exposing the truth of such frauds as had been three times cited-to by AG James' September 21, 2023 order to show cause pertaining to what is COELIG's most important function: handling complaints.

32. The foregoing unethical conduct by a preeminent New York bar association and supposed "good government" groups is consistent with what I have documented about these *amici* for decades by interactions memorialized by a "paper trail" of correspondence with them about the true causes of New York's corruption problem and the ease with which it could be rectified. Always they have not only refused to confront my presentments of evidence to them, refused to engage in any dialogue about it, and excluded CJA from any of their coalitions, but have engaged in knowingly false and deceitful advocacy, subverting every opportunity to achieve the kind of "transparent" "accountable" government they purport to champion [11] This includes as to JCOPE, spanning back to 2013 and the Commission to Investigate Public Corruption.

[11] For more than two decades, this "paper trail" of correspondence, has been contemporaneously posted on CJA's website, www.judgewatch.org, including on specially dedicated webpages, accessible from the left side panel "Search for Champions (Correspondence). Here linked are the webpages for the City Bar, including, as well, the so-called Committee to Reform the State Constitution (which is another name for

The FOURTH REASON These Appeals Must be Heard Together:
***CJA v. JCOPE, et al.* Exposes Material Fraud by Former Governor Cuomo & his Attorneys, by their Respondent's Brief and Initiating and Amended Complaints, Verified by Attorney James McGuire, Esq.**

33. The fourth reason the appeals must be heard together is that the *CJA v. JCOPE, et al.* record exposes material fraud of former Governor Cuomo's December 27, 2023 Respondent's Brief (#22), his April 25, 2023 verified complaint [R.39-358], July 24, 2023 amended verified complaint [ ], and his litigation thereon, predicated on great concern with constitutional separation of powers, while concealing the constitutional separation of powers violations pertaining to the state budget by omitting that that is how the "ethics commission reform act of 2022" was enacted.

34. Here are the first two paragraphs of the "Background" section of the Respondent's Brief (at pp. 5-6):

> "BACKGROUND[fn2]
>
> A 2022 act (the 'Act') of the New York Legislature created COELIG, and conferred on it broad powers to enforce numerous ethics and other laws. R.615 (¶1), 661 (Ex. A). COELIG replaced the Joint Commission on Public Ethics ('JCOPE'), which a Senate committee, after hearing calls for a more independent agency, determined should be 'replace[d] ... with a truly independent body' though the committee thought it 'clear' a 'comprehensive constitutional amendment' was required to do so. R.627 (¶¶36–37), 682 (Ex. B), 764 (Ex. C). Other advocates shared the belief that a constitutional amendment was necessary. R.637 (¶37), 682 (Ex. B), 770 (Ex. D).
>
> The constitutional amendment never even made it out of committee. R.628 (¶39). Nonetheless, on January 5, 2022, Governor Hochul announced a plan to replace JCOPE with a 'truly independent agency'—solely through legislation. *Id*. & 774 (Ex. E). That legislation, the Act, was enacted on April 8, 2022 and signed into law by Governor Hochul the next day. *Id.*"

The referred-to "2022 act" – Part QQ of Chapter 56 of the Laws of 2022 – appears nowhere in the Brief's "Table of Authorities". As for footnote 2 annotating the "BACKGROUND" title, it states:

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former City Bar President Evan Davis); Common Cause-NY; Citizens Union; NYPIRG; and Reinvent Albany.

"Respondent refers to the Complaint for further background. R.615".

This "R.615" is the first page of Respondent's July 24, 2023 amended complaint, which identically to Respondent's April 25, 2023 complaint [R.39], reads, by its first sentence:

> "1. The Ethics Commission Reform Act of 2022 (the 'Act') of the New York Legislature created the Commission on Ethics and Lobbying in Government ('COELIG') and conferred on it broad powers to enforce numerous ethics, lobbying, and other laws.[fn1]".

However, although the annotating footnote 1 states:

> "A copy of the legislation is attached as Exhibit A to this Amended Complaint".

Exhibit A is not the "Ethics Commission Reform Act of 2022", with its §§1 and 2 reading:

> "Section 1. This act shall be known and may be cited as the 'ethics commission reform act of 2022'.
>
> §2. Section 94 of the executive law is REPEALED and a new section 94 is added to read as follows:…"

Instead, it is the Executive Law §94, which omits these §§1 and 2 [R.661-681]; [R.83-103].

35. The complaint does cite, but only once, to "(L. 2022, c. 56, Part QQ)", but not identifying that it is a budget bill or that it is Education, Labor, Housing, and Family Assistance Budget Bill S.8006-C/A.9006-C. The citation is contained in the complaint's "FACTUAL ALLEGATIONS", in its section A entitled "Calls for a More 'Independent' Ethics Agency" [R.627-629]. In full, this section A reads:

> "36. On August 25, 2021, the New York State Senate Standing Committee on Ethics and Internal Governance held a public hearing on the state's system of ethics oversight and enforcement, focusing on concerns about COELIG's predecessor, the Joint Commission on Public Ethics ('JCOPE').[fn2] Specifically, the Committee was concerned about JCOPE's 'neutrality and ability to function as an independent body.' Ex. B at 2. The consensus among those who testified was that JCOPE had failed as an ethics watchdog because it was insufficiently 'independent' of those in power, particularly of the Governor. As described by the Senate committee in its December 17, 2021 report, 'JCOPE's structure and function are set

"[fn2] The committee's report from that hearing, dated December 17, 2021, is attached to this Amended Complaint as Exhibit B ('Ex. B')."

up to avoid holding those in power accountable.' *Id*. The Senate committee concluded that 'immediate change and structural reform' was needed—the stated goal being to 'replace JCOPE with a truly independent body.' *Id.*

37. The Senate committee thought it 'clear' that such a goal could be achieved only through a 'comprehensive constitutional amendment,' such as the bill introduced by Senator Krueger (S855), which would replace JCOPE with an ethics agency modeled on the New York State Commission on Judicial Conduct established in Article VI, §22. *Id*.[fn3] The structure of the proposed agency would have 13 members: 7 members jointly appointed by the chief judge of the court of appeals and the presiding justices of each of the appellate divisions; 1 member appointed by each of the four legislative leaders; and 2 members appointed by the Governor. Ex. C at §2(c).

38. Support for Senator Krueger's amendment was shared by so-called good government groups and advocates at the hearing. According to written testimony submitted by the New York City Bar Association Committee on Government Ethics and State Affairs, the necessary reforms 'can only be realized by abolishing JCOPE and replacing it with an entity to be established by constitutional amendment.' Ex. B. The city bar committee further explained why, in its view, a constitutional amendment was necessary: 'The Constitution must be amended to achieve that goal so that the ability of the judicial branch to participate in making appointments and the creation of a single entity with jurisdiction over the legislative and executive branches is beyond constitutional question.' Ex. D at 3 (emphasis added).[fn4] Another advocacy group expressly supported a constitutional amendment 'to limit the Governor's policy-making authority.' Ex. B.

39. Senator Krueger's amendment never made it out of committee, and no other constitutional amendment was passed. Undaunted by the want of an amendment designed to legitimize a body much like COELIG, on January 5, 2022, Governor Hochul announced her own plan to replace JCOPE with a 'truly independent agency"[fn5] —but through the Act, not a constitutional amendment. *See* Ethics Commission Reform Act of 2022 (L. 2022, c. 56, Part QQ). On April 8, 2022, the Legislature passed the Act, and Governor Hochul signed it into law the next day." (underlining added).

"[fn3] A copy of the Krueger Amendment (S855) is attached to this Amended Complaint as Exhibit C ('Ex. C')."

"[fn4] The New York City Bar Association Report on Legislation by the Committee on Government Ethics and State Affairs, reissued on March 2021, is attached to this Amended Complaint as Exhibit D ('Ex. D')."

[fn5] Press Release, 'Governor Hochul Announces Plan to Replace JCOPE with New Independent Ethics Agency,' dated January 5, 2022. A copy of the press release is attached to this Amended Complaint as Exhibit E ('Ex. E').

36. This is the sum total of what the complaint says about the enactment of the "ethics commission reform act of 2022", no mention of the budget.

37. Although I have no proof that former Governor Cuomo's concealment of ECRA's enactment *via* the budget by his April 25, 2023 complaint, repeated in his July 24, 2023 complaint, was with knowledge of *CJA v. JCOPE, et al.*, I believe it unlikely that his legal team was unaware of the lawsuit. The New York Law Journal published a front-page, above-the-fold, article about *CJA v. JCOPE et al.* in its June 13, 2022 print edition and, assumedly, the Cuomo lawyers were aware of and watched COELIG's March 29, 2023 annual hearing, either as live-streamed or recorded, at which I testified.

38. In any event, Cuomo attorney James McGuire, with whom I interacted in 1996 when he was first assistant counsel to then Governor Pataki[12] and then, more than 20 years later, in 2017, knew, from that second interaction,[13] of the monumental *CJA v. Cuomo…DiFiore* citizen taxpayer action, then in Supreme Court/Albany County, challenging the constitutionality of the New York state budget and that I was searching for:

> "(1) scholarship on the Court of Appeals' 2004 *Silver v. Pataki/Pataki v. Assembly and Senate* decision – and the constitutional provisions relating to the New York State budget;
>
> (2) scholars to whom I might furnish the 'on-the-ground' empirical evidence that the New York State budget is so flagrantly 'OFF the constitutional rails' and violative of the *Silver v. Pataki/Pataki v Assembly and Senate* 2004 Court of Appeals decision and Article VII, §§4, 5, 6 and Article III, §10 of the New York State Constitution as to mandate SUMMARY JUDGMENT declarations…[in *CJA v. Cuomo…DiFiore*]".

39. Five years later, Mr. McGuire would have seen from the *CJA v. JCOPE, et al.* verified petition exactly what had happened in *CJA v. Cuomo…DiFiore*, as it journeyed through

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[12] This is reflected by my May 6, 1996 letter to Mr. McGuire, transmitting to him a copy of the record of CJA's first lawsuit against the Commission on Judicial Conduct.

[13] This is reflected by my four e-mails to Mr. McGuire: April 18, 2017, which, following his rather immediate response, I answered back "What are you talking about?...", on July 20, 2017, and on October 6, 2017. The webpage on which it is posted is here.

Supreme Court, through this Court, and through the Court of Appeals – because it was chronicled by my complaints to the Commission on Judicial Conduct and Attorney Grievance Committees, annexed as exhibits [R.251-286; R.241-250]. And he would have seen that a month after the case ended, I had done my own scholarship of the Court of Appeals' 2004 *Silver v. Pataki* decision and had presented it to then Governor Cuomo by a March 18, 2020 letter entitled:

> "Your January 21, 2020 address on the Executive Budget – Part III:
> GOOD NEWS DURING THIS CORONAVIRUS EMERGENCY – You Can Chuck Six of Your Seven 'Article VII Bills' Because They are Unconstitutional. Here's why based on the Court of Appeals' 2004 plurality, concurring, and dissenting opinions in *Pataki v. Assembly/Silver v. Pataki*, 4 N.Y.3d 75",

which the June 6, 2022 verified petition also annexed as an exhibit [R-132-154], stating, at ¶82 of its sixth cause of action:

> "The March 18, 2020 letter (Exhibit A-5) is the starting point for the declaration that Part QQ was unconstitutionally enacted…" [R.82],

and that three weeks later, on June 28, 2022, I had reinforced CJA's entitlement to summary judgment on the sixth, seventh, eighth causes of action by a CPLR §2214(c) notice to respondents to furnish Supreme Court with records pertaining to the FY2022-23 budget bills [R.518-527] – Education, Labor, Housing, and Family Assistance Budget Bill S.8006-C/A.9006-C, among them – and also, as a first item:

> "all records of **findings of fact and conclusions of law** made with respect to petitioners' March 18, 2020 letter to then Governor Cuomo (Ex A-5 to petition), simultaneously furnished to the Legislature and Budget Director Mujica – identified at ¶82 of the June 6, 2022 verified petition as 'the starting point for the declaration that Part QQ [of Education, Labor, Housing and Family Assistance Budget Bill #S.8006-C/A.9006-C – the 'ethics commission reform act of 2022'] was unconstitutionally enacted'." [R.519, bold in the original].

40. It was Mr. McGuire who both signed and verified Respondent's April 25, 2023 complaint [R.81-82] and who verified the July 24, 2023 complaint [R.660], making no mention of the budget.

The Reasons Warranting These Appeals Being Heard Together Also Warrant The Granting of Leave to File an *Amicus Curiae* Submission

41. The same reasons as warrant these appeals being heard together also warrant the granting of leave to file an *amicus curiae* submission, in the event the appeals are not heard together. In the interest of expedition and economy, and so that the Court may be protected from fraud, I ask that this affidavit be deemed that *amicus curiae* submission.

Elena Ruth Sassower, Unrepresented Petitioner-Appellant
Center for Judicial Accountability, et al. v. JCOPE, et al.
(CV-23-0115)

Sworn to before me this
12th day of January 2024

Notary

CHARLES B. RODMAN
Notary Public, State of New York
No. 4620811
Qualified in Westchester County
Commission Expires 12/31/2025

ENDNOTES

en1

Brief: p. 1: "…Governor Kathy Hochul…included in the 2022-2023 budget a law that replaced the prior ethics commission with the Commission on Ethics and Lobbying in Government"; p. 8: "included in the 2022-2023 budget. L. 2022, ch. 56, pt. QQ, §§1-2 (codified, in part, as Executive Law §94)."

OSC/ASG Brockner's aff: ¶3:"The Ethics Commission Reform Act of 2022 was enacted as part of the 2022-2023 budget bill. L. 2022, ch. 56. pt. QQ §§1-2"; "; ¶40: "The Governor… included Executive Law §94 in her budget bill, which the Legislature passed into law. *See supra* at 3".

en2 Respectively quoting, Brief: p. 1, first sentence; and OSC/ASC Brockner aff: ¶26, quoting "*Nicholas v. Kahn*, 47 N.Y.2d 24, 32 (1979)"

en3 Brief, p.1 : "…the State has long struggled to create an ethics commission that is seen as able to fulfil this vital goal...[JCOPE] was widely perceived as unduly influenced by the officials whom it was supposed to monitor." p.23: "the Commission's structure was a response to the perceived failings of the prior ethics commission, JCOPE"; "JCOPE was widely seen as unduly beholden to the officials it was charged with overseeing. This perceived lack of independence…"; p. 24

OSC/Brockner aff: "36. …As Governor Hochul explained, JCOPE's perceived lack of independence from the Governor undermined its ability to maintain the public's trust and confidence in government by ensuring compliance with the State's ethics and lobbying laws…."

en4 Brief: pp. 6-7:

> "Over time, concerns grew over JCOPE's 'ability to function as an independent body.' (Record on Appeal 'R.'] 107 [December 2021 New York Senate Report].) During a 2021 hearing before the Senate's ethics committee, legislators and witnesses explained that JCOPE's structure impaired it from fulfilling its statutory mission. Speakers expressed concerns about JCOPE's appointment process and the independence of those who were appointed. (See R.107, 113-114, 118.) As witnesses explained, JCOPE's members were appointed based more on their connections to the official who appointed them than on their ability to administer the State's ethics and lobbying laws fairly. (R.113-114, 118-119.)
>
> Those at the hearing also criticized JCOPE's 'special voting' requirement. (R.114, 119, 123.)"

en5 Brief: p. 1: "The Commission's structure was carefully designed to ensure that it possessed the actual and perceived independence that would allow it to carry out its mission and restore the public's trust in government."; p. 3: "…the Commission's structure is designed to meet a uniquely compelling need for the Commission to be sufficiently independent, both in fact and in appearance, from the political branches it monitors."; pp. 22-23: "New York's flexible separation-of-powers doctrine…allows…where there is a particularly compelling need for a commission with both the reality and the appearance of independence"; p. 31: "The Commission's structure is valid because of the coexistence of the several factors detailed above: the compelling need for the Commission's actual and perceived independence from the political branches it monitors…"

OSC/Brockner aff:

> "35. The separation-of-powers doctrine is sufficiently flexible so as to permit the Governor to agree with the Legislature and sign into law an ethics commission where members are nominated by the political branches and which may act independently from the Executive, in an area – ethics and lobbying requirements – where the appearance and reality of independence is vital to maintaining the public's trust."

en6 Brief: p. 10-12:

> "the Commission's structure was carefully designed to enhance its ability to impartially administer and enforce the State's ethics and lobbying requirements. …Each candidate is reviewed by the Independent Review Committee ('IRC'). Id. §94(3)(b). The IRC is a non-partisan body composed of the deans, or associate deans if so designated, of New York's 15 accredited law schools. Id. §94(2)(c).
>
> … The law provides that upon the receipt of the elected officials' 'appointments,' the IRC's members must disclose whether they have a conflict of interest with respect to that 'appointee' and, if appropriate, recuse themselves from 'involvement in the consideration of and action upon the appointment.' *Id*. §94(3)(j).

pp. 24-25:

> "…to address concerns over the independence and qualifications of JCOPE's appointees, Executive Law §94 created a non-partisan body—the IRC—to ensure those appointed to the Commission are, in fact, qualified to fairly enforce the State's ethics and lobbying requirements. *See id*. §94(3)(b)-(d). As detailed *infra* at 39-54, there is 'no constitutional bar' to creating a body that consists of the heads of private organizations, and that can limit who an elected official may appoint to a state board, where such a body can 'reasonably be expected' to help ensure the appointment of qualified individuals, *Lanza v. Wagner*, 11 N.Y.2d 317, 333-334 (1962). The IRC, which is composed of law school deans, serves just that role. The IRC's members lack a personal interest in the Commission's composition. And they bring an informed perspective as leaders of institutions charged with training professionals for whom adhering to a legal code of ethics is central to their trade."

OSC/Brockner aff: "11. Each candidate is reviewed by the Independent Review Committee ('IRC'). *Id.* §94(3)(b). The IRC is a non-partisan body composed of the deans, or associate deans, of New York's 15 accredited law schools. *Id*. §94(2)(c)…." "47. …the IRC, a non-partisan body of law school deans…"

en7 Brief: pp. 8-9:

> "Like JCOPE, the Commission is responsible for investigating and enforcing violations of the State's ethics and lobbying requirements. Executive Law §94(10), (14). Unlike JCOPE, the Commission functions solely by majority vote. *See id.* §94(10(f)(h).
>
> When the Commission receives a complaint, its staff is responsible for investigating and recommending whether to pursue the matter to disposition. *See id.* §94(10)(d)-(f). If, after considering the staff's recommendation, the Commission finds credible evidence of a violation, the person under investigation is entitled to a due process hearing before an independent arbiter. *See* §94(10)(h)-(i)."

OSC/Brockner aff:

> "5. The Commission is also responsible for investigating and enforcing violations of the State's ethics and lobbying requirements. *See* Executive Law §94(10), (14). In its first year of operation, the Commission received over 150 complaints, tips, and referrals alleging violations of the ethics and lobbying laws. (Ex. C ¶ 10.)
>
> 6. The Commission staff is responsible for investigating complaints and recommending to the Commission whether to pursue the matter to disposition. *See* Executive Law §94(1)(d)-(f). If, after considering the staff's recommendations, the Commission finds credible evidence of violation, the person under investigation is entitled to a due process hearing before an independent arbitrator. *Id.* §94(10)(h)-(i). …"
>
> "27. The injunction prohibits the Commission from performing myriad tasks that are essential to maintaining the public's trust and confidence in government. To start, the injunction flatly bars the Commission from engaging in all investigative and enforcement activities. (Ex. A at 24-25.) The Commission receives over 150 complaints, tips, and referrals annually that allege violations of the State's ethics and lobbying laws. (Ex. C ¶ 10.) The injunction renders the Commission powerless to take any steps to even begin to investigate such complaints. And, unless stayed, the injunction could impede either the Commission or any other entity from ever substantiating those complaints…"

The referred to "(Ex. C ¶ 10.)" is COELIG Executive Director Berland's Sept. 21, 2023 affidavit, stating, in pertinent part:

> "10. The Commission's Investigations and Enforcement Division in the first instance carries out the Commission's duties, under Executive Law §94(10), to investigate possible violations of the laws administered by the Commission and, when appropriate, to pursue enforcement proceedings. Executive Law §94(10)(d) provides that:
>
> > The commission staff shall review and investigate, as appropriate, any information in the nature of a complaint or referral received by the commission or initiated by the commission, including through its review of media reports and other information, where there is specific and credible evidence that a violation of section seventy-three, seventy-three-a, or seventy-four of the public officers law, section one hundred seven of the civil service law or article one-A of the legislative law by a person or entity subject to the jurisdiction of the commission including members of the legislature and legislative employees and candidates for members of the legislature.
>
> Following such a preliminary review, the Commission or staff may 'elevate' the preliminary review into an 'investigation,' affording the subject a 15-day period within which to respond to a written notice of 'the possible or alleged violations of...law...and a description of the allegations against the respondent and the evidence, if any, already gathered pertaining to such allegations....' (Executive Law §94(10)(f).) If the investigation proceeds beyond that point, then at its conclusion, staff prepares a report to the Commission 'setting forth' the allegations and the evidence tending support or disprove them, the relevant law and a recommendation 'for the closing of the matter as unfounded or unsubstantiated, for settlement, for guidance, or moving the matter to a confidential due process hearing.' (*Id.*) Thereafter, depending upon the recommendation of staff and how the Commission acts upon it, the matter may be closed or settled, further investigated, or,

if the Commission finds that there is credible evidence of a violation (*id.*, §94(10)(h)), finally determined through the adjudicatory process… In 2022, 155 tips, complaints, referrals and reports were received and processed by the Commission; 128 investigative matters were closed; and the year ended with 156 open or pending investigative matters, including matters carried over from the predecessor agency." (underlining added).

CENTER for JUDICIAL ACCOUNTABILITY, INC.*

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White Plains, New York 10602 *Website: www.judgewatch.org*

July 8, 2022

TO: Commission on Ethics and Lobbying in Government (CELG)

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

RE: TESTING the "ethics commission reform act" Commission on its DAY 1:
Re-filing the seven complaints previously filed with JCOPE,
plus a new eighth complaint against Attorney General Letitia James
for litigation fraud in *CJA, et al. v. JCOPE, et al.* (Albany Co. #904235-22) –
arising from the same conflict of interest Public Officers Law §74 violations
as were the subject of CJA's March 5, 2021 complaint, unaddressed by JCOPE

Pursuant to the "ethics commission reform act of 2022" which establishes the Commission on Ethics and Lobbying in Government *via* a new Executive Law §94, I hereby file with you, based on that new Executive Law §94, my seven sworn complaints of Public Officers Law §74 conflict of interest violations, previously filed with JCOPE. These are the same seven complaints that are Exhibits A through G to the June 6, 2022 verified petition/complaint in the Center for Judicial Accountability's lawsuit against JCOPE, *et al.* (Albany Co. #904235-22). The seven complaints, with the latest first – and linked to the NYSCEF docket – are:

Exhibit A-1: my April 13, 2022 complaint;
Exhibit B: my December 17, 2021 complaint;
Exhibit C: my November 24, 2021 complaint;
Exhibit D-1: my March 5, 2021 complaint;
Exhibit E: my August 31, 2020 complaint;
Exhibit F: my December 11, 2014 complaint;
Exhibit G: my June 27, 2013 complaint.

Additionally, in light of what has thus far occurred in *CJA v. JCOPE*, where Attorney General James, a respondent, representing herself and all nine of her co-respondents, is engaging in litigation fraud in the absence of ANY legitimate defense, I herewith file a further complaint against her beyond the March 5, 2021 complaint I filed with JCOPE, whose evidentiary proof as to Attorney

* **Center for Judicial Accountability, Inc.** (CJA) is a national, non-partisan, non-profit citizens' organization working to ensure that mechanisms are in place to prevent judges from "throwing" cases by decisions that are judicial perjuries, obliterating and falsifying fact and law – and that processes of judicial selection and discipline are effective and meaningful.

General James' litigation fraud in related lawsuits, in collusion with state judges, was furnished by my incorporated February 11, 2021 attorney misconduct complaint against her to the Appellate Division attorney grievance committees, itself incorporating my February 7, 2021 judicial misconduct complaint to the Commission on Judicial Conduct. These are, respectively, Exhibit D-2 and Exhibit D-3 to the petition.

As recited by ¶37 of the petition:

> "JCOPE acknowledged [the March 5, 2021 complaint] by a March 16, 2021 e-mail as #21-033 – but never thereafter advised, in writing or otherwise, that its members had voted and determined that there was 'no violation' or that it had been 'rectified', or that JCOPE's investigation had been 'closed for any other reason'."

JCOPE's corrupt nonfeasance with respect to my March 5, 2021 complaint has led to Attorney General James' repeat of Public Officers Law §74 conflict of interest violations in *CJA v. JCOPE, et al.* and her litigation fraud arising therefrom that is this eighth complaint. Thus far, her litigation fraud in *CJA v. JCOPE, et al.*, has been, as follows:

I.
June 27, 2022

On June 27, 2022, in the complete absence of ANY defense to the June 6, 2022 petition (##1-30) and the June 23, 2022 notice of petition (#46) with which it was served, Assistant Attorney General Gregory Rodriguez, appearing "of Counsel" to Attorney General James, filed a frivolous and fraudulent motion to dismiss (##50-59). I demonstrated this, resoundingly, by a June 28, 2022 affidavit in opposition and in further support of the notice of petition (#61), stating:

> "…Mr. Rodriguez's motion is not merely insufficient, but a fraud upon the Court. Its sole value is to demonstrate that Attorney General James must be disqualified for interest from representing her co-respondents – and from even determining the 'interest of the state' pursuant to Executive Law §63.1, which Mr. Rodriguez's motion does not purport as having been done and which, were it done, would mandate the Attorney General's representation of petitioners, not respondents, *via* independent, outside counsel, retained for such purpose." (at ¶4).

It concluded, as follows:

> "As I stated to Mr. Rodriguez in our extensive phone conversation, his motion must be withdrawn – and his obligation is to refer this case 'upstairs', to his superiors, for review and determination of the 'interest of the state' pursuant to Executive Law §63.1 and the Attorney General James' duty to secure independent, outside counsel, as she is a respondent, directly interested, financially and otherwise. No one examining my March 5, 2021 complaint to JCOPE (Exhibit D-1), resting on – with

> respect to Attorney General James – the February 11, 2021 attorney misconduct complaint I filed against her with the Appellate Division attorney grievance committees (Exhibit D-2) and its included February 7, 2021 judicial misconduct complaint to the Commission on Judicial Conduct (Exhibit D-3) – could come to any other conclusion – and a sworn statement from Attorney General James, personally, is here mandated." (¶26).

I received no subsequent communication from Mr. Rodriguez or anyone else at the Attorney General's office – and the motion was not withdrawn.

II.
July 7, 2022

Yesterday, July 7th, newly-assigned Ulster County Supreme Court Justice David Gandin held oral argument at the courthouse in Kingston on my July 6th order to show cause (##66-72) for determination of petitioners' *matter of law* entitlement to the granting of a TRO/preliminary injunction to stay the "ethics commission reform act of 2022" from taking effect today.

Mr. Rodriguez did not appear for the argument, but, rather, another assistant attorney general, Stacey Hamilton, whose virtually every word was a flagrant lie. Any fair and impartial judge, as Judge Gandin is not, who is not afflicted by a $80,000 yearly salary interest, as Judge Gandin is, would have swiftly rebuked Ms. Hamilton and, if not granting the TRO/preliminary injunction IMMEDIATELY, gotten on the phone, from the bench, to supervisory attorneys in the Attorney General's office, if not to Attorney General James herself, to give them a final, undeserved opportunity to address what was before him, *as a matter of law* – the law being the evidentiary burden of the parties on a preliminary injunction and his duty with respect thereto, set forth by CPLR §§6312(a) & (c) – and, additionally, to inquire as to who, if anyone, had determined the "interest of the state", as Executive Law §63.1 requires, and Attorney General James' glaring conflict of interest disqualification.

I objected, heartily, to Ms. Hamilton's fraudulent, fairy-land argument – and, to no avail, reiterated petitioners' entitlement to determination of the "interest of the state" and to Attorney General James' disqualification, threshold.

Upon receipt of the transcript of the July 7th argument, which I am having transcribed, I will supply it in substantiation of this complaint. Meantime, attached is my memorializing e-mail to Judge Gandin's law clerk, sent earlier today – to which I *cc*'d both Ms. Hamilton and Mr. Rodriguez.

* * *

This morning, July 8th, at promptly 9:00 a.m., I called CELG for information about filing this complaint. The call was answered electronically and after a wait of about six minutes, I was told to record a message. About an hour and a half later Investigator Peter Smith returned the call – and I discussed this complaint with him, extensively, and the fact that CELG's website, supplanting JCOPE's, seems to have no link for materials that had been posted on JCOPE's website, as for instance, its annual reports – including the annual report for 2021, posted, I believe, only yesterday and now gone.

Fortunately, before JCOPE's website evaporated, at about 9:00 a.m. today, I downloaded the 2021 annual report, it being extremely valuable and illuminating – and the only one of its ten annual reports to be compliant with Executive Law §94.9(l)(i) in "listing by assigned number…each complaint and referral received which alleged a possible violation within [JCOPE's] jurisdiction, including the current status of each complaint." – the subject of the petition's second cause of action (¶¶42-47).

I reviewed with Mr. Smith the listings, by assigned number, for my three complaints filed in 2021 – the first being for the March 5, 2021 complaint: #21-033.[1] The listing, at page 63 of the annual report, correctly identifies the complaint as against "Executive Chamber, Assembly, Senate, Office of the Attorney General, Office of the State Comptroller", but does NOT cite the violated "Law" to be "Public Officers Law", but, rather, "Other", does NOT identify the "Nature of Allegation" to be "Conflict of Interest", but, rather, "General" – and, surprisingly, gives, as its "Status", "Closed (Insufficient Allegation)", with a "Closed Date" of "04/27/2021".

I told Mr. Smith that I had repeatedly complained in communications to JCOPE throughout 2021 and 2022 that it was "sitting on" the March 5, 2021 complaint – and had never been contradicted by any e-mail or letter stating that the complaint had been "Closed", let alone for "Insufficient Allegation" – and that this was so-reflected by the petition (at ¶17, quoting from my April 13, 2022 complaint to JCOPE (at p. 2), and at ¶37). Mr. Smith was going to check on that.

Mr. Smith was, additionally, going to check on the listing pertaining to the third of my 2021 complaints, the December 17, 2021 complaint, #21-244, which is at page 79 of the annual report. Although the complaint is against the Senate, Assembly, and the Legislative Ethics Commission, it is identified as being only against "Assembly" and though correctly identifying the "Law" violated as "Public Officers Law" and that the "Nature of Allegation" is "Conflict of Interest", it surprisingly gives, as the "Status" of the complaint, "Pending". This directly contradicts JCOPE Investigations and Enforcement Director Emily Logue's February 28, 2022 e-mail to me, with its attached letter purporting "the Commission considered the allegations raised in the complaint and voted to close the matter on January 25, 2022" – a disposition whose legitimacy and lawfulness I had challenged by

[1] Here linked to the record, as posted on CJA's website. Likewise, my two subsequent 2021 complaints are hereinafter linked to the records, as posted on CJA's website. These links are the same as appear at ¶4(b) of the petition.

my March 4, 2022 e-mail, without response from JCOPE. This is recited by the petition, at ¶17, quoting from my April 13, 2022 complaint to JCOPE (at p. 2), and at ¶39.

The second of my three 2021 complaints, the November 24, 2021 complaint, #21-226, is, as I told Mr. Smith, the complaint arising from the Commission on Judicial Conduct's purported dismissal of my February 7, 2022 complaint against judges participating, with Attorney General James, in corrupting the judicial process – part of my March 5, 2021 complaint, which is complaint #21-033. This second complaint to JCOPE from 2021 appears at page 78 of the annual report. It correctly identifies the complaint to be against "Commission on Judicial Conduct", the "Law" violated as "Public Officers Law", the "Nature of Allegation" to be "Conflict of Interest" – and that its "Status" is "Closed by Commission Vote" with a "Closed Date" of "12/20/2021". No mention of my rebuttal to the legitimacy and lawfulness of such purported Commission vote by my December 21, 2021 letter, to which JCOPE did not respond, or to my subsequent e-mails pertaining thereto. This is recited by the petition, at ¶17, quoting from my April 13, 2022 complaint to JCOPE (at p. 2), and at ¶38.

Although it is now nearly midnight, your website has not yet replaced JCOPE's complaint form with your own. As I discussed with Mr. Smith, a new form will, presumably, no longer indicate a notary for a sworn complaint – and, indeed, there is no longer the need for a complainant to even swear to a complaint, as the new Executive Law §94 no longer confers any added value or mandatory responsive action for sworn complaints.

I nonetheless willingly, proudly, and with full respect for its meaning and significance, swear to the truth of this complaint – using the attestation that Albany District Attorney Soares requires for complaints filed with his Public Integrity Unit, quoted on the last page of my June 4, 2020 grand jury/public corruption complaint to him (at p. 9), physically appended to my March 5, 2021 complaint to JCOPE:

> "I understand that any false statements made in this complaint are punishable as a Class A misdemeanor under Section 175.30 and/or Section 210.45 of the Penal Law."

Thank you.

s/ ELENA RUTH SASSOWER

New York State Commission on
Ethics and Lobbying in Government
540 Broadway
Albany, New York 12207

COMPLAINT

The Commission on Ethics and Lobbying in Government has jurisdiction to investigate potential violations of Public Officers Law § 73, § 73-a, § 74, Civil Service Law § 107, and Legislative Law article 1-A as they apply to State legislators, candidates for the Legislature and legislative employees, as well as the four statewide elected officials, candidates for those offices, executive branch employees, certain political party chairs, and lobbyists and their clients.

COMPLAINANT NAME Director Center for Judicial Accountability, Inc. Elena Ruth Sassower

ADDRESS BX 8101

CITY, STATE, ZIP White Plains, New York 10602

TELEPHONE 914-421-1200

EMAIL elena@judgewatch.org

Please provide a statement or description of the alleged violation of Public Officers Law § 73, § 73-a, § 74, Civil Service Law § 107, or Legislative Law article 1-A including facts constituting a violation of the law(s) above, the identity of the individual(s) at issue and, if possible, a date, time, place of the alleged violation. Also note any documents or exhibits you are including to support the allegations.

See accompanying October 6, 2022 letter — constituting a supplement to CJA's July 8, 2022 complaint against Attorney General Letitia James for litigation fraud in CJA, et al. v VCOPE, et al. (Albany Co #904235-22) - arising from the same conflict of interest Public Officers Law 74 violations as were the subject of CJA's March 5, 2021 complaint, unaddressed by VCOPE

Has this matter been referred to any other agency? ☑ Yes ☐ No

If yes, which agency? 1st Dept Attorney Grievance Committee

Is there pending legal action you are aware of? ☑ Yes ☐ No

If yes, where? CJA, et al. v VCOPE, et al (Albany Co # 904235-22)

New York State Commission on Ethics
and Lobbying in Government
540 Broadway
Albany, New York 12207

OPTIONAL

If you want to submit a sworn complaint for the purposes of Executive Law § 94, among other requirements, you must complete the following oath. The Commission also will accept and review complaints that do not include the oath.

I, Elena Ruth Sassower, being duly sworn, have read the foregoing complaint in its entirety, including any additional pages, and to the best of my knowledge, or based on information and belief, believe it to be true. I also understand the intentional submission of false information may constitute a crime punishable by fine or imprisonment, or both.

Sworn to before me this 6th **day of**

October, 2022
MONTH

Elena Ruth Sassower
SIGNATURE

John Pelose
NOTARY PUBLIC

JOHN PELOSE
Notary Public, State of New York
No. 04PE6147380
Qualified in Westchester County
Commission Expires June 5, ~~2010~~ 2026

INITIALS EJS

(supplement) (complaint) Oct 6th letter - 4 pages
July 8th letter - 5 pages

CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101 ***Tel: 914-421-1200*** ***E-Mail: mail@judgewatch.org***
White Plains, New York 10602 ***Website: www.judgewatch.org***

October 6, 2022

TO: Commission on Ethics and Lobbying in Government (CELG)

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

RE: (1) SUPPLEMENT to CJA's July 8, 2022 complaint against Attorney General Letitia James for litigation fraud in *CJA, et al. v. JCOPE, et al.* (Albany Co. #904235-22) – arising from the same conflict of interest Public Officers Law §74 violations as were the subject of CJA's March 5, 2021 complaint, unaddressed by JCOPE;
(2) INCLUSION OF THIS LETTER IN DISCUSSIONS AT TODAY'S MEETING OF THE COMMISSIONERS AS DIRECTLY RELEVANT TO AGENDA ITEMS.

By a July 8, 2022 letter, I initiated a complaint against Attorney General Letitia James for her Public Officers Law §74 conflict-of-interest violations in *CJA v. JCOPE, et al*., evidenced by her litigation fraud therein, in the absence of ANY legitimate defense.

The complaint recited the then-two instances of AG James' litigation fraud, furnishing links to the NYSCEF docket:

> (1) her June 27, 2022 motion to dismiss the verified petition (##50-59), made by her "of Counsel" Assistant Attorney General Gregory Rodriguez, for which I provided, in substantiation, my July 28, 2022 opposing affidavit (##61-64); and
>
> (2) her July 7, 2022 oral opposition to petitioners' July 6, 2022 order to show cause for a TRO/preliminary injunction to enjoin the "ethics commission reform act of 2022" from taking effect on July 8, 2022, made by Assistant Attorney General Stacey Hamilton, for which I provided, in substantiation, my memorializing July 8, 2022 e-mail to the Court and AAG Rodriguez and stating that the transcript of the July 7, 2022 oral argument would be forthcoming.

By a July 26, 2022 e-mail to CELG, I stated that I had received no acknowledgment of the complaint and inquired as to the complaint numbers assigned to it. Within a minute, I received an automated e-mail acknowledgment of the complaint. However, it contained not even a single complaint number for the eight complaints indicated by the letter – and I have received no written or oral communication from CELG since.

As for the FOIL request that was part of that July 26, 2022 e-mail for "CELG's written procedures for receipt, docketing, acknowledgment, preliminary review, and investigation of complaints" and which I additionally sent by a July 26, 2022 e-mail to CELG's records access officer, I received, by e-mail, an August 2, 2022 letter stating:

> "it is anticipated that the Commission will be able to respond to your request, providing or denying access, in whole or in part, within forty-five (45) business days, or by Wednesday, September 28, 2022. We will notify you in writing if the Commission requires additional time to be responsive to your request." (underlining added).

September 28, 2022 came and went and I received nothing.

Although the new Executive Law §§94.10(d) and (f) authorized CELG staff to send out a "15-day letter" to AG James with respect to my newly-initiated July 8, 2022 complaint against her, no "15-day letter" was sent, as evidenced by the staff's "Operations Report" that is Attachment B to the agenda for today's meeting of the CELG commissioners. As a consequence, AG James continued her Public Officers Law §74-violating litigation fraud in the *CJA v. JCOPE* case by:

> (3) AAG Rodriguez' August 18, 2022 cross-motion to dismiss the verified petition (##79-83) which, *inter alia*, relied on a perjurious August 18, 2022 affidavit of Emily Logue, JCOPE's director of investigations and enforcement, who now holds that position at CELG, at least on an interim basis (#81);
>
> (4) AAG Rodriguez' September 29, 2022 reply to petitioners' September 15, 2022 opposition to his August 18, 2022 cross-motion (##101-103); and
>
> (5) AAG Rodriguez' September 29, 2022 opposition to petitioners' September 15, 2022 motion for sanctions, to disqualify AG James, summary judgment, and other relief (##98-100).

The fraudulence of these further submissions is meticulously detailed by:

- petitioners' September 3, 2022 CPLR §2214(c) notice of papers to be furnished to the Court (#85), requesting documentary substantiation for Ms. Logue's perjurious affidavit and for the comparably perjurious August 18, 2022 affirmation of Leslie Arp, Chief of the State Inspector General's Case Management Unit (#82), also relied upon by AAG Rodriguez for his August 18, 2022 cross-motion;

- petitioners' September 15, 2022 opposition to AAG Rodriguez' August 18, 2022 cross-motion, which petitioners filed in tandem with a September 15, 2022 motion for sanctions, to disqualify AG James, summary judgment, & other relief (##87-94); and

- petitioners' October 4, 2022 reply to AAG Rodriguez' September 29, 2022 opposition to petitioners' September 15, 2022 motion (##104-110).

Inasmuch as Ms. Logue has actively participated in AG James' litigation fraud – doubtless with the approval of (interim) Executive Director Sanford Berland – both of whose corruption is exposed by the *CJA v. JCOPE* verified petition (##1-30) – the determination to send out "15 day letters" for my July 8, 2022 complaint and this supplement cannot be made by staff. It must be made by the CELG commissioners themselves – and I request confirmation that this will be done.[1]

Because this letter is, in so many respects, relevant to today's meeting of the CELG commissioners, whose agenda includes:

"**III. REPORT FROM STAFF**
- Operations Update Attachment B
- Job Postings Attachment C";

"**IV. PROPOSED POLICY FOR HANDLING INQUIRIES AND MATTERS PURSUANT TO EXECUTIVE LAW §94(1)(C) – GENERAL DISCUSSION**";

"**V. PROPOSED REGULATION AUTHORIZING ISSUANCE OF SUBPOENAS AND OTHER PROCESS BY THE EXECUTIVE DIRECTOR AS DELEGATED BY THE COMMISSION** Attachment E
- Proposed Regulation amending Adjudicatory Proceedings and Appeals Process Regulations (19 NYCRR Part 941) and the Emergency Adoption thereof [*ACTION ITEM]"

"VI. FORMATION OF PROPOSED COMMITTEES
…
- Staffing and recruitment
- Regulations and procedures

...
- Litigation"

"**IX. MOTION TO ENTER INTO EXECUTIVE SESSION PURSUANT TO PUBLIC OFFICERS LAW §105 AND EXECUTIVE LAW §94(11) TO ADDRESS MATTERS CONCERNING EMPLOYMENT OF PERSONNEL, PENDING LITIGATION, AND INVESTIGATIVE AND ENFORCEMENT MATTER THAT IS CONFIDENTIAL PURSUANT**

[1] The new Executive Law §94.10(b) contains no provision regarding conflicts of interest/recusal by staff, as opposed to commissioners – and CELG's website has no link for its "Code of Conduct and Recusal Policy".

TO SECTION 94 OF THE EXECUTIVE LAW",

I am e-mailing the letter directly to the six of the seven commissioners whose e-mail addresses I have, with a request that (interim) Chair Frederick Davie furnish same to (interim) Vice-Chair/former Judge Leonard Austin, whose e-mail address I do not have – both elected to those positions at CELG's first meeting on September 12, 2022.

As with the July 8, 2022 complaint, I herewith conclude with the same attestation of truthfulness as Albany County District Attorney P. David Soares uses for public corruption complaints filed with his Public Integrity Unit:

> "I understand that any false statements made in this complaint are punishable as a Class A misdemeanor under Section 175.30 and/or Section 210.45 of the Penal Law."

Later today, after I have appeared before a notary to execute the optional attestation included on the CELG complaint form posted on your website, I will send you the notarized complaint form for both this supplement and the July 8, 2022 complaint.

Thank you.

s/ ELENA RUTH SASSOWER

CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101 *Tel: 914-421-1200* *E-Mail: mail@judgewatch.org*
White Plains, New York 10602 *Website: www.judgewatch.org*

Testimony before the Commission on Ethics & Lobbying in Government
March 29, 2023 – New York Law School

I am Elena Sassower, director of the non-partisan, non-profit citizens' organization, Center for Judicial Accountability, Inc. (CJA). Our website is www.judgewatch.org, and from its left side panel "Testimony", you can find a link for this testimony[1] and to the open-and-shut, *prima facie* EVIDENCE substantiating it and the complaint I will be filing based thereon against you, to you, for your "substantial neglect of duty" and "misconduct in office"[2] from your first meeting last September 12th to date – 6-1/2 months later – arising from your willful violations of Public Officers Law §74, proscribing conflicts of interest that is your duty to enforce as to others,[3] and of Executive Law §94.10(b) explicitly mandating that you each disclose personal, professional, and financial conflicts of interest with respect to complaints – and recuse yourselves or be recused by vote of your fellow commissioners.[4]

The very first complaints the Commission received, upon replacing JCOPE on July 8, 2022, were the eight I submitted on its Day 1 by a single letter. All eight complaints involved the "false instrument" reports by which New York's executive and legislative electeds procured pay raises for themselves – and for judges and district attorneys – embedded in the state budget that they have run "OFF THE CONSTITUTIONAL RAILS" to steal more taxpayer monies and subvert constitutional, lawful governance through massive insertions of non-fiscal/non-revenue producing policy. Surely, no complaint the Commission thereafter received remotely approaches, in magnitude and breadth, any one of these eight complaints, let alone all of them.

The first seven of these complaints were a refiling of complaints I had filed with JCOPE, as to which JCOPE, in violation of its mandatory duty under the Executive Law that established it, had not sent out a single 15-day investigative letter. These seven complaints are the first seven exhibits in CJA's corruption-eradicating lawsuit, *CJA v. JCOPE, et al.*, commenced by a June 6, 2022 verified petition, whose sixth cause of action is to VOID this Commission as enacted unconstitutionally and through fraud, *via* the state budget, for the ulterior purpose of stripping complainants of rights enforceable by mandamus with respect to 15-day letters and, in so doing, to insulate from accountability the seven public officers who appoint the commission members. As for the eighth, completely new complaint, it was against one of those seven public officers, who, with the other six, is a respondent in *CJA v. JCOPE*, namely, Attorney General James, and its basis is her litigation fraud in *CJA v. JCOPE*, in furtherance of her own "false instrument" pay raises – and theirs.

The Commission's original seven commissioners are Cardozo, Groenwegen, James, Austin, Carni, Davie, and Edwards. Six of the seven, if not all seven, knew of these first eight complaints

since at least last August 4th. That is when I sent them an e-mail, which as to now Vice-Chair Austin bounced back, attaching two letters to the 15 law school deans of the Independent Review Committee to which they were *cc*'d. These apprised the would-be commissioners of what the Independent Review Committee had known since my first June 12th letter to its deans, namely, that *CJA v. JCOPE* is dispositive that the budget-born statute establishing this Commission must be voided, *as a matter of law*. It also alerted the would-be commissioners that the public officers who had appointed them had corrupted the vetting process and that the Independent Review Committee deans were collusive in this and were violating conflict-of-interest protocols, including as set forth by Executive Law §94.3(j).[5]

The second of my two August 4th letters detailed the conflicts of interest, requiring disclosure and disqualification that the would-be commissioners would face, with respect to the eight complaints:

(1) would-be Commissioners Cardozo, Groenwegen, and James had colluded in the public corruption involving the pay raises, the budget, and the AG's *modus operandi* of litigation fraud that are the gravamen of the complaints – and I had furnished their appointing public officers with written comment opposing their proposed nominations, without response from the appointing public officers;

(2) would-be Commissioners Austin and Carni, as former judges, have HUGE financial interests in the complaints because, as beneficiaries of the judicial pay raises that the complaints establish to be fraudulent, they face "clawbacks" of approximately three quarters of a million dollars each;

(3) would-be Commissioners Davie and Edwards are also financially interested in the complaints because Executive Law §94.4(f) ties commissioners' *per diem* allowances to "a salary of a justice of the supreme court" – and the complaints establish the fraudulence of $80,000 of that salary.

And what did the seven original commissioners do in face of this August 4th e-mail – and my subsequent e-mails to them on August 22nd and October 6th as to AG's James' unremitting litigation fraud in *CJA v. JCOPE* [6] and the importance of its verified petition to understanding that JCOPE's corruption in its handling of complaints, rested with its personnel, who remained at the Commission, such as JCOPE Executive Director Berland, a former judge with HUGE financial interests in CJA's complaints. They voted unanimously to make Berland interim executive director at their first September 12th meeting and then permanently at their fifth December 16th meeting, both times by fraud about his performance of his duties and other deceits.[7] Between these two meetings, at the October 25th third meeting, the eight complaints in which they and Berland are all interested were allegedly dumped, but I was not informed of this until three weeks later – the day after I sent the Commission staff a November 16th e-mail inquiring as to when it would be responding to my July 26th FOIL request for the Commission's "written procedures for receipt, docketing, acknowledgment, preliminary review, and investigation of complaints". I was thereupon e-mailed

an unsigned November 17th letter, on a letterhead listing the names of the seven original commissioners and Berland, bearing but a single complaint number and stating: "following a review of your complaint, the Commission voted to close the matter."

Yet, pursuant to Executive Law §94.10(f),[8] the only time the Commission votes to close a matter is AFTER investigation that includes 15-day letters, where the staff has recommended same in a report to the Commission for the reason that the complaint is "unfounded or unsubstantiated" – by no stretch the case at bar with respect to any of the eight complaints.

Time does not permit me to testify about the odyssey of my July 26th FOIL request, reiterated and expanded by my December 27th FOIL request pertaining to the November 17th letter, such as for records of your compliance with disclosure/recusal mandates of Executive Law §94.10(b), of compliance by Executive Director Berland and Commission staff with comparable conflict of interest protocols, and of the specific provision of Executive Law §94 pursuant to which the Commission is alleged to have "voted to close the matter" – and the basis for the supposed "vote".

Suffice to say that on February 7th, I *cc*'d my FOIL appeal to the seven original commissioners, excepting Vice-Chair Austin whose e-mail address I do not have, plus to the two new commissioners, Whittingham and Carabello. Assumedly they all would have concerned themselves as to the response. It came on February 17th from your FOIL appeals officer St. John– a high-ranking JCOPE holdover that Berland would days later elevate as the Commission's general counsel. According to St. John, the records I had requested "simply do not exist and, therefore, cannot be provided". As to the only record he furnished, it was the conflict-of-interest protocol for Commission staff that Berland, St. John, and other staff had flagrantly violated from the Commission's July 8, 2022 Day 1 to conceal JCOPE's corruption in handling complaints of which they were part.[9]

I conclude with a procedural suggestion with respect to your letters "closing" complaints on alleged votes by the Commission – and other dispositions that are not, in fact, by votes of the Commission, namely that your letters indicate 30 days in which a complainant may seek reconsideration, similar to what is provided by the Appellate Division Rules pertaining to its attorney grievance committee procedures.[10] Certainly, inasmuch as your dispositions of FOIL requests include, as required, that there is 30 days within which to seek an appeal, there should be an appeal/reconsideration procedure for complaints.

Consistent therewith, that is what I now request, from you, with respect to your unsigned November 17th letter of your "Investigations Division".

ENDNOTES

[1] The direct link to CJA's webpage for this testimony is https://www.judgewatch.org/web-pages/searching-nys/celg/march-29-23-testimony.htm, with EVIDENTIARY links under the heading "'PAPER TRAIL' of Correspondence: What the Commissioners Knew, & When".

[2] Executive Law §94.4(c) identifies "substantial neglect of duty" and "misconduct in office" as grounds upon which "Members of the commission may be removed by majority vote of the commission."

[3] This Commission, with three members appointed by the governor, is a "state agency", pursuant to Public Officers Law §74, and the commissioners are, presumably, its "officers" – and reinforcing this is Executive Law §94.3(l) in specifying that "The independent review committee shall neither be public officers nor be subject to the requirements of the public officers law." No parallel provision appears in Executive Law §94.4 as to commissioners. Certainly, the Commission's paid staff is within the purview of Public Officers Law §74 – and this complaint is also against them, starting with Executive Director Berland and General Counsel St. John.

[4] Executive Law §94.10(b) reads:

> "Upon the receipt of a complaint, referral, or the commencement of an investigation, members of the commission shall disclose to the commission any personal, professional, financial, or other direct or indirect relationships a member of the commission may have with a complainant or respondent. If any commissioner determines a conflict of interest may exist, the commissioner shall, in writing, notify the other members of the commission setting forth the possible conflict of interest. The commissioner may recuse themself from all subsequent involvement in the consideration and determination of the matter. If, after the disclosure, the commissioner does not recuse themself from the matter, the commission, by a majority vote finding that the disclosed information creates a substantial conflict of interest, shall remove the conflicted commissioner from all subsequent involvement in the consideration and determination of the matter, provided the reason for the decision is clearly stated in the determination of the commission."

[5] Executive Law §94.3(j) reads:

> "Upon the receipt of the selection members' appointments, members of the independent review committee shall disclose to the independent review committee any personal, professional, financial, or other direct or indirect relationships a member of the independent review committee may have with an appointee. If the independent review committee determines a conflict of interest exists, such independent review committee member shall, in writing, notify the other members of the independent review committee of the possible conflict. The member may recuse themself from all subsequent involvement in the consideration of and action upon the appointment. If, after disclosure, the member does not recuse themself from the matter, the independent review committee, by majority vote finding the disclosed information creates a substantial conflict of interest, may remove the conflicted member from further consideration of and action upon the appointment."

[6] The AG's litigation fraud included a perjurious affidavit of JCOPE's Director of Investigations and Enforcement Emily Logue, who remained in that position for this Commission at least until August 18, 2022 – the date on which it was notarized by St. John (NYSCEF #81). The particulars of this perjury are set forth by my September 3, 2022 CPLR §2214 notice of papers to be furnished the Court (NYSCEF #85, at pp. 2-5) and its last item, "Pertaining to the whole of her affidavit", was for:

> "any written document reflecting who assisted her in its drafting, reviewed it for truthfulness and accuracy, and determined she should not respond to the particularized allegations in the petition pertaining to JCOPE, most importantly, ¶¶6, 16-26, 27-41, 42-47 – such persons reasonably including JCOPE's last executive director, Sanford Berland, Esq., currently occupying that position at [the Commission]." (at pp. 4-5, underlining added).

See, additionally, my "legal autopsy"/analysis of AG James' fraudulent August 18, 2022 cross-motion (NYSCEF # 88, at pp. 5-7).

Prior to serving as a notary to Ms. Logue, St. John had received from me, *in hand*, the *CJA v. JCOPE* verified petition, etc. on June 23, 2022 – and unlike representatives for all nine other *CJA v. JCOPE* respondents, who I had already served, he refused to furnish me with a signature, on behalf of JCOPE, to prove my service. Fearful that JCOPE would challenge service on grounds of my being a party, I returned with a non-party to effectuate the service upon St. John – and even then he would not give me a signature to acknowledge service. This is reflected by the affidavits of service I was then burdened with making, as to him and him alone (NYSCEF #49, NYSCEF #48).

[7] Although Chair Davie stated at the September 12th first meeting that "the Commission is committed to doing a full search for a permanent executive director" (at 11 mins.), it does not appear that ANY search was done, not even including it in posting for other staff positions (Oct. 6 meeting-posting; Oct 25 meeting-posting-update). At the December 16th meeting, no reference was made to any candidates having been considered for the position when, following an executive session (3 hrs, 48 mins.), Commissioner Cardozo, purporting that the Commission had "carefully considered the question of who should the new executive director of the Commission be… and after a great deal of investigation", he wanted to make "the following proposal and motion":

> "WHEREAS the Commission was created to provide much needed ethics oversight for the New York State government and ensure that New Yorkers have the responsible and ethical government they need and deserve; and
>
> WHEREAS the work of the Commission is both time-sensitive and significant with many outstanding matters needing immediate attention due to a delay resulting from the transition from the previous entity, the Joint Commission on Public Ethics, and the appointment process for the members of this Commission; and
>
> WHEREAS, the Commission requires a permanent executive director in order to properly move forward with its important work, including hiring additional staff; and
>
> WHEREAS, the Commission considered the possibility of a national search for an executive director, but were highly cognizant of the fact that it took two nation-wide searches conducted over a period of nearly two years to find an individual capable of leading the state's previous ethics and lobbying agency, Judge Berland; and,
>
> WHEREAS, based on a thorough review of Mr. Berland, which included examining his background, reviewing his financial disclosures, interviewing Mr. Berland at length and speaking with numerous others who worked with him in his role under the previous

Commission; and

WHEREAS, Mr. Berland has thus far successfully managed the transition from the previous Commission to this Commission; and

WHEREAS based on its dealings with Mr. Berland the Commission has been more than satisfied with his performance; and

WHEREAS the governing statute that created the Commission provides the executive director should be appointed by the Commission to serve a four-year term; and

WHEREAS the Commission needs an executive director immediately given the substantial number of issues with which it must deal and the number of staff vacancies,

IT IS HEREBY RESOLVED, the Commission appoints Sandy Berland as executive director to a term appointment of four years in accordance with Executive Law §94 at a salary of $220,000".

This was seconded by Vice-Chair Austin, with Chair Davie then stating, before the unanimous vote:

> "Let me thank all the Commissioners for their very thorough and diligent review and engagement around the hiring of our Interim Director Berland as the executive director of the Commission, of the agency. Let me reinforce what Commissioner Cardozo's resolution has stated and that is the very competent way in which Mr. Berland has conducted the work of this Commission, at least since my joining it in September and from what we can assess in the very thorough review we did before reaching this decision."

Among the successive lies and deceits by the above is that Berland's hire as JCOPE's executive director resulted from "two nation-wide searches conducted over a period of nearly two years". This is not consistent with his testimony at the August 25, 2021 hearing on "New York State's System of Ethics Oversight and Enforcement" by the Senate Committee on Ethics and Internal Governance:

Senator Salazar:	"Would you mind telling us, just to go back to when you sought the position, when you applied, do you remember how you found out that the position was open in the first place? Did you learn this from someone you know? Do you remember the circumstances?"
Berland:	"Probably the conversation with the former chair, who's someone I've known in various capacities over the years." (Transcript, at pp. 53-54, see also pp. 83-84; VIDEO)

I cited to and substantially quoted Berland's testimony at that August 25, 2021 hearing in my November 2, 2021 complaint against JCOPE and him to the New York State Inspector General (at pp. 10-16) – and it is Exhibit I to the *CJA v. JCOPE* verified petition (NYSCEF #17). This November 2, 2021 complaint is cited and linked in my December 17, 2021 complaint to JCOPE "against legislators and legislative employees for subverting the Legislative Ethics Commission to insulate themselves from complaints" – Exhibit B to the *CJA v. JCOPE* verified petition (NYSCEF #8), whose recitation at pp. 4-6 thereof, under the title "BACKGROUND", begins: "JCOPE is already familiar with the essential underlying facts – or at least JCOPE Executive Director Sanford Berland is."

[8] Executive Law §94.10(f) reads, in pertinent part:

> "If, following a preliminary review of any complaint…the commission or commission staff decides to elevate such preliminary review into an investigation, written notice shall be provided to the respondent setting forth, to the extent the commission is able to, the possible or alleged violation or violations of such law and a description of the allegations against the respondent and the evidence, if any, already gathered pertaining to such allegations… The respondent shall have fifteen days from receipt of the written notice to provide any preliminary response or information the respondent determines may benefit the commission or commission staff in its work. After the review and investigation, the staff shall prepare a report to the commission setting forth the allegation or allegations made, the evidence gathered in the review and investigation tending to support and disprove, if any, the allegation or allegations, the relevant law, and a recommendation for the closing of the matter as unfounded or unsubstantiated, for settlement, for guidance, or moving the matter to a confidential due process hearing. The commission shall, by majority vote, return the matter to the staff for further investigation or accept or reject the staff recommendation."

[9] Pursuant to Executive Law §94.6(a), the executive director may be removed for "substantial neglect of duty" and "misconduct in office", by "a majority vote of the commission."

[10] Appellate Division Rules of Procedure 1240.7(e)(3) reads:

> "Review of Dismissal or Declination to Investigate. Within 30 days of the issuance of notice to a complainant of a Chief Attorney's decision declining to investigate a complaint, or of a Committee's dismissal of a complaint, the complainant may submit a written request for reconsideration to the chair of the Committee. Oral argument of the request shall not be permitted. The Chair shall have the discretion to grant or deny reconsideration, or refer the request to the full Committee, or a subcommittee thereof, for whatever action it deems appropriate."

New York State Commission on Ethics and Lobbying in Government
540 Broadway
Albany, New York 12207

COMPLAINT

The Commission on Ethics and Lobbying in Government has jurisdiction to investigate potential violations of Public Officers Law § 73, § 73-a, § 74, Civil Service Law § 107, and Legislative Law article 1-A as they apply to State legislators, candidates for the Legislature and legislative employees, as well as the four statewide elected officials, candidates for those offices, executive branch employees, certain political party chairs, and lobbyists and their clients.

COMPLAINANT NAME Elena Ruth Sassower — Director, Center for Judicial Accountability, Inc.

ADDRESS BOX 8101

CITY, STATE, ZIP White Plains, New York 10602

TELEPHONE 914-421-1200

EMAIL elena@judgewatch.org

Please provide a statement or description of the alleged violation of Public Officers Law § 73, § 73-a, § 74, Civil Service Law § 107, or Legislative Law article 1-A including facts constituting a violation of the law(s) above, the identity of the individual(s) at issue and, if possible, a date, time, place of the alleged violation. Also note any documents or exhibits you are including to support the allegations.

See accompanying October 2, 2023 complaint — (1) updating + now filing CJA's March 29, 2023 ethics complaint vs COELIG's Commissioners, Executive Director, General Counsel + other high-ranking staff for "substantial neglect of duty" + "misconduct in office" born of flagrant violations of mandatory conflict of interest protocols (2) officially TESTING the Commission's unofficial reconsideration/renewal remedy by resubmitting CJA's July 8, 2022 complaint + October 6, 2022 supplement

Has this matter been referred to any other agency? ☑ Yes ☐ No

If yes, which agency? 1st Dept Attorney Grievance Committee + Commission on Judicial Conduct

Is there pending legal action you are aware of? ☑ Yes ☐ No

If yes, where? CJA, et al. v. COPE, et al. (Appellate Division — Third Dept #CV-23-0115)

New York State Commission on Ethics
and Lobbying in Government
540 Broadway
Albany, New York 12207

OPTIONAL

If you want to submit a sworn complaint for the purposes of Executive Law § 94, among other requirements, you must complete the following oath. The Commission also will accept and review complaints that do not include the oath.

I, Elena Ruth Sassower, being duly sworn, have read the foregoing complaint in its entirety, including any additional pages, and to the best of my knowledge, or based on information and belief, believe it to be true. I also understand the intentional submission of false information may constitute a crime punishable by fine or imprisonment, or both.

Sworn to before me this 2nd **day of**

October, 2023
MONTH

Elena Ruth Sassower
SIGNATURE

Nandhini Sundaram
NOTARY PUBLIC

NANDHINI SUNDARAM
NOTARY PUBLIC STATE OF NEW YORK
ROCKLAND COUNTY
LIC. # 01SU6192640
COMM. EXP. 09/2/24

INITIALS ECS

CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101 *Tel: 914-421-1200* *E-Mail: mail@judgewatch.org*
White Plains, New York 10602 *Website: www.judgewatch.org*

October 2, 2023

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

TO: Commissioners/Commission on Ethics and Lobbying in Government (COELIG)

RE: (1) Updating & Now Filing CJA's March 29, 2023 ethics complaint vs COELIG's Commissioners, Executive Director, General Counsel, & Other High-Ranking Staff, for "substantial neglect of duty" and "misconduct in office", born of flagrant violations of mandatory conflict-of-interest protocols;
(2) Officially TESTING the Commission's unofficial reconsideration/renewal remedy by resubmitting CJA's July 8, 2022 complaint and October 6, 2022 supplement based on the within evidence that the November 17, 2022 staff letter that the Commission "voted to close" it is indefensible.

On March 29, 2023, in testifying at your first annual hearing, I stated to you that I would be filing a complaint

> "against you, to you, for your 'substantial neglect of duty' and 'misconduct in office'[fn2] from your first meeting last September 12th to date – 6-1/2 months later – arising from your willful violations of Public Officers Law §74, proscribing conflicts of interest that is your duty to enforce as to others,[fn3] and of Executive Law §94.10(b) explicitly mandating that you each disclose personal, professional, and financial conflicts of interest with respect to complaints – and recuse yourselves or be recused by vote of your fellow commissioners.[fn4]" (underlining and hyperlinking in the original).

I deferred actually filing such complaint, so as to give you the opportunity to take steps to rectify the violations that my March 29, 2023 testimony summarized and evidentiarily-established. This you have not done and the final straw, prior to your September meetings, was your issuance on August 28, 2023 of your misnomered 2022 Annual Report, which is largely a first-year report, and whose material fraudulence is proven, resoundingly, by my testimony.

Had you made findings of fact and conclusions of law with respect to my testimony, as was your duty to have done – and *pronto* – you could not have rendered your "false instrument" Annual Report, constituting a Penal Law §175.35 violation by you, nor have stolen from the taxpayers scores of thousands of dollars in *per diems* to which you knew yourselves to be not entitled,

violating further Penal Laws, such as:

Penal Law §195 ("official misconduct");
Penal Law §496 ("corrupting the government") – part of the "Public Trust Act";
Penal Law §20.00 ("criminal liability for conduct of another").
Penal Law §195.20 ("defrauding the government");
Penal Law §155.40 ("grand larceny in the second degree");
Penal Law §190.65 ("scheme to defraud in the first degree");

Indeed, with respect to *per diems*, you went way beyond availing yourselves of the fraud of its rate, which Executive Law §94.4(f) ties to the salary of a Supreme Court justice. What you did was to *sub silentio* convert Executive Law §94.4(f) into an hourly compensation provision by falsely purporting that this is what the statute provides, without securing an independent legal opinion because, as you knew, such would not sustain your self-serving interpretation.

I, therefore, now update and herewith file the complaint indicated by my March 29, 2023 testimony to span to the present date and to include the below "specific and credible evidence". Pursuant to Executive Law §§94.10(d) and (f), "specific and credible evidence" is the predicate for investigation, signified and commenced by 15-day letters. Such are here required to be sent to each of you, to Executive Director Berland, to General Counsel St. John, and to other high-level complicit staff, so that each of you may respond to the evidence of your conflict-driven, fraudulent, and larcenous conduct.

To facilitate verification, this presentation extensively hyperlinks to the evidence and is, additionally, posted on CJA's website, here. A table of contents follows, formatted as charges against you.

TABLE OF CONTENTS

* * *

CHARGE 1
Your Conflict-of-Interest-Driven Official Misconduct in Failing to Discharge Your Duty to Make Findings of Fact and Conclusions of Law with Respect to CJA's March 29, 2023 Testimony -- & Your Self-Interested Fraudulent Disposition of that Testimony

One does not have to be a commissioner on an ethics tribunal purporting to exemplify the highest ethics standards, or lawyers, as eight of you are, two being also former Appellate Division justices[1] – or high-ranking administrative, investigative, and ethics staff, among them lawyers, whose head is a former judge – to know that my March 29, 2023 testimony and its substantiating EVIDENTIARY webpage had to be confronted, immediately, and with findings of fact and conclusions of law. These would have been, at minimum:

(1) that the *CJA v. JCOPE, et al* verified petition establishes JCOPE's corruption with respect to the seven complaints that CJA filed with it, each of which mandated 15-day letters pursuant to then Executive Law §94.13(a) – and that

[1] Former Appellate Division Justice Carni apparently resigned from the Commission as some point between the August 28, 2023 Annual Report, which includes him, and the September 2023 meetings, but is criminally liable for his corruption with you, prior thereto – and the fraudulent, larcenous hourly *per diems* he collected and allowed you to collect.

the "ethics commission reform act of 2022" replacing JCOPE with COELIG was unconstitutionally enacted *via* the budget and by fraud, as set forth by its sixth cause of action;

(2) that CJA's July 8, 2022 "DAY 1" complaint to COELIG, consisting of a refiling of CJA's seven complaints to JCOPE, plus a new eighth complaint against Attorney General James for litigation fraud in *CJA v. JCOPE, et al.*, to which CJA filed an October 6, 2022 supplement and which an unsigned November 17, 2022 letter of your "Investigations Division" purported you had "voted to close", establishes COELIG's corruption with respect to those complaints and its violation of Executive Law §§94.10(d) and (f), including with respect to 15-day letters;

(3) that you have financial and other interests in *CJA v. JCOPE, et al.* and in the July 8, 2022 complaint which, pursuant to Public Officers Law §74 and Executive Law §94.10(b), mandated disclosure and recusals by you – and that I gave you notice of this and of the financial and other interests of JCOPE Executive Director Berland, including simultaneously with notifying the Independent Review Committee (IRC) when it was screening you[2];

(4) that the 15 IRC law school deans corrupted the duties imposed upon them by Executive Law §94.3 – including as to their own disclosure and recusal obligations, mandated by Executive Law §94.3(j) – in screening and approving you as commissioners, and in concealing the corrupting of the nominations process by the selection members;

(5) that you actualized your financial and other interests in *CJA v. JCOPE, et al.* and in CJA's July 8, 2022 complaint arising therefrom by retaining JCOPE Executive Director Berland to be COELIG's interim executive director – thereafter compounding same, on December 16, 2022, by making him COELIG's executive director, without the search you had publicly promised at your first meeting, on September 12, 2022, and, possibly without even posting the position,[3] because any competent candidate for the job would have easily discerned that JCOPE and now COELIG were subverting statutory mandates with respect to complaints and 15-day letters;

(6) that Berland and other JCOPE high-ranking staff, such as JCOPE Ethics Director St. John, who Berland would promote to COELIG's general counsel, violated disclosure/recusal mandates with respect to CJA's July 26, 2022 and December 27, 2022 FOIL requests, purporting that records that necessarily exist, do not exist, which was and is an outright lie.

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[2] August 4, 2022 e-mail; August 22, 2022 e-mail; December 27, 2022 e-mail; February 7, 2023 e-mail.

[3] *See* endnote 6 of my March 29, 2023 testimony.

Because such findings of fact and conclusions of law, compelled by my testimony, precluded issuance of an annual report that would – as yours has – conceal, totally, the corruption of COELIG and JCOPE with respect to complaints and 15-day letters and the IRC's corruption, about which I testified, you and your staff headed by Executive Director Berland and General Counsel St. John made no findings of fact and conclusions of law, whatever. Rather, you and staff embarked on a calculated course to avoid and obliterate my testimony. This started at the March 29, 2023 hearing itself when, notwithstanding I was, at my request, your last witness so that I might have an extra 3-1/2 minutes to complete my testimony, you cut the live-stream of those extra 3-1/2 minutes and, with more than 2-1/2 hours remaining for the hearing, asked me not a single question.

Two weeks later, at your April 10, 2023 "special meeting" (at 1hr/59 mins), you allowed General Counsel St. John, whose conflict-of-interest-driven fraud with respect to my FOIL appeal I testified about, to reduce my testimony to a single recommendation: that COELIG's closing letters contain a provision for reconsideration similar to those of the Appellate Division attorney grievance committees. To this, only Commissioner Whittingham took modest exception, stating:

> "From the Center for Judicial Accountability, I think she also had some concerns about the closing letters and the lack of information. In addition to giving the opportunity for reconsideration, whether or not we should have more information in those letters and whether or not the Commissioners did vote on it or it's only saying that the Commissioners voted and to make that clear. I think I got that from her comments, as well, if I'm not mistaken, those were the other concerns that she had." (VIDEO, at 2hrs).

This was apparently too damning to be included in the draft minutes of the April 10, 2023 meeting, as at the May 23, 2023 meeting at which the minutes were being approved, she stated:

> "On page 11, where we also have the last sentence of the first paragraph, noting what Ms. Sassower recommended. I think, in addition to noting what was recommended, I made the suggestion that we look into that and, if I am not mistaken, I was told that was going to be looked into in terms of the way we do the closing letters. I wanted to just add that, the suggestion to look into it, that the Commission and staff will look into it." (VIDEO, at 4mins).

This was accepted as a friendly amendment – and the April 10, 2023 draft minutes were approved, as amended. In violation of the Open Meetings Law (Public Officers Law, §103(e)), the draft minutes were not posted on your webpage of the agenda for the May 23, 2023 meeting – and the approved minutes were not thereafter posted.

The following month, your agenda webpage for the June 27, 2023 meeting attached a "March 29, 2023 Annual Public Hearing Recommendations and Comments Digest", which, though adding two further items pertaining to my testimony (at p. 12), did not include what Commissioner Whittingham had noted. The three items, designated for consideration by the Legal Committee, were:

"• Letters 'closing' complaints by vote of the Commission should indicate 30 days in which a complainant may seek reconsideration of the closing of a matter, similar to what is provided by the Appellate Division Rules pertaining to its attorney grievance committee procedures.

• The statute creating the Commission should be voided

• Commissioners are conflicted, both those who are former judges who benefited from unlawful judicial salary increases and those who will now be receiving per diem allowances that are measured according to the unlawfully raised salaries of Supreme Court justices." (underlining added)

Counsel St. John presented the "Digest" at your June 27, 2023 meeting (VIDEO, at 37mins), without any of you taking exception to its distillation of my testimony, even to the limited extent of:

- adding to the first item that my testimony had challenged the legitimacy of closing letters purporting the Commission had "voted" when, pursuant to Executive Law §94.10(f), the Commission does not "vote" until after an investigative process commenced by a 15-day letter;

- modifying the second item to reflect that my testimony asserted that the sixth cause of action of *CJA v. JCOPE, et al* was dispositive that the statute creating COELIG had to be voided, *as a matter of law* – and that Attorney General James, a respondent, representing herself and the other respondents, was corrupting the judicial process with litigation fraud because she had no legitimate defense – and that CJA's July 8, 2022 complaint to COELIG against Attorney General James based thereon had been fraudulently closed by an unsigned November 17, 2022 letter of COELIG's "Investigations Division", purporting the Commission had "voted" to do so;

- modifying the third item to reflect that, by then, you had already received or would be receiving, within days, your first *per diem* payments, cumulatively totaling $83,946.

On September 6, 2023, you disposed of the three items from the "Digest" pertaining to my testimony. Two were disposed of at your "special meeting", chaired not by Chair Davie, but by Vice Chair Austin, as chair of the Legal Committee.

The first item that Vice Chair Austin announced, he simultaneously disposed of, as follows:

"Number 8 is from Elena Sassower, and she asks that the stat, that we void the statute creating the Commission. I think Governor Cuomo is helping us along that, her along that way. Anyway, we're waiting for a decision, so I don't think there is anything we can do with that, on so many different levels. So, with your kind permission, I am

going to mark that one as rejected." (VIDEO, at 50mins).

No one objected that my testimony[4] had NOT "ask[ed]" that you "void the statute creating the Commission", but had asked for reconsideration of the unsigned staff letter purporting the Commission "voted to close" CJA's July 8, 2022 complaint against Attorney General James for corrupting the judicial process in *CJA v. JCOPE, et al.*, which the Attorney General had done to prevent a declaration voiding the "ethics commission reform act of 2022", to which CJA has a summary judgment/*matter of law* entitlement – mooting *Cuomo v. COELIG*.

18 minutes later, Vice Chair Austin announced:

> "Number 16 is from Elena Sassower, asking that letters closing complaints be by vote of the Commission and indicate 30 days in which a complainant may seek reconsideration closing the matter, similar to what the Appellate Division does and various rules of civil procedure.
>
> Staff responds that that would require an amendment of the Executive Law 94.10 for rehearing, reconsideration. There are other procedural alternatives to an aggrieved party from a decision that we make, and that's through the court in an Article 78. So parties are not without their remedy, beyond an appeal before us. So, with that in mind, is there any discussion with regard to number 16?" (VIDEO, at 1hr/8mins).

No one objected that my testimony had NOT "ask[ed] that letters closing complaints be by vote of the Commission". Rather, I had identified that:

> "pursuant to Executive Law §94.10(f),[fn8] the only time the Commission votes to close a matter is AFTER investigation that includes 15-day letters, where the staff has recommended same in a report to the Commission for the reason that the complaint is 'unfounded or unsubstantiated' – by no stretch the case at bar with respect to any of the eight complaints." (p. 3, capitalization and underlining in the original).

There was, however, push-back from Commissioner Ayres and Chair Davies to the staff response that amending Executive Law §94 would be necessary in order to institute a reconsideration procedure, albeit this push-back did not identify what they and you are presumed to know, namely, that staff was outrightly lying because Executive Law §94.5, entitled "Powers", expressly states:

> "(a) The commission has the authority to:… (ii) adopt, amend, and rescind any procedures of the commission, including but not limited to, procedures

[4] Consistent with your favoring of the misnomered "good government groups", whose recommendations at the March 29, 2023 hearing you identified at the September 6, 2023 meeting by their specific organizational affiliations, you did not identify my testimony by organizational affiliation, *to wit*, the Center for Judicial Accountability – just as, likewise, you used my name, instead of CJA's in your Annual Report's listing of "Litigated Matters". (*see* fn. 5, *infra.*).

for…investigations, enforcement…"

Though ultimately my suggestion of a reconsideration procedure was tabled, deceit pervaded the discussion preceding the vote (Exhibit A), exemplified by:

- the failure of any of you to acknowledge that there might be anything wrong with how even a single complaint had been closed, for which reconsideration would be warranted, let alone with respect to CJA's July 8, 2022 complaint and the unsigned November 17, 2022 staff letter stating you had "voted to close" it. Exemplifying this was Commissioner Ayres' twice-stated assertion, as to whether COELIG's rules should provide for reconsideration, "I'm not saying it's a good idea" and "I'm not saying I support doing it", and Commissioner Whittingham's "I am not persuaded that, you know, this is the route we should take";

- the failure of any of you to ask Executive Director Berland as to the provision of Executive Law §94 to which he was referring when he purported it contemplated an Article 78 remedy to complainants whose complaints had been closed;

- Commissioner Caraballo's obvious knowledge that there was an issue about whether complainants whose complaints had been closed would have an Article 78 remedy, and which, when she questioned Executive Director Berland about it, he laughed and replied: "There are jurisdictional questions" and "It's an interesting question that has been litigated and really it does depend on the circumstances and how you interpret the statute with respect to complaints" – to which there was no follow-up by her or anyone else.

It would appear that some of you were willing to entertain a reconsideration procedure for complainants whose complaints are disposed of by closing letters. Presumably this is because you are confident that, as with other rule provisions you have put in place and the provisions of Executive Law §94 that you have violated, you will be able to render it sham, window-dressing.

The third item from my testimony, though also designated by the "Digest" as for the Legal Committee, was, apparently, shifted to the Ethics Committee. This was improper, as the original designation was correct. The issue in the first instance is a legal one: whether – as I identified by my testimony – $80,000 of the salary of Supreme Court justices is fraudulent, as established by CJA's complaints to JCOPE that are Exhibits A through G to the June 6, 2022 verified petition in *CJA v. JCOPE, et al.*, all seven of these complaints refiled with COELIG by the July 8, 2022 complaint. The ethics issues kick in only after confirmation, by findings of fact and conclusions of law, that the Supreme Court salary level, to which Executive Law §94.4(f) ties COELIG commissioner *per diems*, is fraudulent.

This third item was disposed of at the Ethics Committee's September 6, 2023 meeting that commenced immediately following your nearly 5-1/2 hour special meeting, whose last three hours were about adopting a commissioner code of ethics, disclosure, and recusal policy that would set a

higher standard than that of Public Officers Law §74 and Executive Law §94.10(b). Below is my transcription of how Ethics Committee Chair James, and members Caraballo and Austin disposed of the item.

VIDEO, at 13mins

James: (*rapidly read*) The Commissioners are conflicted, both those who are former judges who benefited from unlawful judicial salary increases and those who will now be receiving *per diem* allowances that are measured according to the unlawfully raised salaries of Supreme Court justices. Umm.

Caraballo: I, yeah, I move to accept the staff recommendation.

James: Denied.

Caraballo: Denied, however you want to say it.

Austin: The Commissioners are conflicted one?

Caraballo: Yea.

Austin: What'd you move?

Caraballo: I moved to deny that, to accept the staff's recommendation.

James: Alright. All in favor?

Austin: Aye.

Caraballo: Aye.

No mention of the basis for the staff's recommendation or inquiry as to how, if at all, staff addressed its conflicts of interest with respect to same – and how, in accepting the staff recommendation, the Ethics Committee members were confronting their financial interests in the issue, which, as to former judges Austin and the not present Commissioner Carni, were, as stated by my testimony (at p. 2), "HUGE", on the order of "approximately three quarters of a million dollars each".

CHARGE 2
Your Conflict-of-Interest-Driven "False Instrument"
August 28, 2023 Annual Report for 2022, in Essence a First-Year Report

Your Annual Report begins with an Executive Summary (at pp. 7-11), whose first paragraph states "Governor Kathy Hochul signed ECRA into law on April 9, 2022, and it took effect 90 days later, on July 8, 2022." Omitted, as likewise from the Annual Report, is that ECRA – the "ethics commission reform act of 2022" – was enacted through the budget – and that *CJA v. JCOPE, et al.*, challenged the unconstitutionality of this and other frauds pertaining to ECRA's enactment.

The Annual Report acknowledges *CJA v. JCOPE, et al* in its section entitled "Litigation Matters" (at pp. 58-60),[5] misidentifying its title, misidentifying the date of the Supreme Court decision that dismissed it, and giving a two-sentence summary, as follows:

> "In this hybrid Article 78/declaratory judgment action, petitioners sought, among other things, to challenge the Ethics Commission Reform Act of 2022 (ECRA), the statute that created COELIG, and moved for a preliminary injunction to stop the implementation of ECRA. The Court dismissed the action, finding that petitioners failed to state a cause of action, and upheld the constitutionality of ECRA." (at p. 60)

Apart from concealing that the basis for the lawsuit's challenge to ECRA, by its sixth cause of action, is its enactment, through the budget and by fraud – the same as entitled petitioners to a preliminary injunction to stop ECRA's implementation – you conceal that the first and second causes of action pertain to JCOPE's corruption with respect to its handling of complaints and specifically 15-day letters – and that the record of the lawsuit, whose NYSCEF link my written testimony furnished, establishes the Supreme Court decision to be a judicial fraud by a judge disqualified for actual bias born of financial interest, as to which I noticed an appeal on December 16, 2022. Yet, the Annual Report does not reflect that fact – or that, on August 15, 2023, almost two full weeks before you issued your Annual Report, the appeal to the Appellate Division, Third Department was perfected.

The Executive Summary's second paragraph then purports that COELIG's creation by Governor Hochul and the Legislature was "to restore public trust in state government by ensuring transparent, consistent, and vigorous application and enforcement of New York's ethics and lobbying laws and regulations" – not mentioning that this, too, was challenged by the *CJA v. JCOPE* verified petition (at ¶6), which expressly asserted that COELIG's enactment was motivated by the ulterior purpose of stripping the public of rights under the JCOPE statute enforceable by mandamus pertaining to complaints – and that among the respects in which the ECRA statute was inferior is that COELIG,

[5] The opening sentence of this "Litigated Matters" section reads: "The Commission and its predecessor agency were involved in four litigation matters in 2022". It then lists five litigations. The first two decisions, of the Appellate Division, Third Department, are listed chronologically. Inconsistently, the next three decisions, of Albany County, are not listed chronologically – which is why the case purported to be "*Elena Sassower, et al. v. Joint Commission on Public Ethics*…" is last.

unlike JCOPE, would not be a "covered agency" under the jurisdiction of the state inspector general.

The Executive Summary continues with a full page chart (at p. 8) entitled "The New Ethics Commission Reform Act of 2022 (ECRA) "What News Under ECRA" – falsely inferring that what is "new" in the ECRA statute are improvements, so-conceived and by their operation.

A graphic follows (at p. 9) entitled "NYS Commission on Ethics and Lobbying Government 2022 Activities Snapshot", focused on numbers – and the title "The Numbers" is how the Annual Report's Table of Contents separately lists it.

From the public's standpoint, the most important number is: "155 tips, complaints, and reports received and processed by the Commission" – and it is explicated (at p. 11) under the heading "Investigations and Enforcement" as follows:

> "After July 8, 2022, Investigations and Enforcement Division staff continued to process complaints and conduct preliminary reviews of matters while awaiting the appointment of COELIG Commissioners and thereafter in 2022 processed 155 investigative matters…. COELIG has continued all pending matters carried over from JCOPE…."

This is utter fraud, as:

- under the ECRA statute, Executive Law §94.10(f), COELIG staff was empowered not just to "conduct preliminary reviews" of complaints but to "elevate" them to "investigation", signified and commenced by 15-day letters;

- it conceals the number of "tips complaints, and reports" that COELIG received "while awaiting the appointment of COELIG Commissioners" – notwithstanding that number was stated to be **30** in the staff operations reports furnished with the agendas of your October 6 and October 25, 2022 meetings – such staff reports also identifying that CEOLIG had sent out **0** 15-day letters and had commenced **0** investigations;

- it falsely implies, by the phrase "155 investigative matters", that these 155 were investigated when, as the Annual Report's chart at page 78 reflects, of the "155 tips, complaints, and reports" that were collectively received by JCOPE and COELIG in 2022, only **3** 15-day letters were sent and **2** investigations commenced.

The Executive Summary ends (at p. 11) with an immediately following single sentence:

> "Detailed information on the matters handled and the work performed by the units of the Commission can be found in the relevant sections of this report that follow."

The "relevant sections", with respect to complaints, are the Annual Report's "Investigations and Enforcement" section (pp. 52-75), plus the final page of the section immediately following it, this being page 78 of "Commission Activities by the Numbers".

The "Investigations and Enforcement" section (pp. 52-75) begins (p. 52) with three highlights, on three panels. The first panel states: "Tips, Complaints, & Reports: The agency received and processed 155 tips, complaints, referrals, and reports in 2022."

The referred-to "agency" was, until July 7, 2022, JCOPE and then, from July 8, 2022 onward, COELIG. The 155 figure corresponds to the reference numbers 22-001 to 22-155 on the chart entitled "2022 Enforcement Activity" (at pp. 64-75), with no indication as to the reference number at which the receiving "agency" changed from JCOPE to COELIG. Nor is there any indication as to which of the reference numbers are "tips", which are "complaints", which are "referrals", and which are "reports".

The second panel states: "The Commission closed 128 investigative matters in 2022."

The "Commission", prior to July 8, 2022, was JCOPE and, from that date onward, was COELIG. The inference, by the phrase "128 investigative matters", is that 128 matters were "investigated". This would have required, at minimum, the sending of 128 15-day letters because 15-day letters are the starting point for "investigation" under both the JCOPE and COELIG statutes.

The third panel states: "Open Investigations: As of December, the Commission had 32 open and 124 pending investigations".

There is no definition of what an "open investigation" is as opposed to a "pending investigation". Presumably the 32 "open investigations" refer to investigations opened by COELIG and the 124 "pending investigations" refer to investigations that JCOPE opened. As to all these "investigations", they were improper and violated the JCOPE and COELIG statutes unless, as to each, 15-day letters were sent.

In any event, the numbers from the staff operations reports that Executive Director Berland furnished you for your meetings are starkly different, revealing that in 2022 COELIG sent out **0** 15-day letters and opened **0** investigation in response to **70** "tips, complaints, and reports received".[6]

These same staff operations reports reveal that in 2022, JCOPE had sent out **3** 15-day letters and opened **2** investigations.

The next subsection is **"The Investigation and Enforcement Process"** (pp. 53-56), depicting COELIG as a properly functioning investigative body, operating consistent with its statutory mandate. This is false. Cloaked by the true sentence (at p. 53):

[6] See staff operations reports for your October 6, 2022, October 25, 2022, November 15, 2022, December 16, 2022, and January 31, 2023 meetings.

> "The Commission will investigate all matters where there is specific and credible evidence that a violation has occurred of Section 73, 73-a, or 74 of the Public Officers Law, Section 107 of the Civil Service Law, or article 1-A of the Legislative Law, by a person or entity subject to the jurisdiction of the Commission." (underlining added),

which is what Executive Law §94.10(d) and §94.10(m) require – and what your website also purports – the next paragraph engages in sleight of hand by changing the definition of "investigation". It does this by replacing the statutory phrase "preliminary review", which Executive Law §94.10(f) expressly identifies as NOT "investigation", with the phrase "preliminary collection and review of information", inferring this to be informal "investigation" and then calling 15-day letters "formal investigation". Thus it states:

> "If the preliminary collection and review of information warrants elevating the matter to a formal investigation, the subject of the investigation will receive written notice of the alleged violations of law and be given 15 days to respond. This written notice is often referred to as the 15-day letter…" (underlining added).

By similar sleight of hand, this subsection purports (at p. 54) that "after staff's presentation", the standard for the Commission's vote as to whether to proceed to a due process hearing is "credible evidence", when "credible evidence" is the standard for the "investigation", commenced by a 15-day letter. The page 55 flow chart then repeats these two deceits.

The subsection "2022 Review and Disposition of Investigative Matters" (pp. 56-57) follows consisting of three short paragraphs. The first two paragraphs repeat what the Annual Report had previously sent forth, most significantly that:

> "Investigations staff continued to process complaints and conduct preliminary reviews of matters while awaiting the formation of COELIG and processed 155 investigative matters in 2022."

As hereinabove stated, this is false. Although Executive Law §94.10(f) empowered COELIG staff to "elevate" "preliminary review" to "investigation" by 15-day letters, the staff operations reports presented to you at your October 6, 2022 and October 25, 2022 meetings show that of the 30 "tips, complaints, and reports" COELIG received before you were seated as commissioners, staff sent out **0** 15-day letters.

The three-sentence third paragraph then concludes:

> "To date in 2023, COELIG elevated eight matters and sent notices of allegation, referred to as 15-day letters, to the affected parties. These 15-day letters included those sent to former Executive Branch officials and employees. COELIG continued

> pending matters carried over from JCOPE, including two matters that have proceeded to the due process hearing stage." (underlining added).

Obvious from the first four words, "To date in 2023", is that another sleight of hand is being employed. The number of "elevated" matters and 15-letters that are relevant to the 2022 Annual Report do NOT span "To date in 2023" – and such are offered up to avoid having to report what the 2022 numbers are for COELIG: **0** matters "elevated" by 15-day letters.

Following the **subsection "Litigation Matters"** (pp. 58-60), misidentifying *CJA v. JCOPE, et al*, the Supreme Court decision, and concealing the relevant facts, including the status of the lawsuit – the subject of a perfected appeal filed 13 days before the Annual Report – is a **final subsection "2022 Enforcement Activity"** (pp. 61-75). This 14-page-chart contains the information required by JCOPE Executive Law §94.9(l) mandated for its annual report: "a listing by assigned number of each complaint and referral received which alleged a possible violation within [JCOPE's] jurisdiction, including the current status of each complaint" – and which none of JCOPE's annual reports had included, excepting the last for 2021, issued on July 7, 2022, the day before JCOPE when out of existence – and doubtless in response to the second cause of action of *CJA v. JCOPE et al*, to compel same. Although no such list is required by COELIG's Executive Law §94.12 for its annual report, you have included it presumably because, in and of itself – and without access to the complaints, tips, and referrals identified only by numbers – it permits no qualitative assessment of the accuracy or legitimacy of what is being represented – failing even to identify the reference numbers that elicited 15 day letters.

The first 3-1/2 pages (pp. 61-64) list, by assigned number, the closing, in 2022, of "tips, complaints, and reports" received by JCOPE in 2018 through 2021. The next 11-1/2 pages (pp. 64-75) are a list, by assigned number, of the status of "tips, complaints, and reports" received in 2022, without indicating at which assigned number the receiving commission became COELIG, not JCOPE. Upon information and belief, number 22-099 is the first complaint that COELIG received – CJA's July 8, 2022 complaint, incorrectly listed as being against "Commission on Ethics and Lobbying in Government", with a "status" of having been "Closed by Commission Vote" – the date being "11/17/22".

Plainly if #22-099 was against the "Commission on Ethics and Lobbying in Government", you could not have voted to close it without having first confronted your self-interest in it, proscribed by Public Officers Law §74, and the disclosure/recusal protocol mandated by COELIG Executive Law §94.10(b). The complaint, which was NOT against COELIG, except inferentially by its October 6, 2022 supplement, did present you with profound conflicts of interest, individually and collectively – and I highlighted some of these at the March 29, 2023 annual hearing.

My testimony (at p. 3) also highlighted that you could NOT have lawfully "voted to close" the complaint, because COELIG Executive Law §94.10(f) requires that BEFORE such a vote, there be a 15-day letter initiating an investigation, followed by a staff report to the Commission based thereon setting forth the evidence, supporting or disproving the alleged violation(s), with a recommendation which, if it is to close, is because the matter is "unfounded or unsubstantiated". Since COELIG sent

out no 15-day letters in 2022, #22-099 could not have been "Closed by Commission Vote" without violating Executive Law §94.10(f).

For the same reason, six matters subsequent to #22-099 could not have been lawfully "Closed by Commission Vote", *to wit*:

#22-104 against "NYS Insurance Fund", on "12/16/2022";
#22-109 against "United Nations Development Corporation", on "12/16/2022";
#22-125 against "NYS Office for People with Developmental Disabilities", on "2/28/2022";
#22-128 against "Department of Corrections & Community Supervision, Board of Parole", on "12/16/2022";
#22-136 against "Assembly", on "12/16/2022";
#22-147 against ? for "Failure to File", on "1/31/2023".

As for 2022 matters prior to #22-099 "Closed by Commission Vote", the chart lists five. Of these, one was "closed" on "5/24/2022" – in other words, by JCOPE. It is #22-052 against "Executive Chamber and Legislature", identified as "Closed by Decision (Commission Vote)". The other four you had "closed":

#22-024 against "SUNY-Stonybrook" on "2/28/2023";
#22-064 against "Office of Parks & Recreation" on "12/16/22";
#22-089 against ? for violation of the Lobbying Act on "12/16/22";
#22-094 against "NYS Insurance Fund" on "12/16/22".

Inasmuch as you had resolved, at your October 6, 2022 meeting, to apply COELIG's Executive Law to all pending matters, you could not close these four by "Commission Vote" unless prior thereto, you had followed the procedural protocol specified by COELIG's Executive Law §94.10(f), starting with 15-day letters. However even applying JCOPE Executive Law §94.13(a), the procedural protocol of 15-day letters was required before a Commission vote.

The same is true with respect to the ten matters from before 2022, that in 2022 were "Closed by Commission Vote". One of these was by COELIG: #21-147 against "SUNY – Binghamton" on "12/16/2022". The other nine, by JCOPE, are:

#18-014 against "Department of Health" on "4/29/2022";
#18-038 against "Executive Chamber" on "4/27/2022";
#20-012 against "Metropolitan Transportation Authority (Headquarters)" on "6/28/22";
#20-017 against "New York City Transit Authority" on "2/10/2022";
#20-197 against "Assembly" on "2/17/2022";
#21-074 against "Public Service Commission" on "3/29/2022";
#21-108 against "New York City Transit Authority" on "2/9/2022";
#21-233 against ? for a "Gift" on "2/28/22";
#21-244 against "Assembly" on "2/28/2022".

Suffice to note that:

- #22-052, the SOLE 2022 matter that JCOPE closed by a "Commission Vote", identified as being against "Executive Chamber and Legislature", is CJA's April 13, 2022 complaint to JCOPE – the same as is Exhibit A to the June 6, 2022 verified petition in *CJA v. JCOPE, et al* (##2-7);

- #21-244 that JCOPE closed by a "Commission Vote" is CJA's December 17, 2021 complaint against Senate and Assembly legislators and legislative employees for subverting the Legislative Ethics Commission – the same as is Exhibit B to the verified petition in *CJA v. JCOPE, et al* (#8). The chart misidentifies it as being against "Assembly".

These two entries are materially discrepant as to their recorded "closed" dates:

- For #22-052, the "closed" date is recorded as "5/24/22" – which is the date the "Commission voted", specified by JCOPE's June 6, 2022 closing letter.

- For #21-244, the "closed" date is recorded as"2/28/22" – which is the date of JCOPE's February 28, 2022 closing letter, not the date the "Commission voted", specified by the letter to be "January 25, 2022".

As for #22-099, CJA's July 8, 2022 complaint, the "closed" date of "11/17/22" is the date of your November 17, 2022 closing letter, not the date the "Commission voted", specified by the letter to be "October 25, 2022". Thereby concealed is that #22-099 is the FIRST complaint you "closed" – and the one to which Executive Director Berland was referring when, on October 25, 2022, upon your return from executive session, he announced, in the public session, that you had closed a single complaint.

As the accuracy and propriety of the chart's listings can only to assessed by examining the records of JCOPE and COELIG pertaining to each entry, the necessity of an independent examination is established by complaints #21-244, #22-052, and #22-099, as the Commission "vote to close" them cannot be justified, procedurally or substantively.

That being said, some further observations are possible about the chart's entries, as for example:

- Most of the dispositions are without reasons or explication, such as "Closed", "Closed by Commission Vote"; "Pending";

- The disposition "Closed (Insufficient Allegations)" appears on a great many of JCOPE's dispositions, but not on a single one of COELIG's dispositions.

Notably, your Annual Report is devoid of any information about your "oversight" over COELIG's handling of complaints – or of litigations pertaining thereto and involving JCOPE – as to which my testimony could not have been more explicit in furnishing you with notice and evidence as to the exigency of "oversight".

CHARGE 3
Your Conflict-of-Interest-Driven Subversion of Executive Law §94.4(f) Pertaining to Your *Per Diems*

Illustrative of the Annual Report's deceit, spinning your unethical, self-serving conduct into an accolade of your virtue, is its sole reference to your *per diems* (at p. 29), where, under the heading "Accomplishments", it states:

> "Posting Commissioner Per Diem Allowances: In 2022, the Commission made a commitment to post the amount of per diem allowances paid to Commissioners for their Commission work, with the first posting made for FY 2023 in May 2023."

The facts are as follows:

Before the IRC had approved a single commissioner as qualified, I alerted the IRC by an August 4, 2022 letter (at p. 7), which I simultaneously e-mailed to the then prospective commissioners, that because ECRA Executive Law §94.4(f) ties commissioner *per diem* allowances to "the salary of a justice of the supreme court divided by two hundred twenty" for a 7-1/2 hour day or pro-rated day, ALL commissioners would have a financial interest in CJA's eight-in-one July 8, 2022 "DAY 1" complaint to COELIG, which they would have to confront, threshold.

Three and a half months later, at your November 15, 2023 meeting, *per diems*, which had not been on the meeting's agenda, were raised by then interim Executive Director Berland as new and other business (VIDEO, at 1hr/16mins). He deemed this, as likewise COELIG's retention of a public relations firm, also not placed on the meeting's agenda, as too sensitive for open discussion and moved them to executive session. Although Chair Davie reiterated that when you came back from executive session, you would report as to these, there was "a small audio outage" preventing audio of what the result of that behind-closed-doors discussion had been. According to the minutes, "The Commission discussed legal questions arising with respect to the proposed Commissioner per diem policy". The "legal questions" were not identified.

Per diems next came up – and now as "VII. EXECUTIVE LAW §94(4)(F) PER DIEM POLICY" – on the agenda of your January 31, 2023 meeting. However, at the meeting (VIDEO, at 1hr/8 mins), Chair Davie announced that because there were "some legal issues surrounding this" it would first be taken up in executive session, with a public report thereafter of the discussion about it. This was recited in the subsequent January 31, 2023 minutes (at p. 6) as:

> "Interim Chair Davie advised that the Per Diem Policy should be discussed in Executive Session to obtain the advice of counsel with respect to the provision, with a report-out to be provided in open session."

Yet, upon your return from executive session, there was no "report-out". There was only a statement by Executive Director Berland that "the Commission discussed legal matter concerning Executive Law Section 94, sub(4), sub (f), the *per diem* policy" (VIDEO, at 1hr/10 mins). The January 31, 2023 minutes comparably recited this (at p. 7).

At your next meeting, on February 28, 2023, you discussed *per diems* for over an hour (VIDEO, at 1 hr/55mins – to 3hrs). Yet there was no mention of legal issues pertaining thereto, let alone what they were, how they had been resolved, and how the manner of their resolution had eliminated, or at least mitigated, your direct financial and other interests in monies you would be receiving.

There were, at minimum, two legal issues:

- The first was the one to which I had alerted you by my August 4, 2022 e-mailed letter (at p. 7), namely, the unlawfulness of the Supreme Court justice salary to which Executive Law §94.4(f) links commissioner *per diems*.

- The second arose from your self-interest in converting the statutory *per diem* provided for by Executive Law §94.4(f) to a "per diem hourly allowance" to cover all work relating to the Commission. This second "legal issue" was reflected by Attachment J to the February 28, 2023 meeting agenda entitled "Resolution on the Payment of a Per Diem Allowance and Expenses to Members of the Commission". It had been revised shortly before the meeting. However, in violation of the Open Meetings Law, the revised resolution was not posted. Nor was there any posting of Commissioner Groenwegen's amending resolution.

The only challenge to the notion that Executive Law §94(4)(f) authorizes an hourly *per diem* allowance was the statement of Commissioner Ayres:

> "I have some discomfort with this whole discussion because I think that our decisions on our own pay I would feel more comfortable if we were looking at an independent analysis. I know the statute may seem clear, on its face, but as a professor of statutory interpretation I know that nothing is actually clear on its face. And I think these questions are difficult for me to opine on, I'm not saying that we should have gone to outside counsel, necessarily, although I certainly would appreciate a comparison of what other agencies do with similar language, how other folks handle this." (VIDEO, at 2hrs/53 mins).

That a "professor of statutory interpretation" should purport, as Commissioner Ayres, did, that it was "difficult for [her] to opine on" how Executive Law §94.4(f) was being interpreted was utter deceit. There was nothing "difficult" in her guiding you to the starting point of "statutory interpretation",

namely the text of the statute, reading:

> "Members of the commission shall receive a per diem allowance equal to the salary of a justice of the supreme court divided by two hundred twenty for each day or each pro-rated day actually spent in the performance of the member's duties under this section, and, in addition thereto, shall be reimbursed all reasonable expenses actually and necessarily incurred by the member in the performance of the member's duties under this section. For the purposes of this subdivision, a day shall consist of at least seven and one-half hours spent in the performance of the member's duties under this section."

As the current Supreme Court salary is $210,900, the *per diem* rate, obtained by dividing by 220, is $958.64. This is more than three times the $300 *per diem* allowance under JCOPE's Executive Law §94.8 which read:

> "The members of the joint commission shall receive a per diem allowance in the sum of three hundred dollars for each day actually spent in the performance of his or her duties under this article, and, in addition thereto, shall be reimbursed for all reasonable expenses actually and necessarily incurred by him or her in the performance of his or her duties under this article."

Indeed, recognizing that the COELIG *per diem* was so significantly higher than the JCOPE *per diem* makes plain why COELIG's Executive Law §94.4(f) specified that "a day shall consist of at least seven and one-half hours" and provided for a "pro-rated day" when the hours fell below that number. It also would explain why the immediately following Executive Law §94.4(g) contemplates that the commissioners might only meet "quarterly".

Other than that, the two *per diem* statutes are identical.

Nevertheless, excepting Commissioner Cardozo, who stated, at the outset of the discussion:

> "the law that JCOPE was operating under, in terms of the wording, that says preparing for meetings and doing your work, was really no different from the law today and notwithstanding that, the JCOPE commissioners voted not to give *per diem* reimbursement for anything other than the public meeting and the commission meetings" (VIDEO, at 2hrs/6mins),

commissioner, after commissioner thereafter misrepresented the statute – and, without the slightest concern as to whether there was the slightest precedent for *per diems* being converted into hourly compensation – voted for the resolution that Chair Davie worded to give commissioners hourly *per diems* to cover all work pertaining to their "duties", without any cap – and retroactive to July 8, 2022. All commissioners so-voted, except the abstaining Commissioner Ayres and Commissioners Groenwegen and Cardozo, who, though making sound arguments against the parameters of the resolution, did NOT blow the whistle on the conversion of *per diems* to hourly compensation. To

the contrary, Commissioner Groenwegen, who identified that months earlier she had been tasked with taking the lead on the *per diem* issue, opened discussion of the resolution by identifying it as for "payment of an hourly *per diem*, as authorized by the statute".

Here are some excerpts of what was subsequently said:

> Davie: "The legislation does lay out an hourly rate, it was specific about that for essentially all our activity for carrying out our activity as commissioners."
>
> * * *
>
> Austin: …is taking time to converse with fellow commissioners on time that would be otherwise spent on other things, is that something for which the legislature, in your opinion, thought we should be compensated?
>
> Groenwegen: No disrespect for the legislature, but I haven't a clue. I haven't a clue. I don't know. I think they used language that is very common in compensation statutes for, you know, the performance of actual duties, but I don't.
>
> Austin: Very different than JCOPE, if I may interrupt.
>
> Groenwegen: But I don't know any body that compensates members for prep time. I just don't.
>
> * * *
>
> Whittingham: "The legislature has said you are supposed to get paid for work related to this. Let's get paid for it or go back to them and say we don't want pay, change the legislation… it was public record what we would be compensated. … I am to get paid, as the legislators said. Go back to them, and say we don't need the money, but until that has changed, I will not vote for a proposal like [Commissioner Groenwegen's]";
>
> * * *
>
> Austin: "the statute doesn't say for time actually spent on this, this, this, and this. All it says is actually spent in the performance of the members' duties under the section… bottom line is that the legislature gave us actually spent in performance of the duties, without limitation."
>
> * * *
>
> Carballo: "This is not a common statute at all. This is the first time this has ever happened. There is a significant difference between what JCOPE was entitled to be paid, on simply a *per diem* basis, not hourly, and what the legislature has set out for us to be paid. …The legislature did not want us to take…JCOPE's compensation structure…

* * *

James: "I think when the legislature established the Commission there was an intent to have different model than existed with JCOPE and I believe that is why they actually specified that there would be an hourly rate, as opposed to a *per diem*";

* * *

Davie: "I move that commissioners be compensated at an hourly rate as outlined in the statute, defined in the statute, for all activities related to their responsibilities on this Commission.

* * *

On March 24, 2023, at your next regular meeting, *per diems* were concealed, first by your agenda by its euphemistically-titled "IX. EFFECTUATING EXECUTIVE LAW §94(4)(F) • Submission forms and process" – and then, at the meeting, when, upon Chair Davie reaching item IX, he did not identify it as pertaining to *per diems* in stating: "On the question of our forms and submissions, we are going to move this to executive session because we have some legal issues that we need to talk through, particularly the review as opposed to approve issue"[7] (VIDEO, at 1 hr/30 mins). He offered no hint of the "legal issues" that might exist with respect to "Submission forms and process". Upon the return from executive session (VIDEO, 2hrs/11mins), no mention was made of "legal issues", or of *per diems*, Executive Law §94.4(f), or "Submission forms and process" – and there were no "questions, comments, or remarks" about this.[8]

"Commissioner per diem payments" were on the May 23, 2023 meeting agenda as part of its "III. REPORT FROM STAFF". Discussion preceded the announced payments (VIDEO, at 34mins) as to what you had agreed would be announced – which is understandable based on the VIDEO of the February 28, 2023 meeting (at 2hrs/51mins), not reflected by the minutes (at p.10). The payments that Executive Director Berland then announced were for the eight months from COELIG's inception in July 2022 to the end of March – though he noted that for at least two commissioners there would be further payments for time sheets not yet fully submitted:

"The aggregate total for everyone in that period of time is $83,946.11. By Commissioner: Chair $12,110.98; Vice Chair Austin: $10,097.84; Commissioner

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[7] The referred-to "review as opposed to approve issue" concerned approval of the February 28, 2023 minutes, to which Commissioner Carballo had stated, at the outset of the March 24, 2023 meeting, that they were not correct with regard to "the motion that was made regarding the 94.4(f) compensation of the commissioners". By a March 20, 2023 FOIL request, I requested the February 28 2023 minutes. Although I received a March 28, 2023 response that they would be posted, they were not.

[8] The minutes of the March 24, 2023 meeting were approved at the April 25, 2023 meeting, without objection, but, in fact, are not accurate, as the reference in the minutes to "payment of a per diem allowance and reimbursement of expenses to members of the Commission" (at p. 2) and "Executive Law §94(4)(f)" (at p. 10) are contextual clarifications not stated at the meeting to explain what was taking place.

> Ayers: $4,218.07; Commissioner Caraballo: $6,199.30; Commissioner Cardozo: $9,171.12; Commissioner Carni: $8,851.57; Commissioner Edwards: $15,689.94; Commissioner Groenwegen: $6,295.17; Commissioner James: $7,637.28; Commissioner Whittingham: $3,674.84."

"Commissioner per diem payments" as part of the "III. REPORT FROM STAFF" would appear on the agendas of each of your subsequent regular meetings.

At the June 27, 2023 meeting, Chair Davie stated "I just actually signed off on a whole set" (VIDEO, 19mins), but they were not yet ready for report.

At the July 19, 2023 meeting, Executive Director Berland announced the not yet final sums for April through June, expected to be paid within the next two weeks:

> "The total, by commissioner, is, for Chair Davie, the total is $3,834.30; for Vice Chair Austin, the total is $2,811.82; for Commissioner Ayers: $4,377.49; for Commissioner Caraballo: $3,291.11; for Commissioner Cardozo: $7,828.36; for Commissioner Carni: $3,418.98; for Commissioner Edwards: $7,796.41; for Commissioner Groenwegen; $2,108.87; for Commissioner James: $3,355.01; and for Commissioner Whittingham: $3,482.82. That's a total of $42,305.11…"

The *per diem* payments would cumulatively be about $3,500 higher, *to wit*, $45,982.09, largely due to the increased *per diem* payment of $7,093.85 to Commissioner Whittingham – and, at the September 27, 2023 meeting the updated figures were announced, along with the further figures, presumably for July and August, totaling another $18,340.76:

> Chair Davie: $2,172.78; Vice-Chair Austin: $990.53; Commissioner Ayers $2,204.73; Commissioner Caraballo: $1,405.91; Commissioner Cardozo: $3,738.44; Commissioner Carni $1,693.48; Commissioner Edwards $3,482.82; Commissioner Groenwegen: $734.91; Commissioner James: $1,214.20; Commissioner Whittingham: $702.96. The total is $18,340.76 (VIDEO, at 20mins).

No one examining the fashion in which you have conducted yourselves with respect to Executive Law §94, whose starting point is reading the statute and understanding it, including in the context of JCOPE's Executive Law §94, could come to any conclusion but that you have been bumbling and incompetent, quite apart from self-interested and dissembling – and that the *per diem* payments and separate expenses that you have received have been a flagrant waste and misappropriation of taxpayer dollars.

CHARGE 4
Your Conflict-of-Interest-Driven Subversion of Executive Law §94.10 by Your 19 NYCRR §§941.2 and 941.3

"Reviewing Regulations" is another one of COELIG's "Accomplishments" touted by the Annual Report (at p. 30):

> "Reviewing Regulations: In 2022, the Commission began making preliminary revisions to regulations to conform to the new ECRA requirements, which has resulted in the adoption of amendments to almost the entire body of the state's applicable ethics and lobbying regulations, including Parts 930 through 938 and 941 through 943 of Title 19, Chapter XX of the New York Code of Rules & Regulations. In particular, these include conforming amendments to the Commission's Adjudicatory Proceedings and Appeals Process regulations, 19 NYCRR Part 941, that, among other things, track ECRA in authorizing Commission staff to elevate a preliminary review to an investigation where there is specific and credible evidence of a violation of a law enforced by COELIG by a person within the Commission's jurisdiction. With those preliminary revisions now in place, the Commission, as required by ECRA, is proceeding to undertake a comprehensive review of all regulations and advisory opinions for consistency with one another and with the goals, objectives, and requirements of ECRA, as well as of the effectiveness of those rules, regulations, existing guidance, and the ethics enforcement structure."

In fact, the best that can be said about your "preliminary revisions" to Part 941, which Executive Director Berland presented to you at your meetings and which you adopted virtually without change, in reliance on him, is that they are incompetent. They conceal and distort the clarity of the ECRA statute with respect to complaints – Executive Law §§94.10(d) and (f) – enabling you and staff to subvert these statutory provisions, on a wholesale basis, as discernible from your own statistics pertaining to 15-day letters and investigations.

The plain meaning of Executive Law §§94.10(d) and (f) is that:

(1) if a complaint within your jurisdiction presents "specific and credible evidence", it will be "elevated" from "preliminary review" to "investigation" by a 15-day letter to the complained-against person or entity to respond to the alleged violation(s) and the evidence in support; and

(2) "After review and investigation" of the response to the 15-day letter, staff will present you with a report setting forth the violation(s) alleged, the evidence, for and against, and a recommendation for your majority vote, which, if it is to "close" the complaint, it is because the complaint has been determined to be "unfounded or unsubstantiated" – with your "vote to close" being your agreement that such staff recommendation is correct.

The provisions of Part 941 relevant to this are §941.2 entitled "Definitions" and §941.3 entitled "Notices". The balance of Part 941 is **not** germane because, as a result of COELIG's readily-discerned violation of Executive Law §§94.10(d) and (f), virtually no complaint progresses to a hearing or subsequent adjudication, which is the content of its balance.

Of course, prefatory §941.1 entitled "Intent and purpose" also has relevance. This should be to clarify and elaborate on Executive Law §§94.10. Your §941.1 claims no such salutary purpose.

Although the linchpin and key terms of Executive Law §94.10(f) are "initial review" and "investigation", your §941.2 defines neither.[9] Reasonably, the definitions would be something like this –

> Preliminary review is the initial facial examination of a complaint or referral to ascertain whether it presents "specific and credible evidence" that a person or entity within the Commission's jurisdiction has violated a law within its jurisdiction. It also includes telephoning the complainant or referring body to clarify, if necessary, the "specific and credible evidence" of the alleged violation(s), without which a complaint or referral will not be investigated.
>
> Investigation is the elevation of the complaint or referral, upon its passing preliminary review, and is signified by sending a written notice to the complained-against person or entity of the alleged violation(s) and "the evidence, if any, already gathered", and requesting a response within 15 days of receipt of the notice, which is then reviewed and investigated by staff.

Nor is there any definition of the term "vote to close" which, pursuant to Executive Law §94(10)(f), reinforced by Executive Law §94(10)(h) and §94(10)(m), would be:

> Vote to close is the vote of the Commission members to accept a staff recommendation, following investigation commenced by a 15-day notice that a complaint is "unfounded or unsubstantiated" – such recommendation having been made by staff in a report setting forth the evidence supporting and disproving the alleged violation(s).

Your §941.3 "Notices", although citing in each of its three subsections to Executive Law §94(10)(f), omit its procedural and standard-identifying content – the same as any proper "Definitions" section would reveal.

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[9] By contrast, the Commission on Judicial Conduct's promulgated rules – 22 NYCRR Part 7000 – include in its definitions section, its terms "initial review and inquiry" and "investigation". It defines "initial review and inquiry" to be "the preliminary analysis and clarification of the matters set forth in a complaint, and the preliminary fact-finding activities of commission staff intended to aid the commission in determining whether or not to authorize an investigation with respect to such complaint." (underlining added). In other words, and like ECRA's "preliminary review", it is not itself "investigation".

Thus, §941.3(a) entitled "Notice of Allegations ('15-Day Letter')" states:

> "If following a preliminary review, the Commission or Commission staff decides to elevate such preliminary review into an investigation pursuant to Executive Law §94(10)(f) the Commission shall provide written notice to the respondent individual or entity…"

The false inference is that you and staff have unfettered discretion in deciding to elevate "preliminary review" to "investigation", contravening Executive Law §94(10)(d) and §94(10)(m) mandating investigation when there is "specific and credible evidence".

§941.3(b) entitled "Notice of Hearing" states:

> "If following presentation of the matter to the Commission pursuant to Executive Law §94(10)(f), the Commission has determined by majority vote to proceed to a hearing, having found that there is credible evidence of a violation under the Commission's jurisdiction, notice shall be provided to the Respondent to inform Respondent of their right to be heard and appear…at a confidential hearing and to give sworn testimony, present evidence, and cross examine witnesses…".

Omitted is that pursuant to Executive Law §94(10)(f) there is NO "presentation of the matter to the Commission" until the "matter" is investigated by a 15-day letter – and that the "presentation" is a staff report setting forth the evidence both supporting and disproving the alleged violation(s), with "a recommendation…for moving the matter to a confidential due process hearing". Only then – based on such explicit procedure, reinforced by Executive Law §94(10)(h) – do you vote that you have found "credible evidence".

§941.3(c) entitled "Notice of Closure, Continued Investigations or Guidance" states:

> "If following presentation of the matter to the Commission pursuant to Executive Law §94(10)(f), the Commission decides, by majority vote, to return the matter to the staff for further investigation, close the matter, or authorizes the resolution of the matter by guidance to the subject, or if the Commission's vote to proceed to a due process hearing does not carry, the Commission shall, within 60 days of such determination, provide written notice of its decision…"

Omitted is that pursuant to Executive Law §94(10)(f) there is NO "presentation of the matter to the Commission" until the "matter" is investigated by a 15-day letter and that the "presentation" is a staff report setting forth the evidence both supporting and disproving the alleged violation(s), with "a recommendation for the closing of the matter as unfounded or unsubstantiated, for settlement, for guidance, or moving the matter to a confidential hearing." Only then does the Commission vote to "return the matter to the staff for further investigation or accept or reject the staff recommendation".

In other words, the staff recommendation to close is NOT – as here implied – unbounded by any standard. Nor is the Commission's "vote to close" for any other reason than its agreement with staff that "the matter [is] unfounded or unsubstantiated".

As for subdivision (1)(i) of §941.3(a), stating:

> "While any response submitted will be reviewed by the Commission and/or Commission staff, Commission staff is not precluded from recommending and the Commission is not precluded from voting to close or settle the matter, to advance it to a confidential due process hearing or to return it to staff for further investigation prior to receiving a Respondent's written response."

This is contrary to Executive Law §94.10(f),[10] expressly requiring that staff's recommendation to you and your vote be after a 15-day letter and "review and investigation" thereon, with such recommendation embodied in a report, setting forth the evidence, both supporting and disproving the alleged violation(s). It also falsely infers that you can "vote to close" a matter for no specified reason, contrary to Executive Law §94.10(f) expressly restricting the basis of your "vote to close" to being because you have accepted staff's recommendation, in a report to you, that the alleged violation(s) are "unfounded or unsubstantiated".

As for subdivision (4) of §941.3(c), stating:

> "At the discretion of the Commission, written notice shall be provided to a Subject who has not been previously notified of the allegations against them…".

How is this scenario possible when Executive Law §94.10(f) requires that the subject of a complaint or referral that is elevated from "preliminary review" to "investigation" be furnished with a 15-day notice/letter – and no "presentation to the Commission" can be made by staff for your vote unless there is a 15-day letter and a report, based thereon.

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[10] With no apparent recognition of Executive Law §94.10(f) Commissioner Caraballo inquired about §941.3(a)(1)(i) at the May 23, 2023 meeting (VIDEO, at 2hrs/27mins):

> "I was just wondering, why would we be allowed to elevate a matter before we even got a response. What is the –…Why would you pursue, but I am wondering why you would pursue without getting a response. I understand that you could look at it and say I don't even need a response from the respondent but, because we are going to close it, but I don't understand why we would advance a matter without first getting a response" --

and accepted, with the other commissioners, Executive Director Berland's deceitful response – a pattern that occurred again and again pertaining to COELIG's Executive Law §94, JCOPE's Executive Law §94, and the regs.

You first approved the above obfuscating and misleading three-section §941.3 on October 25, 2022 (VIDEO, at 29 mins – 42 mins) (Attachment D to the agenda) – and it was after having approved it that, in executive session, you "closed one matter" – so announced by Executive Director Berland when you came back into public session. That this "matter" was CJA's July 8, 2022 complaint seems apparent from the unsigned November 17, 2022 letter from your "Investigations Division" identifying October 25, 2022 as the date of your having "voted to close".

You never modified §941.3 thereafter, though it was before you repeatedly[11] and you approved it, repeatedly, not based on your own independent examination of Executive Law §94.10, but in reliance on Executive Director Berland,[12] whose misrepresentations of it – and of JCOPE's Executive Law §94.13(a) – should have been apparent to you, but which you never challenged. At the same time, indeed, each month, you were confronting the statistics of your procedure-concealing §941.3 by the staff operations reports, attached to the meeting agendas of each of your regular monthly meetings – statistics to which you were contributing by your dispositions of "matters" in executive session, thereupon announced in the public sessions.

The first staff operations report you received was Attachment B to the agenda of your October 6, 2022 meeting. From the topmost entries on its first page, you could see that from July 8, 2022, the day COELIG replaced JCOPE, to September 23, 2022, COELIG had received **30 "tips, complaints, and reports", yet staff had not sent out a single 15-day letter and conducted no investigations**. This, notwithstanding Executive Law §94.10(f) expressly empowered staff to send 15-day letters, thereby initiating investigations.

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[11] See, in addition to October 25, 2022 meeting (VIDEO, at 29 mins – 42 mins) (Attachment D to agenda): December 16, 2022 meeting (VIDEO, at 1hr/5mins-6mins) (Attachment F to agenda); January 31, 2023 meeting (VIDEO, at 56 mins – 1hr/3mins) (Attachment G to agenda); February 28, 2023 meeting (VIDEO, at 54mins-1hr/32mins) (Attachment G to agenda); May 23, 2023 meeting (VIDEO, at 2hrs/21mins – 2hrs/30mins) (Attachment G to agenda – stating in the first sentence of its prefatory note: "Key changes in the law, as set forth in these amendments, provide that a Commission vote is no longer required to initiate an investigation." This is false. JCOPE Executive Law §94 did NOT require a Commission vote to initiate an "investigation" – as no vote was required to send out 15-day notice/letters, which, under COELIG Executive Law §94, is what signifies, if not constitutes, "investigation".

[12] As illustrative, at the October 25, 2023 meeting (VIDEO, at 34mins), Commissioner Cardozo stated:

> "Very difficult to see if there is any issues in what you've done and I appreciate the conforming amendments, but were there any substantive provisions that might have been changed in a different way. It's very hard to focus on, you know, what was the policy issue as distinct from the technical changes. You know, were there anything that say, hey, reasonable people could differ and we could change something one way or another. I don't know how to review, it looks fine as I read it, but I don't know how, where were the real hard decisions made from where a good lawyer looking and making the conforming amendments."

2-1/2 weeks later, the staff operations report that was Attachment B to the agenda of your October 25, 2022 meeting still showed **no 15-day letters and no investigations.** Yet, you did not inquire about this – nor thereafter when you were presented with comparable monthly operations reports, except, at the March 24, 2023 meeting, when Commissioner Cardozo asked whether the decline in COELIG's investigations from those of JCOPE was attributable to staffing issues (VIDEO, at 6mins).

Here are the COELIG statistics from the staff operations reports:

SEPT. 24 – OCT 31, 2022 staff operations report (Nov. 15, 2022 meeting) –
13 "tips, complaints, and reports received"; **0** 15-day letters, **0** investigations opened

NOVEMBER 2022 staff operations report (Dec. 16, 2022 meeting) –
11 "tips, complaints, and reports received"; **0** 15-day letters, 0 investigations opened

DECEMBER 2023 staff operations report (Jan. 31, 2023 meeting) –
16 "tips, complaints, and reports received"; **0** 15-day letters; **0** investigations opened

JANUARY 2023 staff operations report (Feb. 28, 2023 meeting) –
16 "tips, complaints, and reports received"; **0** 15-day letters; **0** investigations opened

FEBRUARY 2023 staff operations report (March 24, 2023 meeting) –
16 "tips, complaints, and reports received"; **1** 15-day letter; **1** investigation opened

MARCH 2023 staff operations report (April 25, 2023 meeting) –
17 "tips, complaints, and reports received"; **0** 15-day letters, **0** investigations opened

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APRIL 2023 staff operations report (May 23, 2023 meeting) –
12 "tips, complaints, and reports received"; **1** 15-day letter; **1** investigation opened

MAY 2023 staff operations report (June 27, 2023 meeting) –
18 "tips, complaints, and reports received"; **0** 15-day letters; **0** investigations opened

JUNE 2023 staff operations report (July 19, 2023 meeting) –
21 "tips, complaints, and reports received"; **2** 15-day letters; **2** investigations opened[13]

[13] JULY 2023 staff operations report (Sept 27, 2023 meeting)
12 "tips, complaints, and reports received"; **2** 15-day letters; **2** investigations opened

AUG 2023 staff operations report (Sept 27, 2023 meeting)
11 "tips, complaints, and reports received"; **1** 15-day letters; **1** investigations opened

Indeed, you failed to ask ANY of the most obvious questions which, starting with the first staff operations report, at your October 6, 2022 meeting, should have been, at minimum –

(1) As to the first category "Number of tips, complaints, and reports received":

- why were these not separately listed: "tips", "complaints", "reports received";
- are "reports received" the same as "referrals" – the term used by Executive Law §94.10 and, if so, why is the word "referrals" not used?;
- are the "tips" being used to provide staff with "information" so that, pursuant to Executive Law §94.10, it can evaluate whether to initiate a complaint of its own?

(2) As to the second category, "Number of 15-day letters sent":

- Why were **0** 15-day letters sent in response to these 30 "tips, complaints, and reports", when Executive Law §94(10)(f) expressly gave COELIG staff authority to send them.

(3) As to the third category, "Number of investigations opened":

- Why was this a separate category when pursuant to Executive Law §94(10)(f) the opening of an investigation is synonymous with the sending of a 15-day letter.

(4) As to the fourth category, "Number of matters closed":

- Why were **0** "matters closed"? Was it staff's interpretation of Executive Law §94(10)(f) and (m) that, following preliminary review, it has no authority to close matters that it has decided not to "elevate" to investigation?

(5) As to the fifth category, "Number of guidance letters sent":

- Were **0** "guidance letters sent" because, pursuant to Executive Law §94(10)(f), such requires a Commission vote, based on a recommendation in a staff report that follows upon an investigation commenced by a 15-day letter?

Suffice to note that immediately prior to your October 6, 2022 meeting and again before it concluded, I e-mailed you an October 6, 2022 letter – this being the supplement to CJA's July 8, 2022 complaint – expressly identifying it for inclusion in your meeting discussions as directly relevant to multiple items featured on your agenda, starting with the staff operations report – and pointing out, in the context of CJA's July 8, 2022 complaint, the significance of the operations report's admission that staff had not sent out any 15-day letters, though, pursuant to Executive Law §94.10(f), it was expressly authorized to do so. Did none of you read my two October 6, 2022 e-mails (& here)?

CHARGE 5
Your Conflict-of-Interest-Driven Violations of FOIL & the Open Meetings Law

Another "Accomplishment" featured by your Annual Report (at pp. 28-29) – and duplicatively so – is transparency, FOIL, & the Open Meetings Law.

With respect to FOIL, the Annual Report purports that COELIG "promptly appointed a Records Access Officer and began following FOIL requirements in 2022" and that "In 2022, the Commission fulfilled 183 FOIL and Financial Disclosure Statement (FDS) access requests."

The referred-to Commission in 2022 was JCOPE and then COELIG and the number **183** is the number of records requests appearing on the Annual Report's chart, at page 78, for the period Jan 1 – Dec 31, 2022, as having been provided out of a total of **184** records request. This differs from the staff operations report, included with the agenda for your January 31, 2023 meeting, showing (at p. 7) **127** records requests provided. This HUGE discrepancy is concealed.

Apart from the complete lack of definition as to what the meaning of "provided" is, numbers do not permit any qualitative assessment of what was furnished. For that, the FOIL requests and the Commission responses would have to be compared.

CJA filed two FOIL requests in 2022, both with COELIG. The first, on July 26, 2022, to which I alerted you by CJA's October 6, 2022 letter, requested COELIG's "written procedures for receipt, docketing, acknowledgment, preliminary review, and investigation of complaints" – which, pursuant to Executive Law §94.1(e), would have been the same as JCOPE's. The second, on December 27, 2022, reiterated the July 26, 2022 request and expanded it to include:

- records as to why the "written procedures" requested by CJA's July 26, 2022 request had not been furnished – and months earlier;

- records pertaining to the unsigned November 17, 2022 letter of your "Investigations Division" that the "Commission voted to close" CJA's July 8, 2022 complaint on October 25, 2022, *to wit*:

(i) records reflecting the identity of the person in the "Investigations Division" responsible for the November 17, 2022 letter;

(ii) records reflecting compliance by the commissioners with Executive Law §94.10(b) pertaining to disclosure of conflict of interest and recusal;

(iii) records reflecting compliance by the Commission's executive director and staff with comparable disclosure rules pertaining to conflicts of interest – and a copy of such rules;

(iv) records reflecting the specific provision of Executive Law §94 pursuant to which "the Commission voted to close the matter" – and the basis for its supposed "vote" to "close";

(v) records reflecting that the Commission's supposed "vote" was by the Commission's members themselves and after they themselves had "review[ed]" the July 8, 2022 complaint and its October 6, 2022 supplement.

I testified about these two requests at the March 29, 2023 hearing, alerting you that then FOIL Appeals Officer St. John had purported, in response to my February 7, 2023 FOIL appeal, that the requested records "simply do not exist and, therefore, cannot be provided" – and that the only record he had provided, the conflict-of-interest protocol for Commission staff, established that Berland, he, and other staff had flagrantly violated it from COELIG's July 8, 2022 Day 1 to conceal JCOPE's corruption in handling complaints of which they were part.

Despite my testimony, no production was thereafter made in response to the July 26, 2022 and December 27, 2022 FOIL requests.[14]

With respect to the Open Meetings Law, with which the Annual Report purports COELIG has been complying", compliance requires that records and "any proposed resolution, law, rule, regulation, policy or any amendment thereto, that is scheduled to be the subject of discussion…during an open meeting" be made publicly-available and posted on the website (Public Officers Law, §103(e)).[15]

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[14] I did receive production in response to my March 27, 2023 FOIL request for records pertaining to the invitations sent to "more than 200 people" about the March 27, 2023 annual meeting – and it established that I was not among them. CJA's webpage for that April 27, 2023 response is here.

[15] Consistent therewith is Section III(d) of the Commission's proposed "Meeting Guidelines", on the agenda of the Commission's April 25, 2023, May 23, 2023, September 6, 2023, and September 27, 2023 meetings, identically reading:

> "Any materials presented to the Commission during the public session of a meeting or proceeding for consideration by the Commission as a body shall be posted on the Commission's website prior to the meeting to the extent practicable and in accordance with applicable law."

This was not uniformly done and, for some meetings where it was most crucial, flagrantly violated.

As illustrative,

- Beginning with your second regular meeting, on October 6, 2022, all meeting agendas, although indicating that the minutes of the prior meeting(s) whose approval was on the agenda were attached, did NOT furnish these attachments on the webpages posting the meetings and agendas;

- Although the agenda for your February 28, 2023 meeting indicates Attachments A-I, the webpage for the meeting did not post Attachments B, D, F, G, H, I – and, with respect to Attachment J, the proposed "Resolution on the Payment of a Per Diem Allowance and Expenses to Members of the Commission", it had been revised prior to the meeting, but the revision was not posted – nor Commissioner Groenwegen's amending resolution.

- No agendas or other materials to be discussed were posted for the March 14, 2023 "Inaugural Committee Day", either for the Commission's meeting or the six committee meetings immediately thereafter of the Administration Committee, the Education-Training Committee, the Legal Committee, the Ethics Committee, and the Lobbying Committee – nor were they thereafter posted.

CHARGE 6
Your Worthless, Conflict-of-Interest-Driven Legal Committee -- & Your Other Ineffectual, Time-Wasting Committees

Your Annual Report also identifies (at p. 28), among your supposed "Accomplishments":

> "Established Committees: In 2022, the Commission began the process of establishing Committees to assess, oversee, and ensure the timely, complete, and effective performance of the Commission's many duties and responsibilities. The first Committee Day was held in March 2023."

The Annual Report does not explicate the meaning of "Committee Day". It was the day on which the six committees listed at page 30, but not the so-called "Special Sub-Committee on Guidance Procedures and Delegation", met for the first time, preceded, on the same day, by a "special" Commission meeting to discuss the role and purpose of committees.[16]

[16] There is no "Special Sub-Committee on Guidance Procedures and Delegation". Rather, on May 23, 2023, a "Special Committee on Guidance Procedures" met for the first time, which, at the June 27, 2023 Commission meeting (VIDEO, at 3hrs/13 mins) was renamed, and so-reflected by the minutes (at p. 11), approved at the July 19, 2023 meeting:

By then, 4-1/2 months had elapsed since the October 25, 2022 Commission meeting at which you had passed a resolution establishing committees, reading, in pertinent part:

> "**WHEREAS**, the Commission finds that in order to efficiently and effectively meet its mandate and its perform its statutory duty to oversee its operations and procedures of the Commission as well as those of its various divisions, promulgate rules and regulations for lobbying, establish education and training programs, fully and fairly investigate and enforce alleged violations of the law and its rules and regulations, and interface with the Commission staff, the creation of various committees is necessary and appropriate.
>
> **NOW THEREFORE, BE IT RESOLVED**, the following committees and subcommittees, designated by an asterisk be created under the terms, conditions and areas of responsibilities herein set forth:
>
> …
>
> 4. Legal
>
> a. Investigation and Enforcement*
>
> b. Litigation (pending and anticipated)*
>
> **RESOLVED**, that the creation and implementation of the foregoing committees and subcommittees shall be accomplished in accordance with the following guidelines:
>
> …
>
> 6. Reports of each committee, including subcommittees, if any, shall be made at each meeting of the Commission.
>
> …
>
> 8. In accordance with Executive Law §94(1)(d), and in consultation with the appropriate division heads, each committee is charged with the duty, on a priority and ongoing basis, to review the rules and regulations and advisory opinions of prior commissions falling within that Committee's jurisdiction. Not only should the committee review the regulations and advisory opinions of prior commissions but also, any new regulations that may be adopted by this commission."

This last sentence of paragraph 8 about reviewing "any new regulations that may be adopted by this commission" was Commissioner Cardozo's friendly amendment to the resolution, occasioned by your approval of regulations, including of §941 *et seq.* for the first time at the October 25, 2022 meeting.

> "A motion was made by Commissioner Whittingham, seconded by Commissioner Caraballo, to recognize the official name of the Commission's special committee as the 'Special Committee on Delegation,' and that it will have two responsibilities: delegation and guidance, with a report on guidance to be presented at the July Commission meeting. The motion carried unanimously."

Nevertheless, the Legal Committee, designated by the October 25, 2022 resolution to have a subcommittee for "Investigations and Enforcement", whose members, announced at your December 16, 2022 meeting, were Commissioner Austin, as its chair, and Commissioners James, Cardozo, Carni, and Groenwegen, undertook NO review, let alone on a "priority and ongoing basis", of new §941 *et seq.* Indeed, at the Legal Committee's March 14, 2023 first meeting (3hrs/4mins – 3hrs/53mins), there was ZERO mention of what it had done over the previous months by way of educating itself and the other commissioners about "Investigations and Enforcement" and "Litigation (pending and anticipated)"[17] – and ZERO mention of any subcommittees with respect thereto or any oversight that had been done. This was because, in fact, the Legal Committee had NOT established an "Investigations" subcommittee or engaged in oversight – and this was apparent from what Legal Committee member Cardozo said during the March 14, 2023 first meeting of the Administrations Committee, of which he was a member:

> "I did have one other thought, I'm not sure it is this committee. One of the subjects that is not dealt with, I don't think, by any other committee at the moment, is any oversight or committee that deals with investigations. And obviously, in some respects, that is the guts of what we're doing and yet it's not specifically listed as a separate committee or I don't, haven't seen it as the specific responsibilities for any committee. I raise it as an issue, I'm not sure how it should be solved." (VIDEO, at 1hr/57mins).

No one corrected Commissioner Cardozo by citing to the Commission's October 25, 2022 resolution establishing an "Investigations and Enforcement" subcommittee within the Legal Committee. The extent of correction was Executive Director Berland saying: "I think there was a proposal", which he did not thereafter elaborate.

Nor did anyone cite to the October 25, 2022 resolution when Chair Davie responded to Commissioner Cardozo's comment by stating that it was his thinking – though he was not sure that he had communicated it – that investigative issues relating to lobbying would go to the Lobbying Committee, but everything else would go to the Ethics Committee – to which Executive Director Berland piped in that this was in terms of substance, as opposed to procedural aspects. As for

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[17] This educational purpose of the committees was recognized in the minutes of the October 25, 2022 meeting:

> "Vice-Chair Austin reported the committee structure is designed to help with the learning curve for the new Commissioners and to help them understand the substantive rules and regulations governing the Commission. Commissioner Edwards added the committee structure would provide better oversight to becoming better educated on the laws and regulations without interfering in the day-to-day operations of staff; rather it would provide oversight. Commissioner Groenwegen asked for clarification that the legal committee and the subcommittee for investigations and enforcement would focus on process rather than the particular cases with which the agency is involved and that the committees would be structured as a species of an administrative function rather than policy making."

Commissioner Edwards' question about handling "policy issues [that] bubble up out of that" – presumably encompassing regulations and litigations – there was a long silence by all when Chair Davie responded that "as to general policy issues related to investigations, we will have to address those, and I am not sure yet".

No minutes were taken of the Administrative Committee's remarkable first and only March 14, 2023 meeting (VIDEO, at 1hr/9mins – 2hrs/5mins)– or of the five other committee meetings held immediately thereafter, in succession. This, in face of Chair Davie's announcement at the immediately preceding Commission meeting of "high-level guardrails" for the committees – among them: "committees will keep accurate minutes and those minutes will be public. That should be a fundamental" (VIDEO, at 1hr).[18]

As for minutes of that March 14, 2023 Commission meeting, you have not posted them – and none were ever on the agenda of any Commission meeting for approval. Presumably, they – like the minutes of the March 14, 2023 committee meetings – were deemed too revealing as to what had been going on, or not going on, over the preceding months with respect to committees – and of what would be an intended future course of malfeasance by you, Executive Director Berland, and staff, with respect to committees – including their foundational "charters" and lists of priorities.[19]

Whether denominated "charter", "charge", "priorities", "action plan", "to do list", no Commission purporting to have committees could rationally and appropriately operate without defining and coordinating committee responsibilities and the specific work each was doing. Such was recognized at your March 14, 2023 Commission meeting – and there was not the slightest reason why each of the six committees meeting that day could not have produced "charters" and lists of their priorities, for discussion and approval ten days later at the Commission's March 24, 2023 meeting. Commissioner pretenses, culminating at the July 19, 2023 meeting, and led by Chair Davie, that putting together committee "charters" and priorities represented a massive amount of work and effort that could not even be accomplished for the September 2023 meetings were utter fraud, enabling the further fraud, endlessly repeated, that confronting issues of Commission delegation of responsibilities to staff was something vast and complicated, which it was not – or that it required a "special committee", which it did not – and that more important than these was for the Commission

[18] Nine weeks later, at the May 23, 2023 meeting, Commissioner Edwards would ask "Should we take minutes? Some committees take minutes, some committees don't. And I think it was recommended by the person who did the FOIL that we not take minutes. I personally like minutes, but I'd like to get your thoughts as to whether or not we should do it. And if we do it, it should be across the board for all committees." (VIDEO, at 2hrs/41mins). "With regard to minutes…I see the value of not keeping them. The question is should we keep minutes…?" (VIDEO, at 2hrs/51 mins). Chair Davie's response: "…I think the committees need to report their actions, at a minimum. I'm agnostic on whether or not committees should keep their minutes", thereupon answering, in response to Commissioner Edwards' further question, that he didn't know "the difference between reporting and minutes".

[19] This "something to hide" is also manifested by the fact that COELIG's webpage for meetings does NOT post the combined single VIDEO of the March 14, 2023 Commission meeting and the March 14, 2023 committee meetings, which can only be found *via* the archives.

to address, as its #1 priority, the suggestions that came out of the March 29, 2023 public hearing, including by legislative recommendations, which is preposterous.

Already by your May 23, 2023 meeting (VIDEO, at 2hrs/30mins – 3hrs/4mins),[20] you were voicing frustration, confusion, and anger about the committees, including your "special" so-called "delegation committee" that was sometimes called the "guidance (procedures) committee" – and which had popped up from what had been a straight-forward assignment to the Legal Committee of the recommendations of the Hogan, Lovells report, made by Chair Davie at your December 16, 2022 meeting (VIDEO, at 1hr/16mins); minutes (at p. 7). These sentiments continued, unabated, at your June 27, 2023 meeting (2hrs/47 mins – 3hrs/20mins) and at your July 19, 2023 meeting, (1hr/47mins - 2hrs/48mins), during which Chair Davie made the understatement: "There is dissatisfaction with the committee structure" (VIDEO, at 1hr/59mins), also declaring "charters are off the table" (2hrs/34mins).

In short, the VIDEOS of the Commission's meetings do not support the Annual Report's pretense that the committees are an "accomplishment". To the contrary, they establish the correctness of Commissioner Groenwegen's view that committees were a cumbersome, time-wasting, way to proceed,[21] which she repeatedly articulated, including, focally, in discussing commissioner *per diems* at the February 28, 2023 meeting – a meeting whose immediately-preceding agenda item was "XI. ROLE AND FUNCTION OF COMMISSION COMMITTEES" that Chair Davie deferred to "March 14th, all day" on the pretext "there is a desire on the part of some commissioners to just have that high-level discussion about committees and this Commission." (VIDEO, 1 hr/54 mins) – which 50 minutes later became the subject of a noteworthy exchange:

VIDEO, at 2hrs/40 mins – 44mins

Groenwegen: …Going into this discussion [about *per diems*], the chair knew of my concerns about committees. I was under the understanding that, until the meeting this morning, that this discussion was going to be preceded by a discussion of committees.

Davie: Um, I never gave you that impression. We clearly have a date set, of March 14th, for committees, for discussion on committees.

Groenwegen: Then I misspoke. I understood that we were going to have on this calendar under item, whatever it was prior to this, a discussion of committees. That's what I thought. And, and, so be it, if I misunderstood or I misread that, so be

[20] The May 23, 2023 minutes, though approved by you at the June 27, 2023 meeting, are not posted.

[21] Without explanation, Commissioner Groenwegen, whose committee assignments, announced at the December 16, 2022 meeting and reflected by the minutes (at p. 7), had been the Administration Committee, the Legal Committee, and the Education-Training Committee and who, at some point before March 14, 2023, replaced Chair Davie as chair of the Administration Committee, is not listed as a member of any committee by the Annual Report's page 30 committee page.

> it. But I do think I am put at a real disadvantage in explaining my concern about this because it all ties together in that we go back to the language of the statute that talks about being compensated for time spent for the performance of the member's duties. That requires a definition of what the member's duties are and one of the things that I have always stated about the committees is my concern that the members start to take on the role of the staff or they supplement the role of the staff. And I think that, that basic conversation about understanding our role as members, *vis a vis* the role of the executive director and the role of the staff, we've never had that conversation. It's another one I've suggested to both the chair and the executive director we have because it all comes back to that. Understanding what we as members are expected to do. I agree with Commissioner Whittingham, I don't see my role as just being a titular role of a commissioner. But nor do I see my role as running this organization on a day-to-day basis. I see it very much the responsibility that we look to the staff who are experts in ways we are not, that we, in the first instance, we rely on them. But, if I could just finish, Commissioner Edwards, it doesn't mean we stop there. Our role is an oversight role, it's to ask the right questions, it's to ask hard questions, but I think we ask those questions in public. We ask the questions and if we don't get good answers or complete answers then we ask them again or we do whatever we need to do to satisfy ourselves that that our vision as the commission members, the policy makers, that we know that's being executed. And there may be times where the chair appropriately says to a group of us or one of us, look into this, look into this, I'm making this part of your duties. Perhaps someday we'll have committees that have charges, that we all agreed to, we know what they are doing and why they exist, and what their work-product is, but we don't have that now. And I think this, this, this role confusion goes to the heart of what the members do and we can't decide what we get compensated for, in fulfilment of the members' duties, until we've, we've discerned that.

As evident from the March 14, 2023 committee meetings, your commissioner responsibilities are limited, discrete, manageable – and readily accomplished. Notably, in contrast to Commissioner Groenwegen's adept chairing of the Administration Committee's March 14, 2023 meeting (VIDEO, at 1hr/9mins – 2hrs/5mins), focused on her drafted committee charter/charge and priorities that she had circulated, in advance of the meeting (VIDEO, 3hrs/5mins - 53mins),[22] Vice Chair Austin

[22] These were essentially finalized at the meeting. Yet, surprisingly, Commissioner Groenwegen did not present these at the March 24, 2023 meeting for Commission approval, or at any subsequent meeting, even though, at her instance, Commission approval of the charters was to be the express protocol, going forward. As reflected by the minutes:

> "Commissioner Groenwegen stated that it was her understanding that the entire Commission would be approving each committee's charter and that there is value in having the commission as a whole consider and approve each committee's charter. After a discussion of

handed over the Legal Committee's meeting to General Counsel St. John and Deputy General Counsel Bhatt, who conspicuously did not orient the members to the operations of the Investigations and Enforcement Division and the policy and litigation issues arising therefrom that would be within their purview (VIDEO, 3hrs/4mins – 3hrs/53mins), sharply contrasting to the nuts-and-bolts orientation about the Ethics Unit and about the Hogan, Lovells report that Ethics Director Sande would give to Ethics Committee members at their meeting (VIDEO, 3hrs/54mins – 4hrs/35mins). Instead, and to soak up time, General Counsel St. John made a nearly half-hour substantive presentation about a commissioner code of ethics and recusal policy – purporting these to be the Legal Committee's "high priority" – when such were properly matters for all commissioners, and, if assigned to a committee, belonged to the Ethics Committee, and, in any event, was the most brazen fraud by him, other staff, and you, considering the purported Commission "vote to close" CJA's July 8, 2022 complaint – and his February 17, 2023 response (& here) to my February 7, 2023 FOIL appeal pertaining thereto.

Your September 6, 2023 special meeting merged the Legal Committee into the full Commission, prefiguring the end of the committees, manifest at your September 27, 2023 meeting (VIDEO, 1hr/12mins – 37mins), with no resistance from anyone, including from Commissioners Edwards, Caraballo, and Wittingham, who – notwithstanding their previously-stated views – gave but feeble complaint to being in the dark and out-of-the-loop about Chair Davie's appointment of "working groups" that were to be the *modus operandi* for the foreseeable future, essentially the concept championed by the absent Commissioner Groenwegen.

Officially TESTING the Commission's Unofficial Reconsideration/Renewal Remedy by Resubmitting CJA's July 8, 2022 Complaint and October 6, 2022 Supplement Based on the Within Evidence that the November 17, 2022 Staff Letter that the Commission "Voted to Close" It is Indefensible

At your September 6, 2023 special meeting (VIDEO, at 1hr/18mins), Deputy Counsel Bhatt endorsed Commissioner Caraballo's speculation that "unofficially" reconsideration/renewal is available to complainants whose complaints are "closed":

> Caraballo: So, so the complainant will get a letter that would say why it was closed. And, I guess, if they have a basis, they could write a letter, saying, you know, you overlooked this important issue that I did bring to your attention previously, or to renew, I didn't give you this, and I should have. So, we do have that, we do have that mechanism, unofficially.

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the role of the committees, Interim Chair Davie stated that as each committee decides on its charter of responsibilities, it will bring it back to the Commission for approval by the full commission."

Not included in the minutes, but stated by Commissioner Groenwegen (VIDEO, at 33 mins), was that she would be furnishing the Administration Committee's "formal charge" to the Commission for its approval.

Bhatt: Unofficially, right. And also complainants can bring in another complaint. They can say, okay, you didn't look at this, I'm going to give you. They can just bring in another complaint.

Caraballo: I see.

Bhatt: So if their complaint was closed, um, you know, then and they feel that it was closed wrongly, they can submit another complaint with more information and it will be opened and investigated, just like any other complaint.

Caraballo: So that's enough of, that's a sufficient remedy.

Bhatt: I'm sorry what?

Edwards: And that's articulated in the decision, the letter?

Bhatt: Um, I don't know what would be articulated in the letter. The letter is just a general closing letter that the matter was closed, but, you know, in the same manner that they want to bring any other complaint, they would just bring, they can bring, there is nothing precluding them from bringing the same complaint to us.

Obviously, if this "unofficial" reargument/renewal remedy existed, my March 29, 2023 testimony should have sufficed to trigger it, by its final sentence, which, with the paragraph preceding it, read:

> "I conclude with a procedural suggestion with respect to your letters 'closing' complaints on alleged votes by the Commission – and other dispositions that are not, in fact, by votes of the Commission, namely that your letters indicate 30 days in which a complainant may seek reconsideration, similar to what is provided by the Appellate Division Rules pertaining to its attorney grievance committee procedures.[fn8] Certainly, inasmuch as your dispositions of FOIL requests include, as required, that there is 30 days within which to seek an appeal, there should be an appeal/reconsideration procedure for complaints.
>
> Consistent therewith, that is what I now request, from you, with respect to your unsigned November 17th letter of your 'Investigations Division'" (at p. 3).

In any event, I now officially test the efficacy of your "unofficial" reconsideration/renewal remedy by resubmitting CJA's July 8, 2022 complaint and its October 6, 2022 supplement, which I do based on the "specific and credible evidence" presented by my March 29, 2023 testimony and the further elaboration of that evidence by the above, establishing that your unsigned November 17, 2022 closing letter is procedurally and substantively indefensible.

* * *

As with the July 8, 2022 complaint and October 6, 2022 supplement, I conclude with the same attestation of truthfulness as Albany County District Attorney P. David Soares uses for public corruption complaints filed with his Public Integrity Unit:

> "I understand that any false statements made in this complaint are punishable as a Class A misdemeanor under Section 175.30 and/or Section 210.45 of the Penal Law."

In further support of the truth of all the foregoing – and giving it further evidentiary value – my accompanying complaint form is notarized.

Thank you.

s/Elena Ruth Sassower

EXHIBIT A

Transcription by Elena Sassower from the VIDEO of COELIG's September 6, 2023 Special Meeting

VIDEO, at 50mins

Austin: Number 8 is from Elena Sassower, and she asks that the stat, that we void the statute creating the Commission. I think Governor Cuomo is helping us along that, her along that way. Anyway, we're waiting for a decision, so I don't think there is anything we can do with that, on so many different levels. So, with your kind permission, I am going to mark that one as rejected.

VIDEO, at 1hr/8mins-1hr/22mins

Austin: Number 16 is from Elena Sassower, asking that letters closing complaints be by vote of the Commission and indicate 30 days in which a complainant may seek reconsideration closing the matter, similar to what the Appellate Division does and various rules of civil procedure.

Staff responds that that would require an amendment of the Executive Law 94.10 for rehearing, reconsideration. There are other procedural alternatives to an aggrieved party from a decision that we make, and that's through the court in an Article 78. So parties are not without their remedy, beyond an appeal before us. So, with that in mind, is there any discussion with regard to number 16?

Ayres: Yeah, Mr. Vice Chair, I don't agree that we would need an amendment to the Executive Law to create a rehearing right. I think an agency can do that by regulation. I'm not saying it's a good idea, but I don't agree that that we couldn't create it. And I think that since we already have an issue that's been raised for this Committee to consider, which is what sort of notice is given to a complainant when we close a case, I believe this was raised a couple of months ago and we have it on our list, our to-do list for this Committee, I think we should take up this suggestion, along with the broader question as to what sort of information is provided to a complainant when we close a case. So, I hesitate to say this because I feel like it's going to cut off debate, but I may be making a motion to table here. But I don't want to stop anybody else from commenting, especially staff.

Austin: Is there a second? The motion to table for consideration is not under discussion. Is there any other discussion with regard to number 16?

Davie: I'd just like to hear more about the point that Commissioner Ayres was making.

Austin: Commissioner Ayes, do you want to elaborate? And then Commissioner James.

Ayres: Sure. So, my view is that if we send somebody a letter that says we're closing your case, I don't think we need and they send something back saying, hey you've overlooked something, I don't think we need an explicit statutory permission to correct a mistake. The staff recommendation is phrased in terms of a rehearing or reconsideration right. And it may be strictly speaking true that a complainant doesn't have a formal right that is an entitlement to force us to reconsider a decision if we're wrong, but I do think that an agency has the power if it wants to revisit its decision and to give itself, for example, 30 days in which to hear from somebody before deciding whether it wants to reconsider its decision. In other words, I don't think the Executive Law forbids us from reconsidering a decision at the end or anyway, that's my view. I know Commissioner Groenwegen seems to have a direct response and I know Commissioner James.

Groenwegen: All I would say is that I agree we could do that, but we'd have to do it by regulation so as to ensure uniformity, that's the only thing.

Ayres: Yeah. And I'm not saying I support doing it, but I disagree with the idea that we would need a statute to do it.

Austin: We lost sound.

Ayres: No. We were done.

Austin: Commissioner James.

James: I think the closing [unintelligible] considerable consideration, that we should be obliged to reopen it, if they make a request within 30 days. They do have an alternative to file an Article 78. I would, I would reject this.

Austin: You wouldn't

[*Inaudible*]

Austin: Okay. Commissioner Whittingham.

Whittingham: Okay, I didn't quite hear what Commissioner James said, but I wanted to hear further from staff if, why they think it's not a good idea to have this period, this wait period because I am aware that sometime reconsideration has resulted in a change in decision because something might be expanded upon, clarified in some way, so I just wanted to hear from staff why it is they believe it's not a good idea.

Austin: Staff?

Berland: Yeah, the principle reason is that we don't have a mechanism internally to make

independent determinations if, what we're looking at in effect is an appellate procedure. We do have instances in which the executive director is empowered to make certain determinations, certain exemptions from, with respect to FDS filings, for example. We do have a procedure, and the statute contemplates a procedure where the applicant can then go to the Commission, in effect appealing that, that ruling. But with respect to procedures like the handling, the closing, in particular, of complaints, where the Commission has already passed on them, absent the circumstance that Commissioner Ayres refers to where perhaps we, whether staff or the Commission has overlooked a point or maybe the applicant hasn't properly presented something or hasn't artfully presented something, and there is an error to correct. To have a routine procedure where every determination we make is subject to eternal reconsideration before it becomes final, before there's an Article 78, seems to me to be inconsistent with the plan of the statute. The statute does indicate where Article78s are appropriate and where there are internal procedures for, you know, and that's why it's our first blush view that a statutory change would be required to have an appellate mechanism of some kind internally.

Austin: Commissioner Edwards?

Edwards: Is it possible if we were in touch with the complainant, with the person whose complaint is being reviewed, prior to making our decision, to say this is where this is going, do you have anything else you want to give us or to reconsider?

Austin: I would think that's a burden on the staff.

Edwards: So then there is no method of appealing this? Our decision is final?

Berland: No, no. I'm sorry. As the vice chair has pointed out, the statute contemplates and, in fact, it is a feature of law in New York. is that if someone is aggrieved by an administrative determination, a determination of our agency, they can go to court and commence a so-called Article 78 proceeding, calling it into question. I don't disagree that it isn't useful to have a mechanism where, if we have erred in some way, just missed a point, we've applied the wrong principle of law, or misunderstood a complaint and dismissed it, it does make sense for the applicant, for the complainant, to be able to come back and point out, you know I think you, you missed the fact that [*inaudible*] misapprehension, on your part, whatever the basis for the determination was and maybe a separate mechanism for that. Certainly that, that can take place on an *ad hoc* basis. But, but I don't disagree with Commissioner Groenwegen that you should try to have a formalized approach so it's not totally *sui generis* every time something like that occurs.

Edwards: So then you think you agree with me?

Berland: Oh, I agree with you, yes. There are instances where there is an egregious mistake

made. That exists in civil practice in the courts, where you can go back to a judge and seek reargument, reconsideration in a very narrow group of circumstances, not where you disagree with the outcome, but where you think the court has misapprehended or overlooked something.

Caraballo: So, a complainant will get a letter saying that their complaint was dismissed or closed and that complainant does have a right to bring an Article 78?

Berland: [*Laughing*] There are jurisdictional questions.

Caraballo: Yeah, I mean it seems to me that the person who's the target of, if there's a finding that there was a substantial basis, they would have an Article 78 –

Berland: Absolutely.

Caraballo: – but the complainant probably would not have an Article 78, is that right?

Bhatt (?): I don't think, um.

Edwards: Right.

Caraballo: I don't think they would be a person aggrieved, I think it's an interesting question, I guess.

Berland: It's an interesting question that has been litigated and really it does depend on the circumstances and how you interpret the statute with respect to complaints. Complaints are only one way in which matters are initiated by the agency.

Caraballo: So, so the complainant will get a letter that would say why it was closed. And, I guess, if they have a basis, they could write a letter, saying, you know, you overlooked this important issue that I did bring to your attention previously, or to renew, I didn't give you this, and I should have. So, we do have that, we do have that mechanism, unofficially.

Bhatt: Unofficially, right. And also complainants can bring in another complaint. They can say, okay, you didn't look at this, I'm going to give you. They can just bring in another complaint.

Caraballo: I see.

Bhatt: So if their complaint was closed, um, you know, then and they feel that it was closed wrongly, they can submit another complaint with more information and it will be opened and investigated, just like any other complaint.

Caraballo: So that's enough of, that's a sufficient remedy.

Bhatt: I'm sorry what?

Edwards: And that's articulated in the decision, the letter?

Bhatt: Um, I don't know what would be articulated in the letter. The letter is just a general closing letter that the matter was closed, but, you know, in the same manner that they want to bring any other complaint, they would just bring, they can bring, there is nothing precluding them from bringing the same complaint to us.

Edwards: Would it make sense to include that in the letter though?

Caraballo: No, because we don't want to keep –

Austin: In other words, then we'll just have serial, serial complaints and I don't think that's what we want.

Cardozo: Right.

Austin: Commissioner Whittingham and then Commissioner Cardozo.

Whittingham: Yeah, I would just ask to table and go back to what Commissioner Ayres said. Based on the response that I receive, I am not persuaded that, you know, this is the route we should take, but we can table it and ask for further comments by staff. We have raised a couple of issues that say under these circumstances, it might be a good idea to have reconsideration. It's not unheard of. It's more, it's pretty typical, we even have it in, I think, yes, we do have an Article 78, but that's a lot more burdensome I would think for the average person, for the public to go to court. So if we have this mechanism, it might be helpful.

Austin: Alright. I hear a motion to table. Is there a second?

Edwards: Second.

Ayres: Um, second – and strongly agree with what Commissioner Whittingham said. Article 78 – asking a whistle-blower to file an Article 78 is not a great approach.

Austin: You have been second. All in favor of tabling.

Davis: Aye.

Austin: Put your hands up. In favor of tabling? Six in favor. All opposed? Six to three, motion to table is carried. The matter is tabled for addition to a subsequent,

subsequent meeting of the Commission.

Davie: Mr. Chair, maybe tabled with a note that we're asking staff to come back with more of an opinion on this, particularly on Commissioner Ayres' suggestion that agency can change a procedure, perhaps, if I understood it correctly, without necessarily a legislative change.

Austin: All in agreement with that? Okay, that is part of the decision then. It's tabled and referred to staff.

Transcription by Elena Sassower from the VIDEO of COELIG's September 6, 2023 Ethics Committee Meeting

VIDEO, at 13mins

James: (*rapidly read*) The Commissioners are conflicted, both those who are former judges who benefited from unlawful judicial salary increases and those who will now be receiving *per diem* allowances that are measured according to the unlawfully raised salaries of Supreme Court justices. Umm.

Caraballo: I, yeah, I move to accept the staff recommendation.

James: Denied.

Caraballo: Denied, however you want to say it.

Austin: The Commissioners are conflicted one?

Caraballo: Yeah.

Austin: What'd you move?

Caraballo: I moved to deny that, to accept the staff's recommendation.

James: Alright. All in favor?

Austin: Aye.

Caraballo: Aye.

SUPREME COURT OF STATE OF NEW YORK
APPELLATE DIVISION, THIRD DEPARTMENT

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Reply Affirmation
in Further Support
of Unopposed Motions

CENTER FOR JUDICIAL ACCOUNTABILITY, *et al.*
v. JOINT COMMISSION ON PUBLIC ETHICS, *et al.*
AD Docket #: CV-23-0115

ANDREW M. CUOMO v. COMMISSION ON ETHICS
AND LOBBYING IN GOVERNMENT
AD Docket #: CV-23-1778

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ELENA RUTH SASSOWER, affirms the following to be true under penalties of perjury, pursuant to CPLR §2106:

1. I am the unrepresented individual appellant in *CJA, et al. v. JCOPE, et al.* (CV-23-0115) and the movant therein and in *Cuomo v. COELIG* (CV-23-1778) for a calendar preference so that the same appellate panel that is hearing the COELIG appeal brought by Attorney General James can hear the CJA appeal being defended by Attorney General James – both appeals involving the constitutionality of the "ethics commission reform act of 2022".

2. My January 12, 2024 motion in the COELIG appeal (#28)[1] additionally seeks, if the preference is denied, leave to file my moving affidavit and its four exhibits therein (#29, #30, #31, #32, #33) as an *amicus curiae* submission to prevent fraud.

3. My January 12, 2024 motion in the CJA appeal (#26) additionally seeks, if the preference is denied, disclosure by the justices of their financial and other interests and determination of the jurisdictional question arising from Judiciary Law §14.

[1] The NYSCEF numbers for my motion in the COELIG appeal are to their numbers on the NYSCEF docket for *CJA v. JCOPE, et al.*

4. Both motions are unopposed:

- In COELIG's appeal: The Cuomo attorneys and the *amici curiae* attorney – though repeatedly given e-mailed notice of my motion therein on January 13 (8:03 am), January 16 (10:51 pm), January 16 (4:35 pm), January 18 (11:32 am), January 18 (1:39 pm), and January 19 (2:02 pm), returnable today, January 22, with "answering papers" due by January 19 – have chosen not to be heard, including as to any objection to service. AG James, as COELIG's attorney, confirmed service by a January 18, 2024 e-mail of Deputy Solicitor General Jeffrey Lang (1:39 pm), to which the Cuomo and *amici curiae* attorneys were *cc*'d[2] – but interposed no "answering papers" thereafter.

- In CJA's appeal: AG James, by Assistant Solicitor General Beezly Kiernan, has interposed a three-paragraph January 19, 2024 affirmation (#34) to my motion therein (#26, #27, #28, #29, #30, #31, #32, #33), which expressly takes no position, stating:

> "3. Respondents do not take a position on petitioners' motion. Respondents note, however, that this case does not raise the separation-of-powers question presented in *Cuomo v. New York State Commission on Ethics & Lobbying in Government*, A.D. No. CV-23-1778. Thus, the requested calendar preference is not necessary."

5. The Court should find these three sentences of ASG Kiernan's affirmation unacceptable, indeed, sanctionable – coming not only from an "officer the court", but, on behalf of New York's highest legal officer, whose duty, pursuant to Executive Law §63.1, is "the interest of the state".

6. It is contrary to "the interest of the state" to have this Court waste its time with a constitutional issue that is moot; in having two separate appeal panels address the same ECRA statute; and in having the Court misled, in the *COELIG* appeal, by AG James' Appellant's Brief for COELIG (#12), by the *Amicus Curiae* Brief for COELIG (#18), and by Cuomo's Respondent's Brief (#22), each false and misleading in material factual assertions, inferences and by their concealment – and so-demonstrated by the motion.

7. ASG Kiernan's affirmation does not deny or dispute the motion's accuracy in any respect – leaving unchallenged its four reasons why the appeals must be heard together. These four

[2] My affirmation of service for the motion in *Cuomo v COELIG* is annexed hereto as Exhibit 1.

reasons, individually and collectively, are not only dispositive, but so much so that ASG Kiernan does not identify even one.

8. The first reason (#29: ¶¶4-14) is that the *CJA v. JCOPE, et al.* record establishes that ECRA is unconstitutional by its enactment through the budget and by fraud – the subject of the sixth cause of action of CJA's June 6, 2022 verified petition [R.81-84] – thereby mooting the sole issue on AG James' COELIG appeal, ECRA's constitutionality, *as written*. My motion not only particularizes (#29: ¶¶8-9) the state of the record on the sixth cause of action, *via* "legal autopsy"/analyses that span the course of the lawsuit, but additionally highlights (¶39) two documents in the record dispositive of the sixth cause of action:

- CJA's analysis of Article VII, §§2 and 3 of the New York State Constitution, set forth by CJA's March 18, 2020 letter to then Governor Cuomo [R.132-154], which the sixth cause of action expressly identifies as "the starting point for the declaration that Part QQ was unconstitutionally enacted" [R.82 (at ¶82)]; and

- CJA's June 28, 2022 CPLR §2214(c) notice to the *CJA v. JCOPE, et al.* respondents to furnish the Supreme Court with "all records of findings of fact and conclusions of law made with respect to [the] March 18, 2020 letter to then Governor Cuomo" and such other documentary evidence as the FY2022-23 budget bills, including Part QQ of Education, Labor, Housing and Family Assistance Budget Bill #S.8006-C/A.9006C – the ECRA statute [R.518-527].

9. As for ASG Kiernan's "note" implying that CJA's appeal raises a different "separation-of-powers question" than that of the COELIG appeal and, therefore, "the calendar preference is not necessary", this conceals that both pertain to ECRA and that CJA's "question" as to ECRA's enactment moots COELIG's, which ASG Kiernan does not deny. The preference is plainly "necessary" for informing the COELIG appeal panel about the CJA appeal, with its record entitling CJA to summary judgment on the sixth cause of action – and the other nine – concealed by AG James' Appellant's Brief for COELIG, the *Amicus Curiae* Brief for COELIG, and Cuomo's Respondent's Brief.

10. My motion's second, third, and fourth reasons (#29, ¶¶15-40) rest on the material frauds of these three Briefs, expressly, impliedly, and by omission – also not identified by ASG Kiernan's three-paragraph affirmation.

11. Suffice to add that on January 16, 2024, in the COELIG appeal, AG James' filed, with an accompanying letter (#30), a Reply Brief for COELIG (#29) signed by Assistant Solicitor General Dustin Brockner, bearing Deputy Solicitor General Lang's name, which does NOT include anything about "Duly-enacted statutes enjoy an exceedingly strong presumption of constitutionality…" –although nevertheless continuing such other frauds as my motions exposed (#29: ¶15).[3]

12. Coincidentally, and adding further grounds for a calendar preference to move the CJA appeal up from the April term to the February term, is that on January 16, 2024, Governor Hochul released her FY2024-25 executive budget, with five "Appropriations Bills" dated January 16, 2024, bearing Senate-Assembly numbers S.8300/A.8800 to S.8304/A.8804, plus five so-called "Article VII Bills" in draft format, requiring Senate and Assembly sponsors, accompanied by memoranda in support – and so-reflected by the Governor's Division of the Budget website. Yet, on the Senate and

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[3] *See* COELIG Reply Brief (#29):

pp. 3-4: "the compelling need for an ethics commission with both actual and perceived independence from the two political branches it monitors".

p. 7: "When assessing separation-of-powers challenges, courts consider 'the motive behind the legislation,' including whether it would help achieve a 'paramount State interest.' … Executive Law § 94 is designed to achieve a paramount State interest— having an ethics commission that is sufficiently independent to fulfill its crucial statutory mission."

pp. 18-19: "…the Commission was created in response to a specific problem—a widely-held perception that the political branches, especially the Executive Branch, were unduly interfering with JCOPE's ability to do its job. (Op. Br. 6-7; New York City Bar Assn. Amici Br. 10- 11.) …

The Commission's enabling act thus targeted the problem at hand. … "adding restraints designed to prevent undue influence from all appointing authorities… These restraints include the IRC review process…

In sum, experience showed that JCOPE's structure was impeding its ability to monitor the political branches."

Assembly websites,[4] the five draft bills had morphed into actual bills, without Senate and Assembly sponsors, purporting to be "submitted by the Governor pursuant to article seven of the Constitution", bearing Senate-Assembly bill numbers S.8305/A.8805 to S.8309/A.8809 and a January 17, 2024 date of introduction. In other words, the same scenario of unconstitutionality and fraud, chronicled by CJA's March 18, 2020 letter to then Governor Cuomo [*at* R.133-135] and June 28, 2022 CPLR §2214(c) notice [*at* R.519-521 (¶¶4, 5, 6)] is repeating.

13. Because of the importance of CJA's March 18, 2022 letter [R.132-154] and June 28, 2022 CPLR §2214(c) notice [R.518-527] – the latter concluding with a paragraph reading:

> "PLEASE ADDITIONALLY TAKE NOTICE that your failure to make such production will entitle petitioners [to] the granting of the relief sought by their June 23, 2022 notice of petition, starting [with] the requested TRO, preliminary injunction, and declaration that Part QQ of Education, Labor, Housing, and Family Assistance Budget Bill S.8006-C/A.9006-C – the 'ethics commission reform act of 2022' – is unconstitutional, unlawful, and void as it was enacted in violation of mandatory provisions of the New York State Constitution, statutes, legislative rules, and caselaw.[fn4]" (capitalization in the original) –

I have extracted both from the *CJA v. JCOPE, et al*. record on appeal and annexed them to this reply affirmation as Exhibits 2 and 3.

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[4] The Assembly webpage for the "2024-2025 Executive Proposal" is here. The Senate does not seem to have a comparable webpage, but here are its webpages for the five morphed "Article VII Bills":

> S.8305/A.8805 (Public Protection & General Government);
> S.8306/A.8806 (Education, Labor & Family Assistance);
> S.8307/A.8807 (Health & Mental Hygiene);
> S.8308/A.8808 (Transportation, Economic Development & Environmental Conservation);
> S.8309/A.8809 (Revenue).

"[fn4] See, *inter alia*, *New York State Bankers Association, Inc. et al. v. Wetzler, as Commissioner of the Department of Taxation and Finance of the State of New York*, 81 NY2d 98, 102 (1993) 'The question concerns not what was enacted or its effect on the budgetary process, but whether there was authority to enact the provision at all. Our precedents clearly compel the conclusion that the controversy is justiciable…'"

Elena Ruth Sassower, movant on January 12, 2024 motions
"on behalf of the People of the State of New York & the Public Interest"

Dated: January 22, 2024
White Plains, New York

AFFIRMATION OF SERVICE

January 12, 2024 motion for preference for related appeals to be heard together or for leave to file *amicus curiae* submission to prevent fraud

ELENA RUTH SASSOWER, affirms the following to be true under penalties of perjury, pursuant to CPLR §2106:

I am the unrepresented individual appellant in the appeal *CJA v. JCOPE, et al.* (CV-23-0115), over 18 years of age, and reside in the State of New York.

On January 13, 2024 (8:03 am), I sent an e-mail to the attorneys for the parties and *amici curiae* in the appeal *Cuomo v. COELIG* (CV-23-1778), alerting them to the motion I was making in the *Cuomo v. COELIG* appeal – and furnishing them with links to my January 12th motion, as uploaded to the *CJA v. JCOPE, et al*. NYSCEF docket as ##28-33.

On January 16, 2024 (10:51 am), I sent the attorneys a further e-mail with those links and, thereafter (4:35 pm), an additional e-mail attaching the notice of motion and my moving affidavit (##28-29).

On January 18, 2024 (11:32 am), I sent a fourth e-mail to them, also attaching the notice of motion and moving affidavit. Entitled "SERVICE…", it requested that they confirm that they would accept my e-mailing of the motion to them on January 13th, as service. To each of these four e-mails the Clerk's Office was also a *cc*.

In response, Deputy Solicitor General Jeffrey Lang e-mailed me, the other attorneys, and the Clerk's Office (at 1:39 pm) that the AG would accept the January 13th e-mailed service on behalf of the appellant COELIG. His January 18, 2024 e-mail, with the chain of e-mails that preceded it, is annexed (Ex. A).

I received no responses, however, from the attorneys for respondent Cuomo – or from the attorney for the *amici curiae*. This, notwithstanding, they were further reminded of the situation by a January 19, 2024 e-mail (2:02 pm) from the Clerk's Office, sent to me and all attorneys, reading:

> "Good afternoon,
>
> This is a reminder to Ms. Sassower that the Court requires proof of service of this motion as well as the $45 motion filing fee.
>
> Thank you."

That e-mail is also annexed (Ex. B).

ELENA RUTH SASSOWER
January 22, 2024

Exhibit A

From: Lang, Jeffrey <Jeffrey.Lang@ag.ny.gov>
Sent: Thursday, January 18, 2024 1:39 PM

To: Center for Judicial Accountability, Inc. (CJA); Brockner, Dustin; Paladino, Victor; jmcguire@hsgllp.com; gdubinsky@hsgllp.com; zkerner@hsgllp.com; rglavin@glavinpllc.com; richard.davis@rjdavislaw.com

Cc: ad3motions@nycourts.gov; 'AD3ClerksOffice'; 'AD3TSU'; Kiernan, Beezly

Subject: **RE: SERVICE: Cuomo v. COELIG (CV-23-1778) -- Jan 12th notice of motion & moving affidavit for preference so that related appeals can be heard together & to prevent fraud**

Only for your January 13 motion in Cuomo v. COELIG, on behalf of COELIG, we'll accept the email as service.

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Thursday, January 18, 2024 11:32 AM

To: Brockner, Dustin <Dustin.Brockner@ag.ny.gov>; Lang, Jeffrey <Jeffrey.Lang@ag.ny.gov>; Paladino, Victor <Victor.Paladino@ag.ny.gov>; Appeals and Opinions Albany <Appeals.Albany@ag.ny.gov>; jmcguire@hsgllp.com; gdubinsky@hsgllp.com; zkerner@hsgllp.com; rglavin@glavinpllc.com; richard.davis@rjdavislaw.com

Cc: ad3motions@nycourts.gov; 'AD3ClerksOffice' <AD3ClerksOffice@nycourts.gov>; 'AD3TSU' <ad3tsu@nycourts.gov>; Kiernan, Beezly <Beezly.Kiernan@ag.ny.gov>

Subject: SERVICE: Cuomo v. COELIG (CV-23-1778) -- Jan 12th notice of motion & moving affidavit for preference so that related appeals can be heard together & to prevent fraud

TO: **Cuomo v. COELIG Attorneys –**
COELIG Attorneys: Assistant Solicitor General Dustin Brockner,
Deputy Solicitor General Jeffrey Lang,
***also* Senior Assistant Solicitor General Victor Paladino**
CUOMO attorneys: James McGuire, Gregory Dubinsky, Zachary Kerner, Rita Glavin
***Amici Curiae* Attorney: Richard Davis**

A short time ago I received a phone call from Appellate Division, Third Department Chief Motion Attorney Amy Conway. As explained by the below and which Ms. Conway confirmed, due solely to my being a non-attorney, I cannot upload to the *Cuomo v. COELIG* NYSCEF docket as a non-party. Tomorrow, I will follow-up to try to resolve that issue with NYSCEF, with the OCA, and, if necessary, by a motion to the Appellate Division, Third Department. In the meantime, Ms. Conway advised that my January 12th motion for a preference, etc. that I digitally submitted for filing in *Cuomo v. COELIG* has been filed – and is returnable on Monday, January 22nd. All that is further required is that I provide an affidavit/affirmation of service and mail the $45 fee. **As time is of the essence, with the Cuomo v. COELIG appeal calendared for the February term, please confirm that you will accept my e-mailing of my motion to you on January 13th by the below, as service.**

In any event, the comparable January 12th motion that I made in *CJA v. JCOPE, et al., via* NYSCEF (##26-33) – as to which there is no service issue and whose Exhibits 1 & 2 were restored yesterday at 12:01 pm – is returnable on January 22nd.

Thank you.

Elena Sassower,
Unrepresented individual petitioner-appellant in *CJA v. JCOPE, et al.*, "on behalf of the People of the State of New York & the Public Interest".
914-421-1200

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Wednesday, January 17, 2024 12:05 PM
To: 'ad3motions@nycourts.gov' <ad3motions@nycourts.gov>

Subject: ATT: Chief Motion Attorney Amy Conway -- Photo of attempt to upload to Cuomo v. COELIG (CV-23-1778) -- Jan 12th notice of motion & moving affidavit for preference so that related appeals can be heard together & to prevent fraud

TO: Appellate Division, Third Department Chief Motion Attorney Amy Conway

Following up our conversation, a short time ago, above-attached is a photo of what I was trying to explain to you about why I cannot directly upload to *Cuomo v. COELIG* (CV-23-1778), as a non-party from my NYSCEF account – notwithstanding the non-party proposed *amicus* Lavine and the non-party proposed *amici* City Bar/"good gov't" groups were able to upload, on December 1, 2023 (#15, #16) and December 15, 2023 (#17, #18), respectively.

The message in the photo, when I try to access *Cuomo v. COELIG* for purposes of filing, as a non-party – and I've checked the "non-party" box -- reads:

> "**The following errors occurred...**
>
> 1. Your account allows you to create and/or file to one case. You are currently participating in the following case: Index #: CV-23-0115 Caption: Center for Judicial Accountability, Inc. et al v. New York State Joint Commission on Public Ethics et al. If you need to participate in a different case, you will need to request an additional account."

Yesterday morning, after speaking with Julianne, I called NYSCEF (646-386-3033) and spoke with Marie for her assistance for "an additional account". After examining the situation, she concluded, perhaps because I am a non-attorney, that I need to proceed *via* "digital submission", which I then did – alerting the Clerk's Office to my having done so at 10:54 am, by the e-mail that is below.

Therefore, it is obviously incorrect that Julianne told me that, as a non-party, I cannot proceed electronically with my motion in *Cuomo v. COELIG*, but must paper serve and file the motion.

You've just called – and I am sending you now what I've already written.

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Tuesday, January 16, 2024 4:35 PM

To: 'ad3motions@nycourts.gov' <ad3motions@nycourts.gov>; 'ad3tsu@nycourts.gov' <ad3tsu@nycourts.gov>; 'AD3ClerksOffice' <AD3ClerksOffice@nycourts.gov>

Cc: 'dustin.brockner@ag.ny.gov' <dustin.brockner@ag.ny.gov>; 'jlang@ag.ny.gov' <jlang@ag.ny.gov>; 'Victor.Paladino@ag.ny.gov' <Victor.Paladino@ag.ny.gov>; 'appeals.albany@ag.ny.gov' <appeals.albany@ag.ny.gov>; 'Kiernan, Beezly' <Beezly.Kiernan@ag.ny.gov>; 'jmcguire@hsgllp.com' <jmcguire@hsgllp.com>; 'gdubinsky@hsgllp.com' <gdubinsky@hsgllp.com>; 'zkerner@hsgllp.com' <zkerner@hsgllp.com>; 'rglavin@glavinpllc.com' <rglavin@glavinpllc.com>; 'richard.davis@rjdavislaw.com' <richard.davis@rjdavislaw.com>

Subject: Cuomo v. COELIG (CV-23-1778) -- Jan 12th notice of motion & moving affidavit for preference so that related appeals can be heard together & to prevent fraud

TO: Appellate Division, Third Department – Motions Department/Clerk's Office

At 2:45 pm today, upon discovering that the Clerk's Office had NOT yet posted to *Cuomo v. COELIG* (CV-23-1778) my notice of motion, moving affidavit, & exhibits that I had digitally submitted 4 hour earlier, as reflected by the below e-mail, AND had "DELETED" that same notice of motion and moving affidavit from *CJA v. JCOPE, et al.* (CV-23-0115), where they were Exhibits 1 and 2 to my moving affidavit in support of my motion therein, I telephoned to find out the reason. Traci answered the call and told me that I would have to speak with Julianne, as she was handling my motions, but that Julianne had left for the day. She declined to give me Julianne's last name or title, other than that Julianne heads the unit in which she works as principal appellate typist.

Traci said she would relay my message to Julianne – to which I replied that if I did not hear from her by 10:30 tomorrow morning – or from the Court's Deputy Clerk or Clerk -- I would be calling.

As the actions of the Clerk's Office plainly impede the *Cuomo v. COELIG* attorneys and *amici* and ASG Kiernan in *CJA v. JCOPE, et al.* from being able to prepare answering papers that are due by Friday, January 19th on the two motions, each returnable on Monday, January 22nd, above-attached are the "DELETED" documents, which, additionally, are accessible here and here.

Thank you.

Elena Sassower,
Unrepresented individual petitioner-appellant in *CJA v. JCOPE, et al.*, "on behalf of the People of the State of New York & the Public Interest".
914-421-1200

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Tuesday, January 16, 2024 10:51 AM

To: 'ad3motions@nycourts.gov' <ad3motions@nycourts.gov>; 'ad3tsu@nycourts.gov' <ad3tsu@nycourts.gov>; 'AD3ClerksOffice' <AD3ClerksOffice@nycourts.gov>

Cc: 'dustin.brockner@ag.ny.gov' <dustin.brockner@ag.ny.gov>; 'jlang@ag.ny.gov' <jlang@ag.ny.gov>; 'Victor.Paladino@ag.ny.gov' <Victor.Paladino@ag.ny.gov>; 'Kiernan, Beezly' <Beezly.Kiernan@ag.ny.gov>; 'jmcguire@hsgllp.com' <jmcguire@hsgllp.com>; 'gdubinsky@hsgllp.com' <gdubinsky@hsgllp.com>; 'zkerner@hsgllp.com' <zkerner@hsgllp.com>; 'rglavin@glavinpllc.com' <rglavin@glavinpllc.com>; 'richard.davis@rjdavislaw.com' <richard.davis@rjdavislaw.com>

Subject: Motion for Related Appeals to be Heard Together & to Prevent Fraud: CJA v. JCOPE, et al. (CV-23-0115) & Cuomo v. COELIG (CV-23-1778) -- or leave to file an amicus curiae submission

TO: Appellate Division, Third Department – Motions Department/Clerk's Office

I left a voice mail about 15 minutes ago (518-471-4777) to advise that I uploaded, *via* "Digital Submissions", my Jan 12th motion in *Cuomo v. COELIG* (CV-23-1778) for the granting of a preference to the appeal in *CJA v. JCOPE, et al.* (CV-23-0115), so that these two related appeals can be heard together & to prevent fraud. The uploaded documents consist of the notice of motion, my moving affidavit, and the four exhibits to the moving affidavit, which I had discussed a short time earlier with Julianne and her authorization to upload, so that the *Cuomo v. COELIG* parties and *amici* may be heard with respect to the requested relief.

Below is my notice to the attorneys, sent on January 13th. The documents I have today uploaded make only a handful of non-substantive typographic corrections, essentially typos and punctuation, to what I had furnished on January 13th.

Thank you.

Elena Sassower
Unrepresented individual petitioner-appellant in *CJA v. JCOPE, et al.*, "on behalf of the People of the State of New York & the Public Interest".
914-421-1200

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Saturday, January 13, 2024 8:03 AM

To: 'AD3ClerksOffice' <AD3ClerksOffice@nycourts.gov>

Cc: 'dustin.brockner@ag.ny.gov' <dustin.brockner@ag.ny.gov>; 'jlang@ag.ny.gov' <jlang@ag.ny.gov>; 'Victor.Paladino@ag.ny.gov' <Victor.Paladino@ag.ny.gov>; 'Kiernan, Beezly' <Beezly.Kiernan@ag.ny.gov>; 'jmcguire@hsgllp.com' <jmcguire@hsgllp.com>; 'gdubinsky@hsgllp.com' <gdubinsky@hsgllp.com>; 'zkerner@hsgllp.com' <zkerner@hsgllp.com>; 'rglavin@glavinpllc.com' <rglavin@glavinpllc.com>; 'richard.davis@rjdavislaw.com' <richard.davis@rjdavislaw.com>

Subject: Motion for Related Appeals to be Heard Together & to Prevent Fraud: CJA v. JCOPE, et al. (CV-23-0115) & Cuomo v. COELIG (CV-23-1778) -- or leave to file an amicus curiae submission

TO: Appellate Division, Third Department Clerk's Office

cc: AG James' Office (Asst. Solicitor General Dustin Brockner, Deputy Solicitor General Jeffrey Lang, *also* Sr. Asst. Solicitor General Victor Paladino & Asst. Solicitor General Beezly Kiernan)
Cuomo attorneys (James McGuire, Gregory Dubinsky, Zachary Kerner, Rita Glavin)
***Amici* attorney (Richard Davis)**

Exhibit A

This follow my phone conversation with Julianne late yesterday afternoon (518-471-4777) regarding the two motions I would be making for a preference for the appeal in ***CJA v. JCOPE, et al.* (CV-23-0115)** so that it could be heard together with the appeal in ***Cuomo v. COELIG* (CV-23-1778)** by the same appellate panel. Despite my best efforts, I was unable to upload the motion for *Cuomo v. COELIG*, *via* "Digital Submissions", as Julianne explained was how I needed to do it. It took me a while to understand that, apparently, I needed to send an e-mail for a link, and to do so not from elena@judgewatch.org, but from a Microsoft email address – elena.sassower@outlook.com – which I did do. As it seems likely that the link or authorization will not be forthcoming until the Court next opens, on Tuesday, January 16th – too late to accommodate a motion returnable on Monday, January 22nd, with answering papers due on Friday, January 19th – I am sending the Court and the attorneys & *amici* in *Cuomo v. COELIG*, by the below links, the documents comprising the motion that I was unable to upload to *Cuomo v. COELIG*, all exhibits to my motion in *CJA v. JCOPE, et al*. that I successfully uploaded yesterday night at 11:40 pm (#26-#33).

#28: January 12, 2024 Notice of Motion

#29: January 12, 2024 Moving Affidavit

#30: Exhibit A: CJA's July 8, 2022 complaint to JCOPE

#31: Exhibit B: CJA's October 6, 2022 supplement to complaint to JCOPE

#32: Exhibit C: CJA's March 29, 2023 testimony at COELIG hearing

#33: Exhibit D: CJA's October 2, 2023 complaint to JCOPE vs commissioners & staff.

I anticipate making slight mostly non-substantive corrections on Tuesday, such as the addition of omitted "bookmarking" and links.

Thank you.

Elena Sassower,
Unrepresented individual petitioner-appellant in *CJA v. JCOPE, et al.*, "on behalf of the People of the State of New York & the Public Interest".
914-421-1200

Exhibit B

From: AD3Motions <AD3Motions@nycourts.gov>
Sent: Friday, January 19, 2024 2:02 PM

To: Center for Judicial Accountability, Inc. (CJA); Brockner, Dustin; jlang@ag.ny.gov; Paladino, Victor; appeals.albany@ag.ny.gov; jmcguire@hsgllp.com; gdubinsky@hsgllp.com; zkerner@hsgllp.com; rglavin@glavinpllc.com; richard.davis@rjdavislaw.com

Subject: **RE: SERVICE: Cuomo v. COELIG (CV-23-1778) -- Jan 12th notice of motion & moving affidavit for preference so that related appeals can be heard together & to prevent fraud**

Good afternoon,

This is a reminder to Ms. Sassower that the Court requires proof of service of this motion as well as the $45 motion filing fee.

Thank you.

Here deleted: Chain of e-mails spanning from CJA's Jan 18, 2024 email (11:32 am) to CJA's Jan 13, 2024 email (8:03 am).

CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101 ***Tel. (914)421-1200*** ***E-Mail:*** ***mail@judgewatch.org***
White Plains, New York 10602 ***Website:*** ***www.judgewatch.org***

March 18, 2020

TO: Governor Andrew Cuomo, Esq.

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

RE: Your January 21, 2020 address on the Executive Budget – Part III:
GOOD NEWS DURING THIS CORONAVIRUS EMERGENCY – You Can Chuck Six of Your Seven "Article VII Bills" Because They are Unconstitutional. Here's why based on the Court of Appeals' 2004 plurality, concurring, and dissenting opinions in *Pataki v. Assembly/Silver v. Pataki*, 4 N.Y.3d 75.

This letter is the third of a trilogy of letters pertaining to your January 21, 2020 Executive Budget address. The first, dated February 18, 2020, demonstrated that the "very simple" budget numbers on your "Partners in Government" slide were "false, contrived, and the product of fraud". The second letter, dated March 3, 2020, demonstrated the same with respect to six additional slides, projected, in succession, as you spoke about the so-called "independent commission [that] proposed pay raises for New York's elected officials because we performed" and about trust in government, transparency and "nothing to hide". This letter pertains to the unconstitutionality of your misnomered "Article VII Bills" whose policy-filled, legislative content predominated your Executive Budget address, accompanied by a great many slides.[1]

Notwithstanding the manner in which the Executive Budget is to be fashioned and enacted is laid out by Article VII of the New York State Constitution, your only mention of the Constitution during your nearly one hour Executive Budget address was when you spoke of the Legislature having "constitutionally passed the budget on time" and its "constitutional responsibility of passing the budget on time" (at 22 mins.).[2] This is itself false. The pertinent constitutional provision pertaining

[1] For your convenience, CJA's website, www.judgewatch.org, has a webpage for this letter, posting all the referred-to substantiating evidence – beginning with the VIDEO of your Executive Budget address. It is accessible from our homepage *via* the prominent center link "LEGISLATIVE SESSIONS: Comparing NY's Legislature BEFORE & AFTER its Fraudulent Pay Raise". Here's the direct link to the webpage: hhttp://www.judgewatch.org/web-pages/searching-nys/2020-legislative/3-18-20-ltr-to-gov.htm – part of a series of webpages for the "2020 LEGISLATIVE SESSION".

[2] A single slide also referenced the Constitution (VIDEO, at 53 mins/11 secs). It read, "ERA – We will pass the Equal Rights Amendment to our State constitution" – as to which you stated: "Let's resolve the ERA today and let's not waste another year. Forget the politics. There is no budget that is complete unless we resolve the ERA issue. We can do it and we're going to do it by the budget, once and for all." There is no connection between passage of the ERA and the budget. Were it capable of being "embraced in any appropriation bill", it would be an unconstitutional rider, violative of Article VII, §6. In any event, it requires

to passage of the budget is Article VII, §4 – which reads, in full:

> "The legislature may not alter an appropriation bill submitted by the governor except to strike out or reduce items therein, but it may add thereto items of appropriation provided that such additions are stated separately and distinctly from the original items of the bill and refer each to a single object or purpose. None of the restrictions of this section, however, shall apply to appropriations for the legislature or judiciary.
>
> Such an appropriation bill shall when passed by both houses be a law immediately without further action by the governor, except that appropriations for the legislature and judiciary and separate items added to the governor's bills by the legislature shall be subject to approval of the governor as provided in section 7 of article IV." (underlining added).

There are no time parameters for the budget's adoption. Rather, as Article VII, §4 makes clear, New York has a rolling budget, with each of your appropriation bills, other than for the Legislature and Judiciary, becoming law, "immediately", as soon as the Senate and Assembly reconcile their separate amendments of each, limited to strike outs and reductions of items. No need for any "three-men-in-a-room", behind-closed-doors, amending of your budget bills with Temporary Senate President Stewart-Cousins and Assembly Speaker Heastie, bundling them together as a package deal. Indeed, your doing so is unconstitutional for the reasons particularized by the verified pleadings of CJA's citizen-taxpayer actions, suing you and your "Partners in Government" for unconstitutionality, unlawfulness, and fraud with respect to the budget.[3]

Tellingly, during your Executive Budget address, you made no reference to the bills comprising your Executive budget. Your Division of the Budget, which posted your budget bills on its website, https://www.budget.ny.gov/pubs/archive/fy21/exec/fy21bills.html, in tandem with your address, posted five "Appropriations Bills", with an additional seven bills posted beneath a heading: "Article VII Bills" – two of these further denominated as "Freestanding Article VII Legislation".

Common to your five "Appropriations Bills" was that you had introduced each in the Legislature, that day, January 21, 2020, obtaining the below sequential Senate and Assembly bill numbers:

State Operations (#S.7500/A.9500)
Legislature and Judiciary (#S.7501/A.9501)
State Dept Service (#S.7502/A.9502)

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a constitutional amendment to implement.

[3] CJA's first citizen-taxpayer action, *CJA v. Cuomo, et al*: sixteenth cause of action of the March 23, 2016 verified second supplemental complaint (¶¶458-470 [R.214-219]);

CJA's second citizen-taxpayer action, *CJA v. Cuomo…DiFiore*: ninth cause of action of the September 2, 2016 verified complaint (¶¶81-84 [R-115]).

Aid to Localities (#S.7503/A.9503)
Capital Projects (#S.7504/A.9504).

Each bill was also identically prefaced:

> "IN SENATE – A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution – read twice and ordered printed, and when printed to be committed to the Committee on Finance
>
> IN ASSEMBLY – A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution – read once and referred to the Committee on Ways and Means".

Not so your five posted "Article VII Bills" –

Education, Labor and Family Assistance (LBD12672-01-0)
Health and Mental Hygiene (LBD12671-01-0)
Public Protection and General Government (LBD12670-01-0)
Transportation, Ec. Development and Envir. Conservation (LBD12673-01-0)
Revenue (LBD12674-04-0).

They were posted by your Division of the Budget website only as proposed bills for introduction by Senate and Assembly members – each offered with a tailored form of the Legislative Bill Drafting Commission[4] for that purpose, requiring a pair of legislators, one from the Senate and one from the Assembly, to be introducers of each bill, to so-signify by their signatures, and to circle the printed names of other Senate and Assembly members wishing to be sponsors or multi-sponsors with them. And accompanying each draft bill was a posted "Memorandum in Support".

Likewise your posted "Freestanding Article VII Legislation":

Equal Rights Amendment Concurrent Resolution (LBD89158-01-0)
Court Restructuring Concurrent Resolution (89159-01-0).

These were posted by your Division of the Budget website only as two proposed resolutions for

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[4] The Legislative Bill Drafting Commission's first three duties, pursuant to Legislative Law §25, are:

> "1. Draft or aid in drafting or examine legislative bills and resolutions and amendments thereto, upon request of a member or committee of either house of the legislature
> 2. Advise as to the constitutionality, consistency or effect of proposed legislation upon request of a member or committee of either house of the legislature;
> 3. Make researches and examinations as to any subject of proposed legislation upon request of either house or of a committee of either house of the legislature".

introduction by Senate and Assembly members – offered with tailored forms of the Legislative Bill Drafting Commission, requiring a pair of Senate and Assembly legislators to be introducers of each resolution, to so-signify by their signatures, and to circle the printed names of other Senate and Assembly members wishing to be sponsors or multi-sponsors with them. Here, too, each was accompanied by a posted "Memorandum in Support".

Clearly, had you and your "Partners" in the Legislature believed your so-called "Article VII Bills" and "Freestanding Article VII Legislation" to actually be "pursuant to article seven of the Constitution", your Division of the Budget would have posted them in the same already introduced bill format as your five "Appropriations Bills" and not as unintroduced bills bearing the sponsorship requirements deemed necessary by the Legislative Bill Drafting Commission.

As of this date, nearly two months since your January 21, 2020 Executive Budget address, your "Freestanding Article VII Legislation" has yet to be introduced into the Legislature. By contrast, your five "Article VII Bills" were introduced into the Legislature on January 22, 2020 – the day following your Executive Budget address, as if they were "Appropriations Bills": without Senate and Assembly sponsors, with Senate and Assembly bill numbers, #S.7505/A.9505- #S.7509/A.9509, continuing the sequence of your five "Appropriations Bills", and with their identical prefatory language:

> "IN SENATE – A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution – read twice and ordered printed, and when printed to be committed to the Committee on Finance
>
> IN ASSEMBLY – A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution – read once and referred to the Committee on Ways and Means".

How did that happen? The answer is not on your Division of the Budget website, which, to conceal the issue, does not post your purported "Article VII Bills" in their introduced format. Nor can the answer be found on the Senate and Assembly websites, also concealing what has occurred by not indicating that you had presented these bills in a draft format requiring Senate and Assembly sponsors. The inference from such concealment on all three websites is that you and the Legislature cannot explain or defend it.

As Senate and Assembly Rules reflect, your authority to introduce bills is limited to Article VII[5] – and absent that you need a Senate and Assembly sponsor.[6] This is consistent with what the Court of

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5 Senate Rule VI, §§1, 6 and Assembly Rule III, §2(d), §2(e), §2(g).

6 Senate Rule VI, §7:

Appeals said in its December 16, 2004 decision in the consolidated *Pataki v. Assembly* and *Silver v. Pataki* cases, 4 N.Y.3d 75, 83. The plurality-majority opinion by then Associate Judge Robert Smith stated as follows with respect to your power to introduce legislation:

> "Article VII, §§1-7 now govern the budget process. Several of these provisions vest certain legislative powers in the Governor, creating a limited exception to the rule stated in article III, §1 of the Constitution: 'The legislative power of this state shall be vested in the senate and assembly.' Thus, the classic 'separation of powers' between the executive and legislative branches is modified to some degree by our Constitution…".

More specific, however, was the dissenting opinion of then Chief Judge Judith Kaye (at 117-118):

> "In 1927, after the dangers of legislative budgeting had been identified and debated, the Governor was for the first time given the power to propose legislation directly-but only in appropriation bills. To be sure, the Governor could *recommend* other legislation in his executive budget, but the power to actually introduce bills obliging action into both houses of the Legislature – a power he has in no other context than the budget – was limited to appropriation bills. Only in 1938 was the predecessor to section 3 amended to give the Governor the additional authority to introduce other 'proposed legislation' recommended in his executive budget. This amendment was adopted primarily to make the Governor responsible for submitting tax legislation, rather than merely recommending it. 'Believing that the revenue side of the budget is of equal importance with the expenditure side, the committee feels that any bills to carry into effect legislation affecting the revenues of the State which the Governor may propose should have the same dignity and importance as his appropriation bills, and all should be submitted directly by the Governor and treated as budget bills' (Report of Comm. on State Finances and Revenues of New York State Constitutional Convention, State of New York Constitutional Convention 1938 Doc No. 3, at 3 [July 8, 1938]). (italics in the original, underlining added).

> "Program, departmental and agency bills. Every bill proposed by the Governor, the Attorney General, the Comptroller or by state departments and agencies shall be submitted to the Temporary President and shall be forwarded for introduction purposes to the appropriate standing committee in accordance with section one of this Rule. Any such bill which is not so forwarded within three weeks after receipt by the Temporary President shall be offered to the Minority Leader who may in accordance with section one of this Rule, forward such bills to any member for introduction purposes."

Assembly Rule III, §2(g):

> "…Bills submitted by the Governor, other than those submitted pursuant to Article VII of the Constitution, shall carry the designation 'Introduced at the request of the Governor.'"

In other words, the only bills that Article VII allows you to introduce for your budget are appropriation bills and bills consisting of tax and revenue legislation. And evidencing that the "proposed legislation, if any" of Article VII, §3 is not a *carte blanche* for you to introduce policy-changing, substantive legislation is the elaboration of the phrase 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]".[7]

One does not have to be a lawyer with a long history in government, including as a former New York Attorney General, as you are, to know what every lawyer is presumed to know: that the starting point for the interpretation of statutes – and constitutions – is their texts – and that identical words and phrases, especially in proximity to each other, are deemed to have the same meaning.[8]

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[7] Article VII, §2 states:

> "Annually, on or before the first day of February in each year following the year fixed by the constitution for the election of governor and lieutenant governor, and on or before the second Tuesday following the first day of the annual meeting of the legislature, in all other years, the governor shall submit to the legislature a budget containing a complete plan of expenditures proposed to be made before the close of the ensuing fiscal year and all moneys and revenues estimated to be available therefor, together with an explanation of the basis of such estimates and recommendations as to proposed legislation, if any, which the governor may deem necessary to provide moneys and revenues sufficient to meet such proposed expenditures. It shall also contain such other recommendations and information as the governor may deem proper and such additional information as may be required by law." (underlining added).

Article VII, §3 states:

> "At the time of submitting the budget to the legislature the governor shall submit a bill or bills containing all the proposed appropriations and reappropriations included in the budget and the proposed legislation, if any, recommended therein.
>
> The governor may at any time within thirty days thereafter and, with the consent of the legislature, at any time before the adjournment thereof, amend or supplement the budget and submit amendments to any bills submitted by him or her or submit supplemental bills.
>
> The governor and the heads of departments shall have the right, and it shall be the duty of the heads of departments when requested by either house of the legislature or an appropriate committee thereof, to appear and be heard in respect to the budget during the consideration thereof, and to answer inquiries relevant thereto. The procedure for such appearances and inquiries shall be provided by law." (underlining added).

[8] *King v. Cuomo*, 81 N.Y.2d 247, 253 (1993): "If the guiding principle of statutory interpretation is to give effect to the plain language…McKinney's Cons Laws of New York, Book 1, Statutes §94), '[e]specially should this be so in the interpretation of a written Constitution, an instrument framed deliberately and with care, and adopted by the people as the organic law of the State' (*Settle v Van Evrea*, 49 NY [280], at 281 [1872])". *People v. Carroll*, 3 N.Y.2d 686, 689 (1958): "The most compelling criterion in the interpretation of an instrument is, of course, the language itself. Particularly is this so in the case of a constitutional

Obvious, too, is that the concluding sentence of Article VII, §2: "It shall also contain such other recommendations and information as the governor may deem proper and such additional information as may be required by law" is not only in a separate sentence from "proposed legislation, if any…", but has no abbreviated parallel in §3.

How surprising then that Chief Judge Kaye's dissenting opinion did not compare Article VII, §2 and §3 so as to reinforce the legislative history she quoted. As for Judge Smith's plurality opinion – and Associate Judge Albert Rosenblatt's concurring opinion which made it a majority – neither compared Article VII, §2 and §3[9] – nor referenced the legislative history pertinent thereto that was in the record before them, quoted by Chief Judge Kaye's dissent. This replicated what occurred below in the separate cases of *Silver v. Pataki* and *Pataki v. Assembly*, where none of the Supreme Court or Appellate Division decisions had compared §2 and §3 – or cited to legislative history from which those provisions might be further understood. This, notwithstanding the first merits decision in those cases – the January 17, 2002 decision of Albany Supreme Court in *Pataki v. Assembly*, 190 Misc.2d 716, 733 – had expressly stated:

> "…the two issues critical to the determination of this case are first, what proposals may properly be included by the Governor in an appropriation bill and, second, may the Legislature strike out what it finds to be extraneous, nonappropriation measures from the Governor's proposed budget. Determination of the first issue requires interpretation of sections 2 and 3 of article VII of the NY Constitution. In interpreting article VII the guiding factors are the language of the sections under review and 'the intent of the framers'…"

Examining your five "Article VII Bills" reveals, dramatically, the results of this judicial cover-up. Apart from your Revenue "Article VII Bill" #S.7509/A.9509, your other four "Article VII Bills" do NOT furnish tax and revenue legislation necessary for your budget.[10] And establishing this further

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provision…where the writing is the deliberate product of a group of men specially selected for and peculiarly suited to the task of its authorship. It is obvious good sense, under such circumstances, to attribute to the provision's authors the meaning manifest in the language they used.". *Anderson v. Regan*, 53 N.Y.2d 356, 362 (1981). Moreover, it is axiomatic that every word in a constitutional or statutory text must be given effect.

[9] *See*, Judge Smith's plurality/majority opinion (at p. 83), which, though citing §2, did not quote it as he did §3. Judge Kaye's dissenting opinion (at pp. 109-110, 111) materially quoted both, but without comparison – and without any analysis derived from them as to the content of "non-appropriation bills" (at p. 111).

[10] Nor do any of these bills purport, by their §1, to be furnishing taxes and revenues for the budget. Rather, they either generically state that they "[e]nact[] into law major components of legislation which are necessary to implement the state fiscal plan for the 2020-2021 state fiscal year – which is what your Revenue Bill, your Public Protection and General Government Bill, and your Transportation, Economic Development and Environmental Conservation Bill do – or, as with the other two bills, that they "[e]nact[] into law major components of legislation necessary to implement" "the state education, labor, housing and family assistance

are your "Memorandum in Support" of each bill, identifying the "Budget Implications" for the legislation presented by their great many parts. Over and over again, they make plain that such legislation is NOT revenue producing.

As illustrative, below are the "Budget Implications" for some of the legislation you singled out during your Executive Budget address, as quoted from your "Memorandum in Support" of each bill:

Your Public Protection and General Government "Article VII Bill" #S.7505/A.9505:

Part C: "Close Rape Intoxication Loophole"

> "Budget Implications: Enactment of this bill is necessary to implement the FY 2021 Executive Budget."

Part K: "Preventing the Manufacture and Dissemination of Ghost Guns"

> "Budget Implications: Enactment of this bill is necessary to implement the FY2021 Executive Budget because it would reduce the number of untraceable guns in New York State."

Part R: "Pass the New York Hate Crime Anti-Terrorism Act"

> "Budget Implications: Enactment of this bill is necessary to implement the FY2021 Executive Budget to ensure that all who commit heinous crimes fueled by hate are prosecuted to the fullest extent of the law."

Part TT: "Nothing to Hide Act – Disclosure of Tax Returns"

> "Budget Implications: Enactment of this bill is necessary to implement the FY2020 Executive Budget."

Your Education, Labor & Family Assistance "Article VII Bill" #S.7506/A.9506

Part E: "Expand Free College Tuition for More Middle-Class Families"

> "Budget Implications: Enactment of this bill is necessary to implement the FY 2021 Executive Budget."

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budget for the 2020-2021 state fiscal year" or "the state health and mental hygiene budget for the 2020-2021 state fiscal year."

Part L: "Legalizing Gestational Surrogacy"

"Budget Implications: Enactment of this bill is necessary to implement the FY2021 Executive Budget."

Your Health and Mental Hygiene "Article VII Bill" #S.7507/A.9507:

Part G: "Prescription Drug Pricing and Accountability Board"

"Budget Implications: Enactment of this bill is necessary to implement the 2020 State of the State Initiative and carries no Budgetary Impact for the FY 2021 Executive Budget."

Part M: "Combatting Opioid Addiction by Banning Fentanyl Analogs"

"Budget Implications: Enactment of this bill is necessary to implement the FY 2021 Executive Budget and will not result in a fiscal impact in FY 2021 or FY 2022 as any costs will be supported within existing resources."

Part Q: "Implementing Various Tobacco Control Policies"

"Budget Implications: Enactment of this bill is necessary to implement the FY2021 Executive Budget and results in a reduction in vapor tax revenue of $25 million in Fiscal Year 2021 and $33 million in Fiscal Year 2022."

Your Transportation, Economic Development and Environmental Conservation "Article VII Bill" #S.7508/A.9508:

Part P: "Sex Subway Offender Ban"

"Budget Implications: Enactment of this bill is necessary to implement the FY 2021 Executive Budget because it will protect subway riders and employees as they use the MTA system."

Part U: "Add 'E Pluribus Unim' to the Arms of the State"

"Budget Implications: Enactment of this bill is necessary to implement the FY2021 Executive Budget as it provides for the implementation of changes to the Arms of the State."

Part WW: "Amending the Environmental Conservation Law Relating to Ban Fracking"

> "Budget Implications: Enactment of this bill is necessary to implement the FY21 Executive Budget as it aligns with the Governor's environmental priorities."

Part EEE: "Make Permanent the New York Buy America Act"

> "Budget Implications: Enactment of this bill is necessary to implement the FY 2021 Executive Budget because it ensures that certain surface roads and bridges are constructed with American made iron and steel."

Your attempt to distinguish these bills from your "Appropriations Bills by calling them "Article VII Bills" is a fraud as to constitutionality. The only bills that Article VII authorizes, apart from "appropriation bills", are those for raising taxes and revenues, which six of your seven "Article VII Bills" are plainly not and do not purport to be.

More accurately, the name for these bills, whose multitude of parts seek to amend and enact general law, is "non-appropriation bills" – and the unconstitutionality of such bills was the Court of Appeals' duty to have declared by its 2004 decision in *Pataki v. Assembly/Silver v. Pataki*, based on its own unequivocal caselaw identifying that practices not authorized by the Constitution and unbalancing it are unconstitutional – including caselaw from the tenure of Chief Judge Kaye, *King v. Cuomo*, 81 N.Y.2d 247 (1993) and *Campaign for Fiscal Equity, Inc. v. Marino*, 87 N.Y.2d 235 (1995). Indeed, the Court's knowledge that such declaration of unconstitutionality was its duty is the ONLY explanation for what its 2004 decision did instead: conceal what the first footnote of its 2001 decision in *Silver v. Pataki* had identified in its first sentence: "The term 'non-appropriation' bill is not found in the Constitution", 96 N.Y.2d 532, 535[11] – a footnote which itself concealed the

[11] In fact, the first footnote of Chief Judge Kaye's dissent (at p. 103) went beyond concealment to misrepresentation. Quoting the first footnote of the Court's 2001 *Silver v. Pataki* decision for its description of the content of a "non-appropriation bill", she sheared off its prefatory sentence "The term 'non-appropriation' bill is not found in the Constitution". In its place, she substituted the assertion that a "nonappropriation bill…may also be part of the Governor's budget submission to the Legislature", impliedly accepting constitutionality of what she knew, from *King v. Cuomo*, and *Campaign for Fiscal Equity*, *supra*, to be unconstitutional. Her dissenting opinion, whose section III was entitled "Distortion of the Constitutional Scheme" (at pp. 113-120), went on to refer to "nonappropriation bills" at least 16 times.

By contrast, Judge Smith's plurality opinion virtually hid the term "non-appropriation bill", referring to it, by that name, only once (at p. 85), offering up no definition for it, and utilizing such other terms as "other legislation" (at pp. 85, 91, 98), "other budget legislation" (at pp. 87, 91, 97 98, 99), "certain of the other bills" (at p. 87), "other proposed legislation" (at p. 87), or even more obliquely as "a bill" "subsequent enactment", "subsequent actions", "legislation" (at p. 86), "subsequent legislation" (at p. 89); "separate legislation" (at p. 94).

Judge Rosenblatt's concurrence made no reference to "non-appropriation bills", referring only to "appropriation bills".

constitution-violating purpose of non-appropriation bills, identified by the 2000 Appellate Division decision in *Silver v. Pataki* that was before it:

> "According to the Speaker, the present dispute arises from the Legislature's response to *New York State Bankers Assn. v. Wetzler*, [81 N.Y.2d 98 (1993)], whereby, to preserve the legislators' desire to enact amendments to the Governor's budget bill [restricted by Article VII, §4], an 'appropriations' budget bill and a complementary 'programmatic' budget bill have been enacted in recent years as part of the annual budget process. …there is no apparent legal warrant for such budget bifurcation… (*Silver v. Pataki*, 274 A.D.2d 57, 59, underlining added).

By concealing the patent unconstitutionality of non-appropriation bills, by failing to give competent textual analysis to Article VII, §§2, 3, and by ignoring the parties' brazen violation of the rolling-budget provision of §4 and their substitution of "three-men-in-a-room" global deal-making on the entire budget[12] involving the very "log-rolling" and "pork barrel" practices the 1927 executive budget constitutional amendment was intended to prevent,[13] the Court upheld the constitutionality of Governor Pataki's FY2001-2002 appropriation bills, challenged in *Pataki v. Assembly*.[14] As such, the 2004 decision is NO authority upon which you can rely to sustain the constitutionality of your non-revenue "Article VII Bills". Indeed, had those bills been "Appropriations Bills", which by virtue of their content they could not be, each would have to be struck down as unconstitutional. As stated by Judge Smith:

> "Today we do not reject, but we also do not endorse, the Governor's argument that no judicial remedy is available (where the anti-rider clause does not apply) for gubernatorial misuse of appropriation bills…
>
> When a case comes to us in which it appears that a Governor has attempted to use appropriation bills for essentially nonbudgetary purposes, we may have to decide whether to enforce limits on the Governor's power in designing 'appropriation

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[12] *See, inter alia, Silver v. Pataki*, 179 Misc.2d 315,316 (NY Supreme Court, Jan. 1999): "When the Governor and legislative leaders failed to come to an agreement on an over-all budget…", *also*, *Pataki v. Assembly*,190 Misc. 2d 716, 728 (Albany Supreme Court, Jan. 2002).

[13] *See*, Judge Smith's plurality opinion (at pp. 81-82), citing "Report of Comm on State Finances, Revenues and Expenditures, Relative to a Budget System for the State, State of New York in Convention Doc No. 32, at 8 [Aug. 4, 1915]"; *also*, Chief Judge Kaye's dissenting opinion (at p. 106).

[14] It appears that when you became governor – and beginning with your first budget for FY2011-2012 – you reorganized and renamed budget bills. Your changes decreased comprehensibility of the budget – and obscured that your non-appropriation bills were increasingly making policy changes untethered to appropriations. Your instant non-appropriation bills manifest this – and, so much so that their content bears little resemblance to the supposed content of non-appropriation bills recited in footnote 1 of the Court's 2001 decision in *Silver v. Pataki*, thereafter quoted in footnote 1 of Chief Judge Kaye's 2004 dissent in *Pataki v. Assembly/Silver v. Pataki*.

> bills'… We conclude however, that we confront no such problem here, for there is nothing in the appropriation bills before us that is essentially nonbudgetary. All of the appropriation bills that the Legislature challenges are, on their face, true fiscal measures, designed to allocate the State's resources in the way the Governor thinks most productive and efficient; none of them appears to be a device for achieving collateral ends under the guise of budgeting.
>
> … 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 appropriations bills." (underlining added).

Indeed, exhibited by your misnomered, non-revenue "Article VII Bills" are all the features of unconstitutionality that Judge Rosenblatt's concurring opinion delineated to guide future governors, like yourself, and the Legislature. His guidance was as follows (at pp. 100-103):

> "To begin with, anything that is more than incidentally legislative should not appear in an appropriation bill, as it impermissibly trenches on the Legislature's role. The factors we consider in deciding whether an appropriation is impermissibly legislative include the effect on substantive law, the durational impact of the provision, and the history and custom of the budgetary process.
>
> In determining whether a budget item is or is not essentially an appropriation, one must look first to its effects on substantive law. The more an appropriation actively alters or impairs the State's statutes and decisional law, the more it is outside the Governor's budgetary domain. A particular 'red flag' would be non-pecuniary conditions attached to appropriations.
>
> History and custom also count in evaluating whether a Governor's budget bill exceeds the scope of executive budgeting. The farther a Governor departs from the pattern set by prior executives, the resulting budget actions become increasingly suspect. I agree that customary usage does not establish an immutable model of appropriation (*see* plurality op at 98). At the same time, it would be wrong to ignore more than 70 years of executive budgets that basically consist of line items.
>
> The more an executive budget strays from the familiar line-item format, the more likely it is to be unauthorized, nonbudgetary legislation. As an item exceeds a simple identification of a sum of money along with a brief statement of purpose and a recipient, it takes on a more legislative character. Although the degree of specificity the Governor uses in describing an appropriation is within executive discretion (*see People v Tremaine*, 281 N.Y. 1, 21 N.E.2d 891 [1939]), when the specifics transform an appropriation into proposals for programs, they poach on powers reserved for the Legislature.
>
> In addition, the more a provision affects the structure or organization of government, the more it intrudes on the Legislature's realm. The executive budget amendment contemplates funding – but not organizing or reorganizing – state programs, agencies and departments through the Governor's appropriation bills.

> The durational consequences of a provision should also be taken into account. As budget provisions begin to cast shadows beyond the two-year budget cycle, they look more like nonbudget legislation. The longer a budget item's potential lifespan, the more legislative is its nature. Similarly, the more a provision's effects tend to survive the budget cycle, the more it usurps the legislative function."

And, of course, it is an absolute no-brainer that the many parts of your "Article VII Bills" that are unconnected to any specific appropriations in your "Appropriations Bills" are unconstitutional riders, violative of Article VII, §6[15]. This includes, for example, adding "E Pluribus Unim" to the state seal, which you stated would be "at no cost to the state", because it would be added to subsequent printings of stationary and the like. Your accompanying slide featured, in capital letters, "NO BUDGET IMPACT". (VIDEO, at 22 mins). Certainly, it is not without significance that your "Memorand[a] in Support" of your "Article VII Bills" do not cross-reference the relevant appropriations of your "Appropriations Bills".

Needless to say, you could have constitutionally presented the Legislature with all the nonfiscal policy measures of your misnomered "Article VII Bills", but to do so, you needed Senate and Assembly members to introduce them, on your behalf. I have already explained to you "How a Bill Becomes a Law" by an August 21, 2013 letter, which I hand-delivered to your second floor office at the Capitol. A copy of that significant letter, entitled "Achieving BOTH a Properly Functioning Legislature & Your Public Trust Act (Program Bill #3) – the *Sine Qua Non* for 'Government Working' & 'Working for the People'", to which I received no response from you, is annexed.

By copy of this letter to Budget Director Robert Mujica, Esq., to the Legislative Bill Drafting Commission, and to the 15 Senate and Assembly Members filling leadership positions, whose stipends were preserved by the December 10, 2018 report of the Committee on Legislative and Executive Compensation, I call on them, as I do you, to respond to the foregoing, and to take remedial steps consistent with your respective constitutional, statutory, and ethical duties. This includes securing long-overdue scholarship of the Court of Appeals' 2004 decision in *Pataki v. Assembly/Silver v. Pataki*, as the foregoing analysis, deconstructing it, appears to be FIRST to date. More on that to follow.

Thank you.

Enclosure
cc: see next page

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[15] In pertinent part, Article VII, §6 states:

> "…No provision shall be embraced in any appropriation bill submitted by the governor or in such supplemental appropriation bill unless it relates specifically to some particular appropriation in the bill, and any such provision shall be limited in its operation to such appropriation."

cc: Budget Director Robert Mujica, Esq.
Legislative Bill Drafting Commission
15 Stipend-Benefitting Legislative Leaders
Senate Majority Leader Andrea Stewart-Cousins
Assembly Speaker Carl Heastie
Senate Minority Leader John Flanagan, Esq.
Assembly Minority Leader William Barclay, Esq.
Deputy Senate Majority Leader Michael Gianaris, Esq.
Deputy Senate Minority Leader Joseph Griffo
Assembly Majority Leader Crystal Peoples-Stokes
Assembly Speaker *Pro Tempore* Jeffrion Aubry
Assembly Minority Leader *Pro Tempore* Andrew Goodell, Esq.
Senate Finance Committee Chair Liz Krueger
Senate Finance Committee Ranking Member James Seward
Assembly Ways and Means Committee Chair Helene Weinstein, Esq.
Assembly Ways and Means Ranking Member Edward Ra, Esq.
Assembly Codes Committee Chair Joseph Lentol, Esq.
Assembly Codes Committee Ranking Member Angelo Morinello, Esq.

Ex. A-5 to Verified Petition: March 18, 2020 letter to Governor Cuomo [R.132-154]

CENTER *for* JUDICIAL ACCOUNTABILITY, INC.*

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Website: www.judgewatch.org

BY HAND

August 21, 2013

TO: Governor Andrew M. Cuomo

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

RE: Achieving BOTH a Properly Functioning Legislature & Your Public Trust Act
(Program Bill #3) – the *Sine Qua Non* for "Government Working"
& "Working for the People"

We applaud your establishment of the Commission to Investigate Public Corruption. However, the purposes you've conferred upon the Commission are actually duties of a properly-functioning legislature, discharging its oversight and law-making functions.

Indeed, those purposes:

> "a. Investigate the management and affairs of the State Board of Elections…
>
> b. Investigate weaknesses in existing laws, regulations and procedures relating to the regulation of lobbying…and make recommendations to reform any weaknesses uncovered in existing State laws, regulations and procedures; and
>
> c. Investigate weaknesses in existing laws, regulations and procedures relating to addressing public corruption, conflicts of interest, and ethics in State Government…and make recommendations to reform any weaknesses uncovered in existing State laws, regulations and procedures." (July 2, 2013 Executive Order #106, Sec. II)

are oversight responsibilities of a large number of committees of the New York Legislature. For example:

- the Senate Committee on Elections
- the Assembly Elections Law Committee
- the Senate Committee on Investigations and Government Operations
- the Assembly Committee on Oversight, Analysis and Investigation

- the Assembly Committee on Government Operations
- the Senate Committee on Codes
- the Assembly Committee on Codes
- the Senate Committee on Civil Service and Pensions
- the Senate Ethics Committee
- the Assembly Committee on Ethics and Guidance
- the Administrative Regulations Review Commission
- the Legislative Commission on Government Administration.

To that end, the Legislative Law gives legislative committees subpoena power and the ability to appoint subcommittees and commissions for the taking of testimony. And one of the functions of the Assembly Committee on Oversight, Analysis and Investigation is acting "as a resource to other Assembly standing committees, lawmakers and staff" by furnishing "technical assistance and guidance" for oversight. According to its 2012 Annual Report, it provides "each lawmaker" with "*A Guide to Legislative Oversight*". In the event you are unfamiliar with this extraordinary 24-page guide, detailing the importance of oversight as an essential component to proper law-making, a copy is enclosed.[1]

Consequently, would you not agree that high on the agenda of the Commission to Investigate Public Corruption should be the question as to what, for example, the Assembly Election Law Committee and the Senate Committee on Elections have been doing all these years in overseeing the Board of Elections and in revising and enacting pertinent laws, especially as Senate and Assembly rules explicitly require committees to engage in "oversight", "studies", "investigations", and "analysis"[2]

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[1] The "*Guide to Legislative Oversight*" and all other documentary substantiation identified herein are posted on a webpage for this letter on our website, www.judgewatch.org. The webpage is accessible from our "Latest News" top panel, *via* the hyperlink "THE PEOPLE LEAD: Securing Introduction & Passage of the Public Trust Act & a Constitutionally Functioning Legislature" Here's the direct link:. http://www.judgewatch.org/web-pages/people-lead/aug-21-2013-ltr-to-gov.htm.

[2] See, Current Senate Rule VIII "Standing Committees":

> Sec. 4: "c. Committee oversight function. Each standing committee is required to conduct oversight of the administration of laws and programs by agencies within its jurisdiction.
>
> d. Each standing committee is required to file with the secretary of the senate an annual report, detailing its legislative and oversight activities. Such report shall be posted to the Senate web site." (underlining added).

See, Current Assembly Rule IV "Committees":

> Sec. 1: "d. …Each standing committee shall propose legislative action and conduct such studies and investigations as may relate to matter within their jurisdiction. Each standing committee shall, furthermore, devote substantial efforts to the oversight and analysis of the activities, including but not limited to the implementation and

The Commission will not have far to look for the answer. It was furnished, nearly a decade ago, by the Brennan Center for Justice in its landmark 2004 report "*The New York State Legislative Process: An Evaluation and Blueprint for Reform*". Surely you are familiar with the report as its lead author was Jeremy Creelan, who you appointed as your "Special Counsel for Public Integrity and Ethics Reform" even before you were sworn in as Governor in January 2011. The report opened with an Executive Summary whose first words were "New York's legislative process is broken". It then identified "Problem #1" as "DYSFUNCTIONAL LEGISLATIVE COMMITTEES", stating:

> "In most modern legislatures, committees 'are the locus of most legislative activity.'[fn]. Committees have two principle functions: first, to enable legislators to develop, examine, solicit public and expert feedback upon, and improve bills in a specific area of expertise and to convey the results of their work to the full chamber; and second, to oversee certain administrative agencies to ensure that they fulfill their statutory mandates. New York's committee system generally does not serve either of these functions."

The report chronicled that New York's Legislature was the most dysfunctional of any state legislature and Congress – and sparked a fledgling reform movement among legislators and some legislative rules changes. Among these, a 2005 revision of Assembly Rules to require all standing committees to conduct annual oversight hearings of the performance of agencies and programs within their jurisdictions. This spurred the Assembly Committee on Oversight, Analysis and Investigation to update its "*Guide to Legislative Oversight*".

Yet, ultimately, little substantively changed – and this was the subject of two subsequent Brennan Center reports bearing titles reflecting that reality:

- "*Unfinished Business: New York State Legislative Reform*" (2006); and
- "*Still Broken: New York State Legislative Reform*" (2008)[3].

> administration of programs, of departments, agencies, divisions, authorities, boards, commissions, public benefit corporations and other entities within its jurisdiction."
>
> Sec. 4: "b. Consistent with the provisions of subdivision d of section one of Rule IV hereof, the chairperson of each standing committee shall call at least one public hearing after the adoption of the state budget regarding the implementation and administration of programs of departments, agencies, divisions, authorities, boards, commissions, public benefit corporations and other entities within the jurisdiction of such committee. The purpose of such public hearing shall include, but not be limited to, the impact, if any, of the state budget on the implementation and administration of the programs within such entities' jurisdiction." (underlining added).

[3] According to the Brennan Center's 2008 report, "In 2006 and 2007, most standing committees met infrequently or not at all. Almost no oversight hearings or hearings on major legislation occurred." (at p. 1).

The report noted that even with the 2005 Assembly rule requiring oversight, Assembly committees had made "no real effort to fulfill that responsibility". It identified that "the Assembly Oversight and Analysis

All three reports detailed that the reason for the dysfunction and brokenness of the Legislature was its partisan rules, vesting domineering powers in the Senate Majority Leader and Assembly Speaker, rendering the committee system moribund and eviscerating a legitimate legislative process. Yet, the solution was *readily at hand*. Amendment of Senate and Assembly rules, which Senators and Assembly members could do at any time. And every two years, there was a ready-made opportunity, as the first order of business of every newly-elected Senate and Assembly was to vote on rules.

Ironically, just as the criminal charges against Senator Malcolm Smith, announced by U.S. Attorney Preet Bharara on April 2, 2013, started the chain of events that led to your establishing the Commission to Investigate Public Corruption, so it was Senator Smith's election as Senate Majority Leader by his Senate colleagues, in January 2009, on a pledge to advance Senate rules reform, that led to the beginnings of a functioning Legislature.[4] The fulfillment of that potential lay in the Temporary Senate Committee on Rules and Administration Reform, established by Senator Smith on his first day as Majority Leader by a resolution he introduced and the Senate approved. His words at that time deserve to be recalled:

Committee, with a very specific mandate, ha[d] not held a meeting of its members in years"; had "recently held its first hearing in 18 months", but, even still, its chairs had collected annual stipends of $12,500. (at p. 6).

On the Senate side, it noted that "over the past three years, the *only* oversight pursued by the Senate Committee on Investigations and Government Operations – wh[ich] has overlapping jurisdiction in the Senate – was the so-called 'Troopergate' scandal." (italics in original, at p. 7).

It also furnished a case study entitled "Oversight Nowhere in Sight" involving the Board of Elections and New York's non-compliance with the federal "Help America Vote Act of 2002" (HAVA), where what was at stake was $230 million in funding and violations so egregious as to result in a Justice Department lawsuit against the state. As to the absence of legislative oversight, it stated:

> "At least four committees in the state legislature have jurisdiction over election issues, most directly the Election Law Committee in the Assembly and the Elections Committee in the Senate, in addition to the oversight committees in both houses. These four committees have been silent on the state's failure to comply with federal election law. None of these committees have held a single hearing devoted to State Board of Elections oversight or HAVA compliance since the Department of Justice lawsuit, failing to assist in formulating a plan to move forward or to investigate compliance delays.
>
> By contrast, the New York City Council has held a number of hearings related to the State Board's failure to comply with HAVA..." (at p. 8).

[4] Under his leadership, the Senate Judiciary Committee, chaired by Senator John Sampson, held oversight hearings on the Commission on Judicial Conduct, for the first time in 22 years, combining these with hearings on the court-controlled attorney disciplinary system, which, upon information and belief, had never been the subject of public hearings since its inception 29 years earlier. Chairman Sampson also held oversight hearings on the 31-year old "merit selection" process to the New York Court of Appeals, as to which, upon information and belief, there also had never been oversight hearings. Nevertheless, and in the face of testimonial and documentary evidence presented and proffered at these 2009 oversight hearings of systemic corruption, no investigation was ever undertaken, no findings of fact and conclusions of law were ever made, and no committee reports ever rendered.

> "We have said that one of our first orders of business is to reform the Rules of the Senate to give members meaningful deliberation of legislation and to foster bi-partisan agreement on matters of public interest. Today, we are making good on that promise.
>
> This morning we created a new committee on rules and administration – a bi-partisan commission – to review the full Senate Rules and adopt a process for greater transparency that allows greater public input into our legislative process, as well as provides for greater authority for individual members....
>
> Imagine a fully functioning legislature where Senate committees function like real committees, where members debate and even amend bills in the committee, where members of the Majority and Minority introduce bills onto the floor for a vote, and those votes are recorded. And, where budget conference committees and individual members are able to negotiate final bills with their Assembly counterparts." (underlining added).

The extraordinary potential of the Temporary Senate Committee on Rules and Administration Reform was crushed in the aftermath of the June 8, 2009 Senate coup, which encompassed a struggle over rules reform. In its brief life, however, the Temporary Committee held four public hearings, in Syracuse, Albany, Manhattan, and Long Island, at which it took testimony from 51 witnesses – including three Brennan Center witnesses, Mr. Creelan among them. The testimony was as shocking as the Brennan Center reports. Former Senators Nancy Larraine Hoffman, Franz Leichter, and Seymour Lachman spoke candidly and scathingly – the latter two at the February 26, 2009 hearing in Manhattan at which Mr. Creeland testified. In pertinent part, former Senator Leichter said:

> "The rules changes required for a properly functioning process are not unknown, complex or difficult to implement. They have been identified in reports, recommendations and the proposals of a few legislators. I want to focus on what my experience has shown is a major problem – the AUTOCRATIC power invested in the leader of each House.
>
> The power of the Speaker and the Majority Leader is so vast that they control all aspects of how the Legislature functions. They appoint committee chairs, members' committee assignments, determine what bills are brought to the floor for a vote, decide who gets additional pay – lulus –, award staff allowances, make office assignments and equipment, authorize use of facilities, allocate member items – that is earmarks –, authorize mailings, and so on. They also control the Legislative Budget, which is not itemized as are the Executive and Judicial Budgets, and its opaqueness allows the shifting of monies at the leaders' whim. In addition, the State's porous campaign finance laws allow them to raise millions in contributions which they can fairly easily transfer to legislators who are in competitive election districts – but only if they have followed the Leaders' dictates. The leaders' domination over the process is absolute.

> The remaining 210 legislators are basically reduced to supernumeraries. They are like the spear carriers in Aida. They fill the stage but their voices are not heard. I once proposed – only partly in jest – that the State might save money by having just one Assembly member and one Senator. I may be drawing the picture very starkly but essentially I am correct. The 'three men in a room', the end of session avalanche of bills, the failure to address pressing economic and social issues, the refusal to bring to the floor bills most members support, the marginalization of the minority in each House all flow from the leaders' outsized power." (pp. 1-2 of written testimony, read at the hearing, capitalization in original, underlining added).

This abomination was then summed up by former Senator Seymour Lachman, in a single sentence:

> "...To say that the only vote that matters, the only one that counts, is the vote for leader is only a slight exaggeration." (p. 1 of written testimony, read at the hearing).

These four public hearings were followed by four public meetings at which the nine-member Commission – its co-chairs Senators David Valesky and John Bonacic and its members, Senators Joseph Griffo, Jeffrey Klein, Kevin Parker, Jose Serrano, Andrea Stewart-Cousins, Daniel Squadron, and former Senator George Winner, Jr. – discussed and deliberated over rule changes to empower Senators and committees so that bills introduced would go through a robust legislative process of committee deliberations, public hearings, mark-ups for amendments, votes – all reflected in substantive committee reports – followed by Senate and Assembly floor debate, amendments, and votes, with conference committees to reconcile divergent versions of the bills passed by each house.

How surprising it then was that upon your becoming Governor, on a platform that pledged to "clean up Albany" and end the "dysfunction" and "mess", and hiring Mr. Creelan to give you an assist, you did not seek to break the stranglehold of domination wielded by the Senate Majority Leader and Assembly Speaker or to use your "bully pulpit" to champion Senate and Assembly rules reform. Instead, you reverted to behind-closed-doors "three men-in-a-room" deal-making governance, which this year was expanded to four men by the inclusion of Senator Klein, itself shocking when one considers his participation as a member of the Temporary Senate Committee on Rules and Administration Reform.

Underscoring your own shocking disregard of legitimate legislative process in favor of brokered deals with legislative leaders, then sped through the Legislature for rubber-stamp approval, was what you said at a press conference on April 16, 2013. Having announced the Public Trust Act five days earlier with great particularity as to its provisions, you answered press inquiries about your talks with leaders by saying they were going "swimmingly" (at 10:20 mins.) and that your failure to "release" bill language was because:

> "Normally when we release bill language before an agreement, it means the probability of that bill passing is very, very low." (at 10:55 mins.) [5]

You then tried to back away from this, the next day, on The Capitol Pressroom:

> "You have a little fun and then they take it seriously. Some bills are for press releases, and some are good faith proposals, and some are just posturing. And that was the point I was trying to make".[6]

It was more than a week later that you finally released the Public Trust Act, your Program Bill #3, delivering it to the Senate and Assembly. Was it a "good faith proposal" or "just posturing"? What did you think would happen to it at that point? Were you unaware that Assembly Speaker Silver and Majority Coalition Leaders Skelos and Klein, with whom you were then and thereafter negotiating behind-closed-doors, were not themselves sponsoring the Public Trust Act nor furnishing it to rank-and-file legislators for sponsorship, with the consequence that it was never introduced because it had no sponsors?

And when you publicly berated the Legislature for failing to act – explaining that this was the reason you were creating the Commission to Investigate Public Corruption – did you not know that Assembly Speaker Silver and Majority Coalition Leaders Skelos and Klein were also withholding from rank-and-file legislators your Program Bills #4, #5, and #12, which you had rhetorically joined with Program Bill #3 as your corruption-fighting package, such that all four program bills had no sponsors and were never introduced?

To read the Public Trust Act – not to mention its accompanying memorandum and the June 11, 2013 letter of all 62 of this state's district attorneys, Republican and Democratic, urging its passage – and to watch your April 9, 2013 and June 11, 2013 press conferences on the subject – is to know:

- that if any legislation could halt public corruption, it was this;
- that had it been introduced, no legislator, including Assembly Speaker Silver and Majority Coalition Leaders Skelos and Klein could have opposed it, and certainly not publicly; and
- that, if accorded legitimate legislative process, it would have passed overwhelmingly, if not unanimously.

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[5] April 16, 2013 press conference, video clip in "*Cuomo won't give AG election enforcement powers*", Capitol Confidential, Jimmy Vielkind).

[6] April 17, 2013, Capitol Pressroom, Susan Arbetter; *Also*, April 25, 2013, "*Where's the bills?*", Capitol Report, Curtis Schick.

As you publicly encourage citizens to actively participate in their government, because that is how government and democracy work best[7], you will be pleased to know that we have taken steps, *on your behalf*, to have the Public Trust Act introduced by our Senator, Senator George Latimer, and by our Assembly member, Assemblyman David Buchwald, consistent with the Senate and Assembly informational guides, "*How a Bill Becomes a Law*" and "*The Legislative Process and YOU*", which instruct that if you have an idea for legislation, all you have to do is contact your legislator.

Our idea was to have Senator Latimer and Assemblyman Buchwald introduce the Public Trust Act and to takes steps to ensure that it has the kind of legitimate legislative process that is reflected by those guides and detailed by the Brennan Center reports, with discussion in committee, public hearings, amendments, votes – all embodied in substantive committee reports – followed by Senate and Assembly floor debate, amendments, votes – and a reconciliation of different bills through a conference committee. A copy of our August 13, 2013 letter to Senator Latimer and Assemblyman Buchwald, setting this forth, is enclosed.

As therein stated, we call upon you to actively endorse our efforts to achieve passage of the Public Trust Act in this fashion. Will you do this? And will you ask your Senator and your Assemblyman to sponsor the Public Trust Act, consistent with "*How a Bill Becomes a Law*" and "*The Legislative Process and YOU*"?

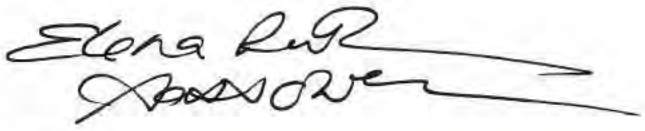
You will be pleased to know that Assemblyman Buchwald is not just our Assemblyman, but yours – and that he is ready to sponsor the Public Trust Act. However, he would like your go-ahead. Will you give it to him?

As for your Senator, he is Senator Greg Ball. Enclosed is a copy of the "*How a Bill Becomes a Law*" guide that Senator Ball furnishes to constituents, like you. Will you request him to join with our Senator Latimer as a co-sponsor of the Public Trust Act, as our August 13, 2013 letter proposes?

You have the state's biggest "bully pulpit". You can easily achieve enactment of the Public Trust – and do it in a way that models what is necessary if we are to truly get "government working" and "working for the People": a properly functioning Legislature, such as we do not have.

We look forward to your speedy, affirmative response.

Thank you.



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7 Your website, CitizenConnects: http://www.governor.ny.gov/citizenconnects/:

"Governor Cuomo believes that government works when the voice of the people rings strong and true. Democracy works best when people are most engaged. It's your government: own it! ...Governor Cuomo encourages you to make your voice heard!"

Enclosures: (1) "*A Guide to Legislative Oversight*"
(2) CJA's August 13, 2013 letter to Senator Latimer & Assemblyman Buchwald with its enclosures "*How a Bill Becomes a Law*"; "*The Legislative Process & YOU*"; and "*There Ought To Be A Law*"
(3) Senator Ball's imprinted guide "*How a Bill Becomes a Law*"

cc: Senator George Latimer
Assemblyman David Buchwald
Senator Greg Ball
The Public & The Press

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

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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,

Index #: 904235-22

Petitioners/Plaintiffs,

CPLR §2214(c) NOTICE of Papers to be Furnished to the Court

-against-

NEW YORK STATE JOINT COMMISSION ON PUBLIC ETHICS,
LEGISLATIVE ETHICS COMMISSION,
NEW YORK STATE INSPECTOR GENERAL,

KATHY HOCHUL, in her official capacity as
GOVERNOR OF THE STATE OF NEW YORK,

ANDREA STEWART-COUSINS, in her official capacity as
TEMPORARY SENATE PRESIDENT, & the NEW YORK STATE SENATE,

CARL HEASTIE, in his official capacity as
ASSEMBLY SPEAKER, & the NEW YORK STATE ASSEMBLY,

LETITIA JAMES, in her official capacity as
ATTORNEY GENERAL OF THE STATE OF NEW YORK,

THOMAS DiNAPOLI, in his official capacity as
COMPTROLLER OF THE STATE OF NEW YORK,

Respondents/Defendants.

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S I R S:

PLEASE TAKE NOTICE that upon the hearing of petitioners/plaintiffs' June 23, 2022 notice of petition for a TRO, preliminary injunction, transfer/removal to federal court, mandamus, declaratory & other relief in the above-entitled Article 78 proceeding/declaratory judgment action/citizen taxpayer action, you are hereby given notice, pursuant to CPLR §2214(c), to furnish:

(1) all records of **findings of fact and conclusions of law** made with respect to petitioners' March 18, 2020 letter to then Governor Cuomo (Ex A-5 to petition), simultaneously furnished to the Legislature and Budget Director Mujica – identified at ¶82 of the June 6, 2022 verified petition as "the starting point for the declaration that Part QQ [of Education, Labor, Housing and Family Assistance Budget Bill #S.8006-C/A.9006-C – the 'ethics commission reform act of 2022'] was unconstitutionally enacted";

(2) all records of **findings of fact and conclusions of law** made with respect to petitioners' January 22, 2022 written statement in support of oral testimony (Exhibit A-2 to petition), January 25, 2022 written oral testimony (Exhibit A-3 to petition), and March 25, 2022 e-mail to 41 legislators – including to Temporary Senate President Stewart-Cousins and Assembly Speaker Heastie (Exhibit A-4 to petition) – identifying petitioners' March 18, 2020 letter and specifying other constitutional, statutory, and legislative rule violations pertaining to the FY2022-23 state budget;

(3) all records of **discussions** of the aforesaid March 18, 2020 letter (Ex A-5 to petition), January 22, 2022 written statement in support of oral testimony (Exhibit A-2 to petition), January 25, 2022 written oral testimony (Exhibit A-3 to petition), and March 25, 2022 e-mail to 41 legislators Heastie (Exhibit A-4 to petition): (a) in any legislative committee meetings; (b) in any of the closed-door Senate and Assembly majority and minority party conferences;

(4) certified paper copies or electronic copies of Governor Hochul's "FY2023 Executive Budget Legislation", such as posted on her Division of the Budget website, consisting of:

(i) the Governor's five "FY 2023 Appropriations Bills", introduced on January 18, 2022:

- State Operations Bill #S.8000/A.9000
- Legislature and Judiciary Bill #S.8001/A.9001
- State Debt Service Bill #S.8002/A.9002
- Aid to Localities Bill #S.8003/A.9003
- Capital Projects Bill #S.8004/A.9004

(ii) the Governor's five "FY Article VII Bills", posted as draft bills, requiring Senate & Assembly sponsors

- Education, Labor and Family Assistance (ELFA) Bill & Memorandum in Support
- Health and Mental Hygiene (HMH) Bill & Memorandum in Support
- Public Protection and General Government (PPGG) Bill & Memorandum in Support

- Transportation, Economic Development and Environmental Conservation (TED) Bill & Memorandum in Support

- Revenue (REV) Bill & Memorandum in Support

(iii) the Governor's "Freestanding Article VII Legislation", posted as draft resolutions, requiring Senate & Assembly sponsors:

- Private Sector Employment for Incarcerated Individuals Continuing Resolution & Memorandum in Support

- Two-Year Term Limits on Statewide Elected Officials & Memorandum in Support

(iv) the Governor's "30-Day Amendments" – consisting of a "Narrative" and "Amendments" for each bill except for two "appropriations bills": Legislative/Judiciary and Debt Service;

(5) certified paper copies or electronic copies from the Senate and Assembly websites of Governor Hochul's "FY2023 Executive Budget Legislation", reflecting the history of each bill from introduction through passage:

"APPROPRIATIONS BILLS"

State Operations Budget Bill
S.8000 – Senate webpage
A.9000 – Senate webpage A.9000 – Assembly webpage

Legislative/Judiciary Budget Bill
S.8001 – Senate webpage
A.9001 – Senate webpage A.9001 – Assembly webpage

State Debt Budget Bill
S.8002 – Senate webpage
A.9002 – Senate webpage A.9002 – Assembly webpage

Aid to Localities Budget Bill
S.8003 – Senate webpage
A.9003 – Senate webpage A.9003 – Assembly webpage

Capital Projects Budget Bill
S.8004 – Senate webpage
A.9004 – Senate webpage A.9004 – Assembly webpage

"ARTICLE VII BILLS"

Public Protection & General Government Budget Bill
S.8005 – Senate webpage
A.9005 – Senate webpage A.9005 – Assembly webpage

Education, Labor, Housing & Family Assistance Budget Bill
S.8006 – Senate webpage
A.9006 – Senate webpage A.9006 – Assembly webpage

Health & Mental Hygiene Budget Bill
S.8007 – Senate webpage
A.9007 – Senate webpage A.9007 – Assembly webpage

Transportation, Economic Development, & Environmental Conservation Budget Bill
S.8008 – Senate webpage
A.9008 – Senate webpage A-9008 – Assembly webpage

Revenue Budget Bill
S.8009 – Senate webpage
A.9009 – Senate webpage A.9009 – Assembly webpage

(6) **all records reflecting how Governor Hochul's five so-called "FY 2023 Article VII Bills", requiring Senate and Assembly sponsors – and so-posted on her Division of the Budget webpage of her "FY2023 Executive Budget Legislation" as proposed bills, with supporting memoranda – became actual bills purported to have been "submitted by the Governor pursuant to article seven of the Constitution", bearing combined Senate-Assembly bill numbers S.8005/A.9005 to S.8009/A.9009 and a January 19, 2022 date of introduction**;[1]

(7) all records pertaining to the formulation of Governor Hochul's Part Z of her "Public Protection and General Government Article VII Legislation" and supporting memorandum, thereafter becoming Part Z of her "Public Protection and General Government" Budget Bill S.8005/A.9005 – including its deviation from the original formulation announced on January 5, 2022 with her "State of the State" address as creating an ethics commission to replace JCOPE, consisting of "a rotating board of five members made up of the 15 state-accredited law school deans or their designees";

(8) all records reflecting how, following Governor Hochul's 30-day amendments on February 22, 2022, amending three of her appropriation bills (excepting Legislative/Judiciary & Debt Service) and amending all five of her purported "FY 2023 Article VII Bills" – resulting in those eight bills having an "-A" suffix – the Senate and Assembly each "amended" them three weeks later on days when neither house was in session:

[1] Compare the Governor's Division of the Budget webpage of her "FY2023 Executive Budget Legislation" with the Assembly webpage for the "2022-2023 Executive Proposal".

(i) On Saturday, March 12, 2022, when the Assembly "amended" all eight of the Governor's aforesaid bills resulting in Assembly bills each bearing a "-B" suffix;

(ii) On Sunday, March 13, 2022, when the Senate "amended" all eight of the Governor's aforesaid bills resulting in Senate bills each bearing a "-B" suffix;

Specifically, who introduced each of the multitude of changes that produced these "amended" bills? At what committee meetings were they discussed and voted on? How many legislators voted on each of these changes and the ultimate "-B" bills? Who were they – and what were their votes? Why are none of these records posted on the Senate and Assembly websites?

(9) all records reflecting the introducer, discussion, and votes in the Senate of the amendment that eliminated the Part Z "Independent Ethics Reform Act" from S.8005-A/A.9005-A, resulting in an "amended" S.8005-B where Part Z was "intentionally omitted";

(10) all records reflecting the introducer, discussion, and votes in the Assembly of the amendment that eliminated the Part Z "Independent Ethics Reform Act" from S.8005-A/A.9005-A, resulting in an "amended" A.9005-B where Part Z was "intentionally omitted";

(11) a certified paper copy or electronic copy from the Senate's website of Resolution S-2081, introduced by Senate Majority Leader Stewart-Cousins on Sunday, March 13, 2022 – and any records of the time it was introduced and whether referred to any committee;

(12) All records substantiating the text of Senate Resolution S-2081, reading:

"RESOLUTION in response to the 2022-2023 Executive Budget submission (Legislative Bills S.8000-A, S.8001, S.8002, S.8003-A, S.8004-A, S.8005-A, S.8006-A, S.8007-A, S.8008-A, S.8009-A) to be adopted as legislation expressing the position of the New York State Senate relating to the 2022-2023 New York State Budget

WHEREAS, It is the intent of the Senate to effectuate the timely passage of a State Budget; and

WHEREAS, It is the intent of the Senate to engage in the Budget Conference Committee process, which promotes increased participation by the members of the Legislature and the public; and

WHEREAS, Article VII of the New York State Constitution provides the framework under which the New York State Budget is submitted, amended and enacted. The New York State Courts have limited the Legislature in how it may change the appropriations bills submitted by the Governor. The Legislature can delete or reduce items of appropriation contained in the several appropriation bills submitted by the Governor in conjunction with the Executive Budget, and it can add additional items of appropriation to those bills provided that such additions are stated separately and distinctly from the original items of the bill and refer each to a single object or purpose; and

WHEREAS, An extensive study and review of the Governor's 2022-2023Executive Budget submission has revealed that the construction of the budget bills submitted to the Legislature by the Governor constrains the Legislature in its ability to fully effectuate its intent in amending the Governor's budget submission; and

WHEREAS, The Senate has amended the Governor's 2022-2023 Executive Budget submission to the fullest extent possible within the authority provided to it pursuant to Section 4 of Article VII of the New York State Constitution; and

WHEREAS, The Senate, in addition to the Governor's 2022-2023 Executive submission bills as amended by the Senate in the above referenced legislative bills, does hereby provide its recommendations as to provisions in the Governor's 2022-2023 Executive Budget submission which reflect those items the Senate is constrained from effectuating as amendments to the 2022-2023 Executive Budget appended hereto; and

WHEREAS, It is the intent of the Senate that upon the passage of the Governor's 2022-2023 Executive Budget submission as amended by the Senate, the incorporated Report on the Amended Executive Budget may provide a basis for both houses of the Legislature to convene Committees on Conference pursuant to Joint Rule III of the Senate and Assembly for the purpose of reconciling any differences between the amendments to the Governor's budget as proposed by each house of the Legislature; now, therefore, be it

RESOLVED, That the above referenced legislative bills (Legislative Bills S.8000-B, S.8001, S.8002, S.8003-B, S.8004-B, S.8005-B, S.8006-B, S.8007-B, S.8008-B, S.8009-B) be and are incorporated as part of this resolution and are hereby adopted as the New York State Senate's budget proposal for the 2022-2023 New York State Budget.";

(13) all records establishing whether each of the positions/changes identified by the accompanying "REPORT ON THE AMENDED EXECUTIVE BUDGET" was already embodied in the Senate's above "-B" "amended" budget bills;

(14) all records substantiating the assertion in the Senate's "REPORT ON THE AMENDED EXECUTIVE BUDGET", accompanying Temporary Senate President Stewart-Cousins Resolution S-2081:

> "The Senate understands the Governor's responsibility to ensure that New York's budget is fiscally sound, but it is equally important to ensure that the constitutional limits on the Executive's powers are not exceeded. Failure to ensure reasonable limits on Executive authority would signal an irreversible abrogation of the Legislature's constitutionally guaranteed legislative responsibility."

(15) a certified paper copy or electronic copy from the Assembly's website of Resolution A-E00644, introduced by Assembly Speaker Heastie on Saturday, March 12, 2022 – and any records of the time it was introduced and whether referred to any committee;

(16) all records substantiating the text of Assembly Resolution A-E00644, reading:

"in response to the 2022-023 Executive Budget submission (Bill Nos. A.9000-A, A.9001, A.9002, A.9003-A, A.9004-A, A.9005-A, A.9006-A, A.9007-A, A.9008-A, and A.9009-A) to be adopted as legislation expressing the position of the New York State Assembly relating to the 2022-2023 New York State Budget

WHEREAS, Article 7 of the constitution requires the Governor to submit an executive budget containing a plan of expenditures to be made before the close of the ensuing fiscal year and recommendations as to proposed legislation; and

WHEREAS, At the time of submitting the budget to the legislature the Governor is required to submit a bill or bills containing all the proposed appropriations and reappropriations included in the budget and the proposed legislation, if any recommended therein; and

WHEREAS, No provision may be embraced in any appropriation bill submitted by the Governor unless it relates specifically to some particular appropriation in the bill, and any such provision shall be limited in its operation to such appropriation; and

WHEREAS, Upon submission, pursuant to Joint Rule III, the Senate finance committee and the Assembly ways and means committee undertake an analysis and public review of all the provisions of the budget; and

WHEREAS, After study and deliberation, each committee makes recommendations in the form of bills and resolutions as to the contents thereof and such other items of appropriation deemed necessary and desirable for the operation of the government in the ensuing year; and

WHEREAS, All such fiscal committees' recommendations, when arrived at, are then to be placed before the members of the Legislature, individually and collectively, in their respective houses for their consideration and approval; and

WHEREAS, Each house thereupon considers and adopts legislation in bill format expressing its positions on the budget for the ensuing fiscal year; and

WHEREAS, Upon adoption thereof, a Conference Committee on the Budget, authorized by concurrent resolution of the Senate and Assembly pursuant to Joint Rule III, and such subcommittees thereof as may be deemed necessary are appointed by the Speaker of the Assembly and Temporary Preside of the Senate, respectively, will engage in negotiations designed to reach an accord on the contents of the budget for the ensuing fiscal year; and

WHEREAS, In order to commence a Legislative process of budget negotiations designed to reach a timely accord on the contents of the budget for the ensuing fiscal year, it is necessary that budget proposals be adopted by each house of the Legislature; be it now, therefore,

> RESOLVED, That, this resolution, together with the New York State Assembly proposals for Executive budget resubmission contained in Assembly Bill Nos. A.9000-B, A.9001, A.9002, A.9003-B, A.9004-B, A.9005-B, A.9006-B, A.9007-B, A.9008-B, and A.9009-B, which are incorporated as if fully set forth in this resolution, herein constitute the legislation which expresses the budget proposals of the Assembly for the 2022-2023 New York State Budget."

(17) all records pertaining to why the Senate and Assembly did not promulgate the budget schedule, required by their Joint Rule III within 10 days of the Governor's submission of her budget[2] – referred to by both Senate and Assembly resolutions.

(18) the joint certificate establishing the Joint Budget Conference Committee, referred to by Assembly Speaker Heastie at the first and only meeting of the Joint Budget Conference Committee on March 14, 2022;

(19) all records pertaining to why neither the Joint Budget Conference Committee, nor its subcommittees produced any reports;

(20) all records pertaining to the "ethics commission reform act of 2022" and its insertion as Part QQ into what became Education, Labor, Housing and Family Assistance Budget Bill S.8006-C/A.9006-C that emerged from the behind-closed-doors "three people in a room" budget "negotiations" following the first and only March 14, 2022 meeting of the Joint Budget Conference Committee and the first and only March 15, 2022 meetings of each of the ten budget conference subcommittees;

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[2] Joint Rule III reads:

> "Section 1. Budget Consideration Schedule. In accordance with section 54-a of the Legislative Law, within ten days of the submission of the budget by the Governor pursuant to article VII of the Constitution, the Temporary President of the Senate and the Speaker of the Assembly shall promulgate a schedule of dates for considering and acting upon such submission. Such schedule shall include the dates for those actions required to be taken by the legislature pursuant to section 53 of the Legislative Law, dates for the convening of a joint budget conference committee or committees as provided herein, and a date by which such committee or committees shall issue a final report or reports.
>
> §2. Joint Budget Conference Committee. In accordance with section 54-a of the Legislative Law, within ten days the submission of the budget by the Governor pursuant to Article VII of the Constitution, the Temporary President of the Senate and the Speaker of the Assembly shall jointly establish a Joint Budget Conference Committee and, as they deem necessary, any number of subcommittees subordinate to such Joint Budget Conference Committee, to consider and reconcile such budget resolutions or bills passed by, or as may be passed by, the Senate and Assembly. Such Joint Budget Conference Committee shall be constituted and conducted as prescribed in Joint Rule II and shall file its written report in accord with the schedule established pursuant to section 1 of this rule."

(21) all records reflecting who made the determination and on what basis for adding $2,467,286 for "Personal service-regular" plus inserting $2,000,000 for a "Commission on Long Island Power Authority" – these constituting the changes to §1 of Legislative/Judiciary Budget Bill S.8001/A.9001 by the "three people in a room", which popped out from their behind closed doors as S.8001-A/A.9001-A;

(22) all records pertaining to the insertion into what became Public Protection and General Government Budget Bill S.8005-C/A.9005-C of a Part JJ to enact the "Legislative Commission on the future of Long Island Power Authority" (a new Legislative Law §83-N – part of Legislative Law Article 5-A "Legislative Commissions");

(23) Governor Hochul's message of necessity for the two April 4, 2022 "extender" bills for emergency budget appropriations, introduced "at request of the Governor" by Senate Finance Committee Chair Krueger and Assembly Ways and Means Chair Weinstein, S.8715 and A.9766 – and, thereafter, the Governor's messages of necessity for all nine of the "three people in a room"-"amended" FY2022-23 budget bills;

(24) all records of the discussions in the Senate and Assembly majority and minority party conferences on the FY2022-23 budget bills that emerged "amended" from the behind-closed doors of the "three people in a room", prior to the Senate and Assembly votes;

(25) reports on the FY2022-23 "three people in a room"-"amended" budget bills that were furnished legislators before they voted, as Legislative Law §54 requires[3].

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[3] Legislative Law §54, entitled "Report on the budget", reads, as follows, at its ¶¶2(b) and (c):

> "(b) Before voting upon an appropriation bill submitted by the governor and related legislation, as amended, in accordance with article seven of the constitution, each house shall place on the desks of its members a report relating to each such bill and, preceding final action on all such appropriation bills and legislation, members shall be so provided with a comprehensive, cumulative report relating to all such bills and legislation.
>
> (c) The reports prepared by each house shall include for the general fund a summary of proposed legislative revisions to the executive budget for the ensuing fiscal year, and shall separately identify and present all legislative additions, reestimates and other revisions that increase or decrease disbursements, and separately identify and present all legislative reestimates and other revisions that increase or decrease available resources. Such report shall, where practicable, display and separately identify and present all legislative additions, reestimates, and other revisions that increase or decrease state funds and all funds spending, including an estimate of the impact of the proposed revisions on local governments and the state workforce."

PLEASE ADDITIONALLY TAKE NOTICE that your failure to make such production will entitle petitioners the granting of the relief sought by their June 23, 2022 notice of petition, starting the requested TRO, preliminary injunction, and declaration that Part QQ of Education, Labor, Housing, and Family Assistance Budget Bill S.8006-C/A.9006-C – the "ethics commission reform act of 2022" – is unconstitutional, unlawful, and void as it was enacted in violation of mandatory provisions of the New York State Constitution, statutes, legislative rules, and caselaw.[4]

Dated: June 28, 2022
White Plains, New York

Yours, etc.

ELENA RUTH SASSOWER,
individual petitioner/plaintiff *pro se*
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
10 Stewart Place, Apt. 2D-E
White Plains, New York 10603
914-421-1200
elena@judgewatch.org

TO: New York State Joint Commission on Public Ethics (JCOPE)
Legislative Ethics Commission (LEC)
New York State Inspector General (NYS-IG)
Governor Kathy Hochul
Temporary Senate President Andrea Stewart-Cousins & Senate
Assembly Speaker Carl Heastie & Assembly
Attorney General Letitia James
Comptroller Thomas DiNapoli

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[4] See, *inter alia*, *New York State Bankers Association, Inc. et al. v. Wetzler, as Commissioner of the Department of Taxation and Finance of the State of New York*, 81 NY2d 98, 102 (1993) "The question concerns not what was enacted or its effect on the budgetary process, but whether there was authority to enact the provision at all. Our precedents clearly compel the conclusion that the controversy is justiciable..."

New York State Commission on
Ethics and Lobbying in Government
540 Broadway
Albany, New York 12207

COMPLAINT

The Commission on Ethics and Lobbying in Government has jurisdiction to investigate potential violations of Public Officers Law § 73, § 73-a, § 74, Civil Service Law § 107, and Legislative Law article 1-A as they apply to State legislators, candidates for the Legislature and legislative employees, as well as the four statewide elected officials, candidates for those offices, executive branch employees, certain political party chairs, and lobbyists and their clients.

COMPLAINANT NAME Elena Ruth Sassower, Director, Center for Judicial Accountability, Inc.
ADDRESS BOX 8101
CITY, STATE, ZIP White Plains, New York 10602
TELEPHONE 914-421-1200
EMAIL elena@judgewatch.org

Please provide a statement or description of the alleged violation of Public Officers Law § 73, § 73-a, § 74, Civil Service Law § 107, or Legislative Law article 1-A including facts constituting a violation of the law(s) above, the identity of the individual(s) at issue, the agency where the individual(s) work, and, if possible, a date, time, place of the alleged violation. Also note any documents or exhibits you are including to support the allegations.

see attached November 13, 2024 written testimony constituting a conflict of interest/corruption complaint against JCOPE's Commissioners, Executive Director, General Counsel, + other High-Ranking Staff for "substantial neglect of duty" and "misconduct in office", born of flagrant violations of Public Officers Law '74, Executive Law 94.10(b) + other mandatory conflict of interest protocols

Has this matter been referred to any other agency? ☐ Yes ☑ No

If yes, which agency? _____

Is there pending legal action you are aware of? ☑ Yes ☐ No

If yes, where? CJA, Dal v. JCOPE, et al
October 21, 2024 Notice of Appeal of Right to the Court of Appeals

New York State Commission on
Ethics and Lobbying in Government
540 Broadway
Albany, New York 12207

Complaint Additional Page

This complaint form + attached November 13, 2024 testimony/complaint w/ 2 substantiating hyperlinks and appended March 29, 2023 testimony w/ 2 substantiating hyperlinks are affirmed as true under penalties of perjury, pursuant to CPLR 2106

Elena Ruth Sassower
November 13, 2024
White Plains, NY

INITIALS ERS

CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101 *Tel: 914-421-1200* *E-Mail: mail@judgewatch.org*
White Plains, New York 10602 *Website: www.judgewatch.org*

A Tale of Four Complaints – & Now Five

Testimony before the Commission on Ethics & Lobbying in Government (COELIG)
November 13, 2024 – New York City Bar Association

I am Elena Sassower, director of the non-partisan, non-profit citizens' organization, Center for Judicial Accountability, Inc. (CJA). Our website is www.judgewatch.org, and from its left side panel "Testimony", you can find a link for this testimony[1] and to the open-and-shut, *prima facie* EVIDENCE substantiating it.

At last year's public hearing, on March 29, 2023, I stated that based on your first 6-1/2 months, I would be filing a complaint against you, to you, for your "substantial neglect of duty" and "misconduct in office"[2] arising from your willful violations of Public Officers Law §74, proscribing conflicts of interest that is your duty to enforce as to others,[3] and of Executive Law §94.10(b), explicitly mandating that you each disclose personal, professional, and financial conflicts of interest with respect to complaints – and recuse yourselves or be recused by vote of your fellow commissioners.[4]

I deferred actually filing such complaint, so as to give you the opportunity to take steps to rectify the violations that my testimony summarized and evidentiarily-established pertaining to the eight complaints I filed with COELIG, by a single complaint-letter, on its "DAY 1" -- July 8, 2022. All involved the "false instrument" reports by which New York's 4 statewide-elected executive officers and all its 213 state legislators have procured unlawful and unconstitutional pay raises for themselves – and for judges and district attorneys – embedded in a state budget that they have driven "OFF THE CONSTITUTIONAL RAILS" to steal more taxpayer monies and subvert constitutional, lawful state governance through massive insertions of non-fiscal/non-revenue-producing policy.

As to this July 8, 2022 complaint, I stated:

> "Surely no complaint that the Commission thereafter received remotely approaches, in magnitude and breadth, any of these eight complaints, let alone all of them." (underlining in the original).

I identified your serious and substantial conflicts-of-interest pertaining thereto, the least being that your COELIG *per diems* are tied to Supreme Court justice salaries that the "false instrument" reports had inflated by $80,000 and that, by an unsigned November 17, 2022 letter, your Investigations Division purported, in violation of Executive Law §94.10(f), that you had "voted to close" the July 8, 2022 complaint and its October 6, 2022 supplement. I concluded with a procedural suggestion

that your letters disposing of complaints indicate 30 days in which a complainant could seek reconsideration, similar to what Appellate Division rules provide for its attorney grievance committees[5]. The last sentence of my testimony expressly requested such reconsideration of the July 8, 2022 complaint.

Instead of confronting my testimony with findings of fact and conclusions of law as to the legitimacy of your November 17, 2022 letter, and about your handling of my FOIL requests pertaining to the July 8, 2022 complaint, about which I testified, and about the corruption of the process by which you were appointed commissioners, involving the so-called Independent Review Committee of 15 law school deans, about which I also testified, you ignored it all. This enabled you to issue, on August 28, 2023, a fraudulent Annual Report for 2022 extolling the success of COELIG and the Independent Review Committee. A week and a half later, at September 6, 2023 special meetings of your then Legal Committee and Ethics Committee, you dumped two recommendations you purported I had made at the March 29, 2023 hearing. As for my recommendation for a reconsideration procedure for complaints – which, in fact, was my ONLY express recommendation – the deceits about it by COELIG staff, including that it would require an amendment to Executive Law §94, resulted in "push-back" from several Legal Committee members and a vote tabling the recommendation to a subsequent meeting so that staff could provide further guidance on the subject.

On October 2, 2023 – as an explicit TEST of the staff deceit that an unofficial reconsideration procedure exists inasmuch as a complainant can resubmit his/her complaint with additional information or file a new complaint – I did both. I filed a new complaint – the complaint against you, your executive director, your general counsel, and high-ranking staff that I had announced I would be filing at the March 29, 2023 hearing. It was now updated and supplemented by an analysis of your fraudulent 2022 Annual Report and of what had taken place at your September 6, 2023 meetings – and embodied separate relief, denominated as:

> "Officially TESTING the Commission's unofficial reconsideration/renewal remedy by resubmitting CJA's July 8, 2022 complaint and October 6, 2022 supplement based on the within evidence that the November 17, 2022 staff letter that the Commission 'voted to close' it is indefensible."

Your response? You excluded me from your rigged November 1, 2023 "roundtable" discussion of recommendations from the March 29, 2023 hearing that you were adopting and embodying into your 2024 legislative agenda – and ignored, without acknowledgment, the October 2, 2023 complaint.

Executive Law §94.10(e) expressly states: "The commission shall notify the complainant…that the commission has received their complaint". I pointed this out by a December 5, 2023 e-mail to you, further asking:

> "What is the status of the October 2, 2023 complaint – and, additionally, the status of its request for reconsideration of CJA's July 8, 2022 sworn complaint and its October 6, 2022 sworn supplement?

> Please advise – and also furnish, pursuant to FOIL, the Commission's written procedures/manual for receipt, docketing, acknowledgment, preliminary review, investigation of complaints, notification of disposition to complainants – and reconsideration."

You responded only to the FOIL request, by a January 9th e-mail stating that "written procedures…are in preparation but, at this time, are not yet final".

Twenty days later, on January 29, 2024, I filed with you a third complaint – this against the seven members of the (3rd) Commission on Legislative, Judicial and Executive Compensation for their "false instrument" report that would raise judicial salaries, effective April 1, 2024. In other words, it was a complaint that would directly impact raises to your *per diems*. Indeed, more than that, it would crack open the whole mass of conflict-of-interest-driven corruption involving "false instrument" report pay raises and the budget that was the subject of CJA's eight-in-one July 8, 2022 complaint.

Four months later, in the absence of your acknowledgment of this complaint, I sent you a May 30th e-mail, asking as to its status and the number you had assigned to it. I reiterated this, a week later, by a June 5th e-mail, further stating that I still had no acknowledgment of the October 2, 2023 complaint. I asked whether you had not, by then, finalized your "written procedures/manual for receipt, docketing, acknowledgment, preliminary review, investigation of complaints, notification of disposition to complainants – and reconsideration."

Another four months later, I would ask this, yet again, by an October 7th e-mail, requesting the numbers you had assigned to these two complaints – and what their status was.

A full month elapsed before you responded, on November 7th. By then, I had filed with you a fourth complaint, on October 29, 2024, against the 4 statewide-elected executive officers and all 213 state legislators for benefitting themselves by colluding in the (3rd) Commission on Legislative, Judicial and Executive Compensation's "false instrument" report – the subject of CJA's January 29, 2024 complaint that you had been "sitting on". I had also, by then, sent you a November 4th e-mail for the number you had assigned to the October 29th complaint.[6]

As for your November 7th response, you asserted that the status of CJA's October 2, 2023 complaint is "closed" and that the number you had assigned to it was 22-099. As 22-099 is the number you assigned to the July 8, 2022 complaint, you clearly assigned NO number to the October 2, 2023 complaint against yourselves, which you did NOT determine.

As for the status of CJA's January 29, 2024 complaint, you asserted that it is "open" and that the number you had assigned to it was 24-141. Evident from this number is that it was NOT assigned until late October or early November – and possibly only in response to the October 29, 2024 complaint.

You also furnished a pdf entitled "Internal Controls and Procedures", identifying that it had been

updated on October 17, 2024, with a single footnote about JCOPE which is false.[7] Assuming comparable "Internal Controls and Procedures" existed, in whole or in part, over the past two-plus years of COELIG's existence – and this was the subject of my repeated FOIL requests, beginning July 26, 2022 and culminating with my February 7, 2023 FOIL appeal, identifying that they should be existing – COELIG staff, with your knowledge, flagrantly violated same with respect to CJA's complaints.

COELIG's most important function is appropriately addressing complaints – and, as chronicled by CJA's October 2, 2023 complaint, with its painstaking 46-page, single-spaced analysis of your 2022 Annual Report, of your monthly operations reports, of the videos of your meetings, and of Part 941.2 and 941.3 of your rules, obfuscating your duty under Executive Law §94, you have been failing in that function, flagrantly, from the outset, while, simultaneously, flagrantly violating conflict-of-interest mandates both with respect to yourselves and staff – and collecting unlawful hourly *per diems* that now total well over a quarter of a million dollars.

Indeed, as a result of your self-serving and deliberate nonfeasance and cover-up of the October 2, 2023 complaint against yourselves and COELIG staff, ALL the frauds of your 2022 Annual Report are essentially replicated by your 2023 Annual Report – and, with respect to your handling of complaints, even more brazenly. For instance, although the 2023 Annual Report, states (at p. 73) that COELIG "received and processed 156 tips, complaints, referrals, and reports in 2023", this 156 number is NOT reflected by the chart (at p. 82) purporting to list "all matters incepted in 2023". Rather, the chart ends at #23-118, thus signifying only 118 "matters incepted…in 2023" – and, if that discrepancy is not startling enough, 68 numbers are missing within the sequence leading up to #23-118!

As CJA's October 2, 2023 complaint is DISPOSITIVE of the situation then, now, and of what must happen, going forward – including with respect to the lawsuits *CJA v. JCOPE, et al.* and *Cuomo v. COELIG* (APL-2024-00076), now both at the Court of Appeals – my recommendation, in closing, is that you do your duty by confronting, with findings of facts and conclusions of law, its "specific and credible evidence" of your conflict-of-interest-driven "substantial neglect of duty" and "misconduct in office" – and its continuation to the present, as herein summarized. To assist you in doing so, I am embodying this testimony in now a second complaint against you, your executive director, your general counsel, and other high-ranking staff – to be processed consistent with your current "Internal Controls and Procedures". To further assist, my March 29, 2023 testimony will be annexed to the complaint.

Thank you.

ENDNOTES

[1] The direct link to CJA's webpage for this testimony is https://www.judgewatch.org/web-pages/searching-nys/celg/testimony-11-13-24.htm, hyperlinking to CJA's MENU webpage for COELIG, with hyperlinks to CJA's complaints to COELIG and FOIL requests.

[2] Executive Law §94.4(c) identifies "substantial neglect of duty" and "misconduct in office" as grounds upon which "Members of the commission may be removed by majority vote of the commission."

[3] This Commission, with three members appointed by the governor, is a "state agency", pursuant to Public Officers Law §74, and the commissioners are, presumably, its "officers" – and reinforcing this is Executive Law §94.3(l) in specifying that "The independent review committee shall neither be public officers nor be subject to the requirements of the public officers law." No parallel provision appears in Executive Law §94.4 as to commissioners. Certainly, the Commission's paid staff is within the purview of Public Officers Law §74.

[4] Executive Law §94.10(b) reads:

> "Upon the receipt of a complaint, referral, or the commencement of an investigation, members of the commission shall disclose to the commission any personal, professional, financial, or other direct or indirect relationships a member of the commission may have with a complainant or respondent. If any commissioner determines a conflict of interest may exist, the commissioner shall, in writing, notify the other members of the commission setting forth the possible conflict of interest. The commissioner may recuse themself from all subsequent involvement in the consideration and determination of the matter. If, after the disclosure, the commissioner does not recuse themself from the matter, the commission, by a majority vote finding that the disclosed information creates a substantial conflict of interest, shall remove the conflicted commissioner from all subsequent involvement in the consideration and determination of the matter, provided the reason for the decision is clearly stated in the determination of the commission."

[5] Appellate Division Rules of Procedure 1240.7(e)(3) reads:

> "Review of Dismissal or Declination to Investigate. Within 30 days of the issuance of notice to a complainant of a Chief Attorney's decision declining to investigate a complaint, or of a Committee's dismissal of a complaint, the complainant may submit a written request for reconsideration to the chair of the Committee. Oral argument of the request shall not be permitted. The Chair shall have the discretion to grant or deny reconsideration, or refer the request to the full Committee, or a subcommittee thereof, for whatever action it deems appropriate."

[6] This was reiterated by my November 8, 2024 e-mail to you, to which, as with my November 4, 2024 e-mail, there has been no response.

[7] The footnote in "Internal Controls and Procedures" (at p. 4) annotates the definition of "Open" as "matters where a 15-day letter has been sent". It states:

> "For matters 'opened' under JCOPE, JCOPE voted to open formal investigations."

This is false – and replicates the falsehood that appeared in the proposed revisions to COELIG's rules – Part 941 – foisted on commissioners in 2022 and 2023 by then interim Executive Director Berland, and which the commissioners adopted, virtually without change. This is detailed at pages 23-30 of CJA's October 2, 2023 complaint, under the title heading "Your Conflict-of-Interest-Driven Subversion of Executive Law §94.10 by Your 19 NYCRR §§941.2 and 941.3". Footnote 11 thereto (at p. 27) gives the specifics – and states:

> "JCOPE Executive Law §94 did NOT require a Commission vote to initiate an 'investigation' – as no vote was required to send out 15-day notice/letters, which, under COELIG Executive Law §94, is what signifies, if not constitutes, 'investigation'." (capitalization in the original).

The referred-to JCOPE Executive Law §94 is §94.13(a) entitled "Investigations".

CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

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White Plains, New York 10602 ***Website: www.judgewatch.org***

Testimony before the Commission on Ethics & Lobbying in Government
March 29, 2023 – New York Law School

I am Elena Sassower, director of the non-partisan, non-profit citizens' organization, Center for Judicial Accountability, Inc. (CJA). Our website is www.judgewatch.org, and from its left side panel "Testimony", you can find a link for this testimony[1] and to the open-and-shut, *prima facie* EVIDENCE substantiating it and the complaint I will be filing based thereon against you, to you, for your "substantial neglect of duty" and "misconduct in office"[2] from your first meeting last September 12th to date – 6-1/2 months later – arising from your willful violations of Public Officers Law §74, proscribing conflicts of interest that is your duty to enforce as to others,[3] and of Executive Law §94.10(b) explicitly mandating that you each disclose personal, professional, and financial conflicts of interest with respect to complaints – and recuse yourselves or be recused by vote of your fellow commissioners.[4]

The very first complaints the Commission received, upon replacing JCOPE on July 8, 2022, were the eight I submitted on its Day 1 by a single letter. All eight complaints involved the "false instrument" reports by which New York's executive and legislative electeds procured pay raises for themselves – and for judges and district attorneys – embedded in the state budget that they have run "OFF THE CONSTITUTIONAL RAILS" to steal more taxpayer monies and subvert constitutional, lawful governance through massive insertions of non-fiscal/non-revenue producing policy. Surely, no complaint the Commission thereafter received remotely approaches, in magnitude and breadth, any one of these eight complaints, let alone all of them.

The first seven of these complaints were a refiling of complaints I had filed with JCOPE, as to which JCOPE, in violation of its mandatory duty under the Executive Law that established it, had not sent out a single 15-day investigative letter. These seven complaints are the first seven exhibits in CJA's corruption-eradicating lawsuit, *CJA v. JCOPE, et al.*, commenced by a June 6, 2022 verified petition, whose sixth cause of action is to VOID this Commission as enacted unconstitutionally and through fraud, *via* the state budget, for the ulterior purpose of stripping complainants of rights enforceable by mandamus with respect to 15-day letters and, in so doing, to insulate from accountability the seven public officers who appoint the commission members. As for the eighth, completely new complaint, it was against one of those seven public officers, who, with the other six, is a respondent in *CJA v. JCOPE*, namely, Attorney General James, and its basis is her litigation fraud in *CJA v. JCOPE*, in furtherance of her own "false instrument" pay raises – and theirs.

The Commission's original seven commissioners are Cardozo, Groenwegen, James, Austin, Carni, Davie, and Edwards. Six of the seven, if not all seven, knew of these first eight complaints

since at least last August 4th. That is when I sent them an e-mail, which as to now Vice-Chair Austin bounced back, attaching two letters to the 15 law school deans of the Independent Review Committee to which they were *cc*'d. These apprised the would-be commissioners of what the Independent Review Committee had known since my first June 12th letter to its deans, namely, that *CJA v. JCOPE* is dispositive that the budget-born statute establishing this Commission must be voided, *as a matter of law*. It also alerted the would-be commissioners that the public officers who had appointed them had corrupted the vetting process and that the Independent Review Committee deans were collusive in this and were violating conflict-of-interest protocols, including as set forth by Executive Law §94.3(j).[5]

The second of my two August 4th letters detailed the conflicts of interest, requiring disclosure and disqualification that the would-be commissioners would face, with respect to the eight complaints:

(1) would-be Commissioners Cardozo, Groenwegen, and James had colluded in the public corruption involving the pay raises, the budget, and the AG's *modus operandi* of litigation fraud that are the gravamen of the complaints – and I had furnished their appointing public officers with written comment opposing their proposed nominations, without response from the appointing public officers;

(2) would-be Commissioners Austin and Carni, as former judges, have HUGE financial interests in the complaints because, as beneficiaries of the judicial pay raises that the complaints establish to be fraudulent, they face "clawbacks" of approximately three quarters of a million dollars each;

(3) would-be Commissioners Davie and Edwards are also financially interested in the complaints because Executive Law §94.4(f) ties commissioners' *per diem* allowances to "a salary of a justice of the supreme court" – and the complaints establish the fraudulence of $80,000 of that salary.

And what did the seven original commissioners do in face of this August 4th e-mail – and my subsequent e-mails to them on August 22nd and October 6th as to AG's James' unremitting litigation fraud in *CJA v. JCOPE* [6] and the importance of its verified petition to understanding that JCOPE's corruption in its handling of complaints, rested with its personnel, who remained at the Commission, such as JCOPE Executive Director Berland, a former judge with HUGE financial interests in CJA's complaints. They voted unanimously to make Berland interim executive director at their first September 12th meeting and then permanently at their fifth December 16th meeting, both times by fraud about his performance of his duties and other deceits.[7] Between these two meetings, at the October 25th third meeting, the eight complaints in which they and Berland are all interested were allegedly dumped, but I was not informed of this until three weeks later – the day after I sent the Commission staff a November 16th e-mail inquiring as to when it would be responding to my July 26th FOIL request for the Commission's "written procedures for receipt, docketing, acknowledgment, preliminary review, and investigation of complaints". I was thereupon e-mailed

an unsigned November 17th letter, on a letterhead listing the names of the seven original commissioners and Berland, bearing but a single complaint number and stating: "following a review of your complaint, the Commission voted to close the matter."

Yet, pursuant to Executive Law §94.10(f),[8] the only time the Commission votes to close a matter is AFTER investigation that includes 15-day letters, where the staff has recommended same in a report to the Commission for the reason that the complaint is "unfounded or unsubstantiated" – by no stretch the case at bar with respect to any of the eight complaints.

Time does not permit me to testify about the odyssey of my July 26th FOIL request, reiterated and expanded by my December 27th FOIL request pertaining to the November 17th letter, such as for records of your compliance with disclosure/recusal mandates of Executive Law §94.10(b), of compliance by Executive Director Berland and Commission staff with comparable conflict of interest protocols, and of the specific provision of Executive Law §94 pursuant to which the Commission is alleged to have "voted to close the matter" – and the basis for the supposed "vote".

Suffice to say that on February 7th, I *cc*'d my FOIL appeal to the seven original commissioners, excepting Vice-Chair Austin whose e-mail address I do not have, plus to the two new commissioners, Whittingham and Carabello. Assumedly they all would have concerned themselves as to the response. It came on February 17th from your FOIL appeals officer St. John– a high-ranking JCOPE holdover that Berland would days later elevate as the Commission's general counsel. According to St. John, the records I had requested "simply do not exist and, therefore, cannot be provided". As to the only record he furnished, it was the conflict-of-interest protocol for Commission staff that Berland, St. John, and other staff had flagrantly violated from the Commission's July 8, 2022 Day 1 to conceal JCOPE's corruption in handling complaints of which they were part.[9]

I conclude with a procedural suggestion with respect to your letters "closing" complaints on alleged votes by the Commission – and other dispositions that are not, in fact, by votes of the Commission, namely that your letters indicate 30 days in which a complainant may seek reconsideration, similar to what is provided by the Appellate Division Rules pertaining to its attorney grievance committee procedures.[10] Certainly, inasmuch as your dispositions of FOIL requests include, as required, that there is 30 days within which to seek an appeal, there should be an appeal/reconsideration procedure for complaints.

Consistent therewith, that is what I now request, from you, with respect to your unsigned November 17th letter of your "Investigations Division".

ENDNOTES

[1] The direct link to CJA's webpage for this testimony is https://www.judgewatch.org/web-pages/searching-nys/celg/march-29-23-testimony.htm, with EVIDENTIARY links under the heading "'PAPER TRAIL' of Correspondence: What the Commissioners Knew, & When".

[2] Executive Law §94.4(c) identifies "substantial neglect of duty" and "misconduct in office" as grounds upon which "Members of the commission may be removed by majority vote of the commission."

[3] This Commission, with three members appointed by the governor, is a "state agency", pursuant to Public Officers Law §74, and the commissioners are, presumably, its "officers" – and reinforcing this is Executive Law §94.3(l) in specifying that "The independent review committee shall neither be public officers nor be subject to the requirements of the public officers law." No parallel provision appears in Executive Law §94.4 as to commissioners. Certainly, the Commission's paid staff is within the purview of Public Officers Law §74 – and this complaint is also against them, starting with Executive Director Berland and General Counsel St. John.

[4] Executive Law §94.10(b) reads:

> "Upon the receipt of a complaint, referral, or the commencement of an investigation, members of the commission shall disclose to the commission any personal, professional, financial, or other direct or indirect relationships a member of the commission may have with a complainant or respondent. If any commissioner determines a conflict of interest may exist, the commissioner shall, in writing, notify the other members of the commission setting forth the possible conflict of interest. The commissioner may recuse themself from all subsequent involvement in the consideration and determination of the matter. If, after the disclosure, the commissioner does not recuse themself from the matter, the commission, by a majority vote finding that the disclosed information creates a substantial conflict of interest, shall remove the conflicted commissioner from all subsequent involvement in the consideration and determination of the matter, provided the reason for the decision is clearly stated in the determination of the commission."

[5] Executive Law §94.3(j) reads:

> "Upon the receipt of the selection members' appointments, members of the independent review committee shall disclose to the independent review committee any personal, professional, financial, or other direct or indirect relationships a member of the independent review committee may have with an appointee. If the independent review committee determines a conflict of interest exists, such independent review committee member shall, in writing, notify the other members of the independent review committee of the possible conflict. The member may recuse themself from all subsequent involvement in the consideration of and action upon the appointment. If, after disclosure, the member does not recuse themself from the matter, the independent review committee, by majority vote finding the disclosed information creates a substantial conflict of interest, may remove the conflicted member from further consideration of and action upon the appointment."

[6] The AG's litigation fraud included a perjurious affidavit of JCOPE's Director of Investigations and Enforcement Emily Logue, who remained in that position for this Commission at least until August 18, 2022 – the date on which it was notarized by St. John (NYSCEF #81). The particulars of this perjury are set forth by my September 3, 2022 CPLR §2214 notice of papers to be furnished the Court (NYSCEF #85, at pp. 2-5) and its last item, "Pertaining to the whole of her affidavit", was for:

> "any written document reflecting who assisted her in its drafting, reviewed it for truthfulness and accuracy, and determined she should not respond to the particularized allegations in the petition pertaining to JCOPE, most importantly, ¶¶6, 16-26, 27-41, 42-47 – such persons reasonably including JCOPE's last executive director, Sanford Berland, Esq., currently occupying that position at [the Commission]." (at pp. 4-5, underlining added).

See, additionally, my "legal autopsy"/analysis of AG James' fraudulent August 18, 2022 cross-motion (NYSCEF # 88, at pp. 5-7).

Prior to serving as a notary to Ms. Logue, St. John had received from me, *in hand*, the *CJA v. JCOPE* verified petition, etc. on June 23, 2022 – and unlike representatives for all nine other *CJA v. JCOPE* respondents, who I had already served, he refused to furnish me with a signature, on behalf of JCOPE, to prove my service. Fearful that JCOPE would challenge service on grounds of my being a party, I returned with a non-party to effectuate the service upon St. John – and even then he would not give me a signature to acknowledge service. This is reflected by the affidavits of service I was then burdened with making, as to him and him alone (NYSCEF #49, NYSCEF #48).

[7] Although Chair Davie stated at the September 12th first meeting that "the Commission is committed to doing a full search for a permanent executive director" (at 11 mins.), it does not appear that ANY search was done, not even including it in posting for other staff positions (Oct. 6 meeting-posting; Oct 25 meeting-posting-update). At the December 16th meeting, no reference was made to any candidates having been considered for the position when, following an executive session (3 hrs, 48 mins.), Commissioner Cardozo, purporting that the Commission had "carefully considered the question of who should the new executive director of the Commission be… and after a great deal of investigation", he wanted to make "the following proposal and motion":

> "WHEREAS the Commission was created to provide much needed ethics oversight for the New York State government and ensure that New Yorkers have the responsible and ethical government they need and deserve; and
>
> WHEREAS the work of the Commission is both time-sensitive and significant with many outstanding matters needing immediate attention due to a delay resulting from the transition from the previous entity, the Joint Commission on Public Ethics, and the appointment process for the members of this Commission; and
>
> WHEREAS, the Commission requires a permanent executive director in order to properly move forward with its important work, including hiring additional staff; and
>
> WHEREAS, the Commission considered the possibility of a national search for an executive director, but were highly cognizant of the fact that it took two nation-wide searches conducted over a period of nearly two years to find an individual capable of leading the state's previous ethics and lobbying agency, Judge Berland; and,
>
> WHEREAS, based on a thorough review of Mr. Berland, which included examining his background, reviewing his financial disclosures, interviewing Mr. Berland at length and speaking with numerous others who worked with him in his role under the previous

Commission; and

WHEREAS, Mr. Berland has thus far successfully managed the transition from the previous Commission to this Commission; and

WHEREAS based on its dealings with Mr. Berland the Commission has been more than satisfied with his performance; and

WHEREAS the governing statute that created the Commission provides the executive director should be appointed by the Commission to serve a four-year term; and

WHEREAS the Commission needs an executive director immediately given the substantial number of issues with which it must deal and the number of staff vacancies,

IT IS HEREBY RESOLVED, the Commission appoints Sandy Berland as executive director to a term appointment of four years in accordance with Executive Law §94 at a salary of $220,000".

This was seconded by Vice-Chair Austin, with Chair Davie then stating, before the unanimous vote:

> "Let me thank all the Commissioners for their very thorough and diligent review and engagement around the hiring of our Interim Director Berland as the executive director of the Commission, of the agency. Let me reinforce what Commissioner Cardozo's resolution has stated and that is the very competent way in which Mr. Berland has conducted the work of this Commission, at least since my joining it in September and from what we can assess in the very thorough review we did before reaching this decision."

Among the successive lies and deceits by the above is that Berland's hire as JCOPE's executive director resulted from "two nation-wide searches conducted over a period of nearly two years". This is not consistent with his testimony at the August 25, 2021 hearing on "New York State's System of Ethics Oversight and Enforcement" by the Senate Committee on Ethics and Internal Governance:

Senator Salazar:	"Would you mind telling us, just to go back to when you sought the position, when you applied, do you remember how you found out that the position was open in the first place? Did you learn this from someone you know? Do you remember the circumstances?"
Berland:	"Probably the conversation with the former chair, who's someone I've known in various capacities over the years." (Transcript, at pp. 53-54, see also pp. 83-84; VIDEO)

I cited to and substantially quoted Berland's testimony at that August 25, 2021 hearing in my November 2, 2021 complaint against JCOPE and him to the New York State Inspector General (at pp. 10-16) – and it is Exhibit I to the *CJA v. JCOPE* verified petition (NYSCEF #17). This November 2, 2021 complaint is cited and linked in my December 17, 2021 complaint to JCOPE "against legislators and legislative employees for subverting the Legislative Ethics Commission to insulate themselves from complaints" – Exhibit B to the *CJA v. JCOPE* verified petition (NYSCEF #8), whose recitation at pp. 4-6 thereof, under the title "BACKGROUND", begins: "JCOPE is already familiar with the essential underlying facts – or at least JCOPE Executive Director Sanford Berland is."

[8] Executive Law §94.10(f) reads, in pertinent part:

> "If, following a preliminary review of any complaint…the commission or commission staff decides to elevate such preliminary review into an investigation, written notice shall be provided to the respondent setting forth, to the extent the commission is able to, the possible or alleged violation or violations of such law and a description of the allegations against the respondent and the evidence, if any, already gathered pertaining to such allegations… The respondent shall have fifteen days from receipt of the written notice to provide any preliminary response or information the respondent determines may benefit the commission or commission staff in its work. After the review and investigation, the staff shall prepare a report to the commission setting forth the allegation or allegations made, the evidence gathered in the review and investigation tending to support and disprove, if any, the allegation or allegations, the relevant law, and a recommendation for the closing of the matter as unfounded or unsubstantiated, for settlement, for guidance, or moving the matter to a confidential due process hearing. The commission shall, by majority vote, return the matter to the staff for further investigation or accept or reject the staff recommendation."

[9] Pursuant to Executive Law §94.6(a), the executive director may be removed for "substantial neglect of duty" and "misconduct in office", by "a majority vote of the commission."

[10] Appellate Division Rules of Procedure 1240.7(e)(3) reads:

> "Review of Dismissal or Declination to Investigate. Within 30 days of the issuance of notice to a complainant of a Chief Attorney's decision declining to investigate a complaint, or of a Committee's dismissal of a complaint, the complainant may submit a written request for reconsideration to the chair of the Committee. Oral argument of the request shall not be permitted. The Chair shall have the discretion to grant or deny reconsideration, or refer the request to the full Committee, or a subcommittee thereof, for whatever action it deems appropriate."

CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

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White Plains, New York 10602 ***Website: www.judgewatch.org***

A Tale of Four Complaints – & Now Five

DATE: November 15, 2024

TO: Commission on Ethics & Lobbying in Government

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

RE: Supplement in Further Substantiation of CJA's November 13, 2024 Testimony at the Commission's Second Annual Public Hearing, for Inclusion in the Record – & in Further Substantiation of CJA's November 13, 2024 Complaint

Attached, for inclusion in the record of the Commission's November 13, 2024 second annual public hearing, in further substantiation of my November 13, 2024 testimony and November 13, 2024 complaint, are the four FOIL requests e-mailed to you today:

FOIL Request #1 (at 4:11 pm)
"COELIG's 2023 Annual Report –
& its Chart of 'matters incepted...in 2023'"

FOIL Request #2 (at 4:16 pm)
"The 'Investigations & Enforcement' sections
of COELIG's 2022 & 2023 Annual Reports –
& Comparison to JCOPE's Annual Reports"

FOIL Request #3 (at 4:19 pm)
"JCOPE's 'internal procedures for intake and review
of all tips and complaints'& its 'case management system' –
& COELIG's revisions and updates thereto"

FOIL Request #4 (at 4:42 pm)
"Cumulative Hourly Per Diems Paid –
Including as Supplemented, Retroactively, to April 1, 2024,
as Voted by the Commissioners at their Oct 23, 2024 Meeting"

Thank you.

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Friday, November 15, 2024 4:11 PM

To: 'records@ethics.ny.gov'

Cc: 'aayer@albanylaw.edu'; 'm@michaelcardozo.com'; 'sjames@barketepstein.com'; 'ngroenwegen@gmail.com'; 'dolly@caramanlaw.com'; 'claudialedwards2@gmail.com'

Subject: **FOIL Request: COELIG's 2023 Annual Report -- & its Chart of "matters incepted...in 2023"**

TO: Commission on Ethics and Lobbying in Government
ATT: FOIL Records Access Officer Emily DeSantis

Your 2023 Annual Report, released on June 24, 2024, states (at p. 73), as its "Investigations and Enforcement Highlights":

> "Tips, Complaints, & Reports: The agency received and processed 156 tips, complaints, referrals, and reports in 2023."

Five pages later (at p. 78), under the heading: "2023 Review and Disposition of Investigative Matters", it repeats:

> "Investigations staff processed 156 investigative matters…in 2023. …
> In 2023, COELIG elevated 11 matters and issued notices of allegation, referred to as '15-day letters,' to the affected subjects."

However, four pages after that (at p. 82), under the heading "2023 Enforcement Activity", these "156 tips, complaints, referrals, and reports in 2023" are NOT reflected by the chart purporting to list "all matters incepted in 2023". Rather, the chart ends at #23-118. This signifies only 118 "matters incepted…in 2023". Moreover, of these 118, the following 68 numbers are missing:

> 23-001, 23-002, 23-003, 23-004, 23-009, 23-012, 23-014, 23-017, 23-018, 23-020, 23-022, 23-023, 23-024, 23-026, 23-027, 23-028, 23-032, 23-033, 23-034, 23-035, 23-036, 23-038, 23-039, 23-042, 23-044, 23-045, 23-047, 23-050, 23-051, 23-052, 23-053, 23-054, 23-056, 23-058, 23-059, 23-063, 23-064, 23-065, 23-066, 23-068, 23-069, 23-071, 23-074, 23-075, 23-077, 23-078, 23-079, 23-080, 23-081, 23-083, 23-084, 23-089, 23-092, 23-093, 23-095, 23-096, 23-097, 23-098, 23-099, 23-102, 23-104, 23-110, 23-111, 23-112, 23-114, 23-115, 23-116, 23-117.

Pursuant to FOIL, this is to request records as to:

(1) why the last entry on the chart is #23-118, not #23-156 – representing another 38 entries;

(2) why the above 68 numbers are missing from the chart;

(3) the information pertaining to the missing 106 entries, *to wit*, "Reference ID", Agency", "Law", "Nature of Allegation", "Status", and "Closed Date";

(4) which of the "156 tips, complaints, referrals, and reports" were the 11 "elevated" by "15-day letters";

(5) why the chart does not identify which numbers are "tips", which numbers are "complaints", which numbers are "referrals", and which numbers are "reports";

(6) what is the difference between "referrals" and "reports".

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org
914-421-1200
elena@judgewatch.org

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Friday, November 15, 2024 4:16 PM

To: 'records@ethics.ny.gov'

Cc: 'aayer@albanylaw.edu'; 'm@michaelcardozo.com'; 'sjames@barketepstein.com'; 'ngroenwegen@gmail.com'; 'dolly@caramanlaw.com'; 'claudialedwards2@gmail.com'

Subject: **FOIL Request: The "Investigations & Enforcement" sections of COELIG's 2022 & 2023 Annual Reports -- & Comparison to JCOPE's Annual Reports**

TO: Commission on Ethics and Lobbying in Government
ATT: FOIL Records Access Officer Emily DeSantis

COELIG's website posts COELIG's two annual reports, for 2023 and 2022, and JCOPE's 10 annual reports. Below is a comparison of statistics extracted from the "Investigations and Enforcement" sections of these 12 annual reports.

COELIG's 2023 Annual Report *(June 24, 2024) Executive Director Sanford Berland/Chair Frederick Davie*
"Investigations and Enforcement": pp. 73-89

- "received and processed **156 tips, complaints, referrals, and reports**" (at p. 73); "processed **156 investigative matters in 2023**" (at p. 78);
- "elevated **11** matters and issued notices of allegation, referred to as '**15-day letters**'";
- no reference to settlements by COELIG or penalties and assessments – and none are reflected by its chart of "**2023 Enforcement Activity**" (at pp. 82-89);
- its "**2023 Enforcement Activity" chart**, whose title (at p. 82) is annotated by a footnote that it "lists all matters incepted or with other activity in 2023", lists entries by "Ref ID" and requires for each entry, "Agency", "Law", "Nature of Allegation", "Status", and "Closed Date". The entries, 25 of which identify "N/A" for "Agency", span NOT to #23-156, but only to #**23-118** – and from this span are entirely missing 68 numbers for 2023, *to wit*:

  23-001, 23-002, 23-003, 23-004, 23-009, 23-012, 23-014, 23-017, 23-018, 23-020, 23-022, 23-023, 23-024, 23-026, 23-027, 23-028, 23-032, 23-033, 23-034, 23-035, 23-036, 23-038, 23-039, 23-042, 23-044, 23-045, 23-047, 23-050, 23-051, 23-052, 23-053, 23-054, 23-056, 23-058, 23-059, 23-063, 23-064, 23-065, 23-066, 23-068, 23-069, 23-071, 23-074, 23-075, 23-077, 23-078, 23-079, 23-080, 23-081, 23-083, 23-084, 23-089, 23-092, 23-093, 23-095, 23-096, 23-097, 23-098, 23-099, 23-102, 23-104, 23-110, 23-111, 23-112, 23-114, 23-115, 23-116, 23-117.

COELIG's 2022 Annual Report *(August 28, 2023) Executive Director Sanford Berland/Chair Frederick Davie*
"Investigations and Enforcement": pp. 52-75

- "received and processed **155 tips, complaints, referrals, and reports**" (at p. 52); "processed **155 investigative matters** in 2022" (at p. 56);

- "elevated **eight** matters and sent notices of allegation, referred to as '**15-day letters**'" (at p. 57), yet states in a "Commission Activities by the Numbers" section (at pp. 76-78) that in 2022, from "Jan 1 – Dec 31", the "Number of **"15-day letters sent"** were "**3"** and the "Number of **investigations opened**" were "**2**";
- **no settlements by COELIG, but four by JCOPE,** reported in a section entitled **"Summary of Public Settlement Matters"** (at pp. 57-58)**, without cumulative total of penalties/assessments**, with a **chart entitled "2022 Public Settlement Matters**" summarizing the four settled matters and identifying: "paid over $97,000 to settle the violations"; "paid $8,000"; "$8,000 to settle the violations"; "$1,000 to settle the violation";
- **chart entitled "2022 Enforcement Activity"** (at pp. 61-75), annotated by a footnote (at p. 61) that it "lists all matters incepted or with other activity in 2022", with entries listed by "Ref ID" and requiring for each entry "Government Division or Agency of Subject or Subject (if public settlement)", "Law", "Nature of Allegation", "Status", and "Closed Date". The entries, which span to #**22-155**, list the four settled matters (#19-193, #20-067, #21-144, and #22-028), but for 21 entries are blank as to the identity of the complained-against "Government Division or Agency".

JCOPE's 2021 Annual Report *(July 7, 2022) Executive Director Sanford Berland/Chair Jose Nieves*
"Investigation and Enforcement": pp. 54-80

- "processed **246 investigative matters**";
- "issued **sixteen 15-day letters**";
- "commenced **eight investigations**";
- "**settled five matters**, two of which had been initiated or commenced in years prior to 2021", **"penalties totaling $21,100**";
- **chart entitled "2021 Enforcement Activity"** (at pp. 58-80) – for entries listed by "Ref ID", and requiring for each entry, "Government Division or Agency of Subject (if applicable) or Subject (if public settlement)", "Law", "Nature of Allegation", "Status", and "Closed Date" – a chart that impliedly concedes the second cause of action (¶¶42-47) of the June 6, 2022 verified petition/complaint in *CJA v. JCOPE, et al*. The entries, 56 of which are blank as to the identity of the complained-against "Government Division or Agency", identify 16 as against JCOPE (#21-117, #21-127, #21-158, #21-190, #21-209, #21-210, #21-211, #21-212, #21-213, #21-214, #21-215, #21-216, #21-217, #21-219, #21-220, #21-221) and identify 3 as against the State Inspector General (#21-135, #21-186, #21-187), which had jurisdiction over JCOPE, double #21-032 and #21-117 and skip #21-034, #21-074, #21-132, before concluding with a last entry of #**21-247**.

JCOPE's 2020 Annual Report *(July 8, 2021) Executive Director Sanford Berland/Chair Camille Joseph Varlack*
"Investigation and Enforcement": pp. 53-57

- "processed **209 investigative matters**";
- "issued **20 15-day letter**s";
- "commenced **12 investigations**";
- **"settled four matters**, two of which had been initiated or commenced in years prior to 2020", "**penalties totaling $25,000**" – with a summary in a section entitled **"Public Settlement Matters**" (pp. 56-57) whose **chart entitled "2020 Enforcement Actions"** lists 4 entries, each entry with "Name", "Violation Charged", "Amount Paid", "Outcome", and "Date".

JCOPE's 2019 Annual Report *(July 30, 2020) -- Chair Michael Rozen*
"Investigations and Enforcement": pp. 48-55

- "processed **209 matters**";
- "issued **17 fifteen-day letters**";
- "commenced **12 investigations**…5 of which were initiated by fifteen-day letters in 2018";
- "**settled 21 matters**…14 arose from matters initiated by a fifteen-day letter and/or commenced in years prior to 2019";
- "**penalties and settlement payments totaling $172,550**" – with a summary in a section entitled "**Public Settlement Matters**" (pp. 51-55), whose **chart entitled "2019 Enforcement Actions"** lists 21 entries, each entry with "Name", "Violation Charged", "Amount Paid", "Outcome", and "Date".

JCOPE's 2018 Annual Report *(April 11, 2019) -- Executive Director Seth Agata/Chair Michael Rozen*
"Investigation and Enforcement": pp. 49-54

- "processed **257 matters**";
- "issued **35 fifteen-day letters**";
- "commenced **27 investigations**";
- "**settled 10 matters**", "**penalties totaling $73,037**"— with **a chart entitled "2018 Enforcement Actions",** solely listing 10 settled matters, each by "Name", with "Violation Charged", "Amount Paid/Owed", "Outcome", and "Date".

JCOPE's 2017 Annual Report *(April 18, 2018) -- Executive Director Seth Agata/Chair Michael Rozen*
"Investigation and Enforcement": pp. 46-50

- "processed **nearly 170 matters**";
- "issued **22 fifteen-day letters**";
- "commenced **14 investigations**";
- "**referred one matter for criminal investigation** to the New York State Attorney General";
- "**settled eight matters**" ("48 settlement agreements to resolve eight matters"), **penalties totaling approximately $123,000**" – with **a chart entitled "2017 Enforcement Actions"**, solely listing 8 settled matters, each by "Name", with "Violation Charged", "Amount Paid/Owed", "Outcome", and "Date".

JCOPE's 2016 Annual Report *(June 8, 2017) -- Executive Director Seth Agata/Acting Chair Michael Rozen*
"Investigations and Enforcement": pp. 49-56

- "processed **more than 200 matters**";
- "issued **32 fifteen-day letters**";
- "commenced **25 investigations**";
- "For the first time, the Commission **referred two matters for criminal investigation**, one to the Albany County District Attorney and the other to New York State Attorney General";

- "**settlement agreements to resolve eight matters**", "**penalties totaling approximately $566,500**" – with **a chart entitled "2016 Enforcement Actions"**, with 9 entries, 8 "settled", plus 1 indicating "Hearing", each by "Name", with "Violation Charged", "Amount Paid/Owed", "Outcome", and "Date" (which do not tally to $566,500).

JCOPE's 2015 Annual Report *(April 7, 2016) -- Chair Daniel Horwitz*
"Investigations and Enforcement" pp. 43-48

- "processed **more than 200 matters**";
- "issued **17 fifteen-day letters**";
- "commenced **13 investigations**";
- "issued **one Substantial Basis Investigation Report**";
- "**settled 26 matters**", "**penalties totaling approximately $189,300**" – with **a chart entitled "2015 Enforcement Actions"**, with 12 entries, all "settled", each by "Name", with "Violation Charged", "Amount Paid/Owed", "Outcome", and "Date".

JCOPE's 2014 Annual Report *(April 29, 2015) -- Executive Director Letizia Tagliafierro/Chair Daniel Horwitz*
"Investigations and Enforcement": pp. 37-40

- "reviewed **over 200 potential matters**";
- "issued **52 fifteen-day letters**";
- "**settled 28 matters**", "**penalties totaling approximately $58,572**" – with **a chart entitled "2014 Enforcement Actions"** containing 14 entries, 12 of which were "settled" and 2 by "Decision & Civil Assessment", each entry by "Name", with "Violation Charged", "Amount Paid/Owed", "Outcome", and "Date".

JCOPE's 2013 Annual Report *(April 3, 2014) -- Executive Director Letizia Tagliafierro/Chair Daniel Horwitz*
"Investigation and Enforcement": pp. 45-50

- "reviewed **nearly 200 potential matters**";
- "**penalties totaling approximately $450,000**" – and **a chart entitled "2013 Enforcement Actions"** containing 15 entries, 12 "settled", 1 by a "LEC Decision" and 2 by "Decision and Order", each entry by "Name", with "Violation Charged", "Amount Paid/Owed", "Outcome", and "Date".

JCOPE's 2012 Annual Report *(March 28, 2013) -- Executive Director Ellen Biben/Chair Janet DiFiore*
"Investigation and Enforcement": pp. 45-48

- "reviewed **more than 300 potential matters,** including at least 60 investigative matters that were transferred to the Commission from the former Commission on Public Integrity";
- "commenced 48 substantial basis investigations";
- "resolved **27 enforcement actions that resulted in settlements and penalties totaling more than $52,000**" – and an **untitled chart** containing 27 entries, 22 "settled", 5 "assessed", each entry by "Name", with "Violation Charged", "Amount Paid/Owed", "Outcome", and "Date".

It would appear that the phrase **"tips, complaints, referrals, and reports**", used by COELIG to describe what it had "received and processed" is the same as "potential matters" and "matters", used by JCOPE until its final two annual reports of 2021 and 2022, under Executive Director Burland, where the phrase "investigative matters" was substituted.

Pursuant to FOIL, this is to request any records reflecting:

(1) why the number of "tips, complaints, referrals, and reports" purported by COELIG's 2022 annual report as "155" and by its 2023 annual reports as "156", is so appreciably lower than the number of "potential matters", "matters", and "investigative matters" purported by JCOPE's 10 annual reports, from 2012 to 2021, as "more than 300"; "nearly 200", "over 200", "more than 200", "more than 200", "nearly 170", "257", "209", "209", and "246";

(2) any discussion about this by the Commissioners – or about the other statistics and content of the "Investigations and Enforcement" sections of their 2022 and 2023 annual reports.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org
914-421-1200
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From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Friday, November 15, 2024 4:19 PM

To: 'records@ethics.ny.gov'

Cc: 'aayer@albanylaw.edu'; 'm@michaelcardozo.com'; 'sjames@barketepstein.com'; 'ngroenwegen@gmail.com'; 'dolly@caramanlaw.com'; 'claudialedwards2@gmail.com'

Subject: **FOIL Request: JCOPE's "internal procedures for intake and review of all tips and complaints" & its "case management system" -- & COELIG's revisions and updates thereto**

TO: Commission on Ethics and Lobbying in Government
ATT: FOIL Records Access Officer Emily DeSantis

In its 2012 "First Year Report", JCOPE stated (at p. 13)

> "…the Investigations Division also adopted internal procedures for intake and review of all tips and complaints and is in the process of creating a new case management system."

In JCOPE's 2012 Annual Report – its first – released March 28, 2013, it comparably stated (at p. 46)

> "…the Investigations Division also established internal procedures for intake and review of all tips and complaints and is in the process of creating a new case management system."

In its February 2015 "Third-Year Report", JCOPE stated (at p. 37)

> "Over the past three years, JCOPE has established internal procedures for intake and review of all tips and complaints and worked closely with the State Office of Information Technology Services to create an effective electronic case management system."

Pursuant to FOIL, this is to request:

(1) a copy of JCOPE's referred-to "adopted internal procedures for intake and review of all tips and complaints" – and any subsequently adopted revisions/updates to same by JCOPE and/or COELIG;

(2) a copy of specifications/procedures/protocols pertaining to JCOPE's referred-to "effective electronic case management system" – and any subsequently adopted revisions/updates to same by JCOPE and/or COELIG.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org
914-421-1200
elena@judgewatch.org

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Friday, November 15, 2024 4:42 PM

To: 'records@ethics.ny.gov'

Cc: 'aayer@albanylaw.edu'; 'm@michaelcardozo.com'; 'sjames@barketepstein.com'; 'ngroenwegen@gmail.com'; 'dolly@caramanlaw.com'; 'claudialedwards2@gmail.com'

Subject: **FOIL Request: Cumulative Hourly Per Diems Paid -- Including as Supplemented, Retroactively, to April 1, 2024, as Voted by the Commissioners at their Oct 23, 2024 Meeting**

TO: Commission on Ethics and Lobbying in Government
ATT: FOIL Records Access Officer Emily DeSantis

Your 2023 Annual Report, released on June 24, 2024, states that among COELIG's "Accomplishments" and "significant milestones" is "Posting Commissioner Per Diem Allowances" (at p. 22). It does not provide any figures, but instead furnishes a link to where they are posted on COELIG's "Pressroom" website. From the nine entries currently posted, it is impossible to ascertain the cumulative figure either for hourly *per diem* payments made in 2023 or of work done in 2023, for which hourly *per diem* payments were made. These nine entries are: .

"Oct 2023-Mar 2024 Commissioner Per Diems" (Paid-May 22, 2024) $15,976.35

"Oct. 2023 – March 2024 Commissioner Per Diems" (Paid-May 22, 2024).....$15,976.61

"Jan – April 2024 Commissioner Per Diems" (Paid-April 10, 2024).....$36,240.20

"Nov 2023- March 2024 Commissioner Per Diems" (estimated).....$8,371.56

"Oct – Dec 2023 Commissioner Per Diems" (Paid-Dec 20, 2023).....$37,895.82

"Sept – Nov 2023 Commissioner Per Diems" (Paid-Nov 2023).....$23,612.95

"July – September 2023 Commissioner Per Diems".....$18,340.76

"Apr – June 2023 Commissioner Per Diems".....$45,982.09

"FY 2022-23 Commissioner Per Diems" (Paid-FY 2022-23).....$83,946.11

It appears from this tally – and omitting what appears to be a redundant entry (differing by 26 cents) and an estimated entry, that the amount is: $261,994.54.

Pursuant to FOIL, this is to request any cumulative tally of the hourly *per diems* paid to date to the Commissioners – including as supplemented, retroactively, to April 1, 2024, to reflect the increase in Supreme Court justice salary resulting from the December 4, 2023 Report of the Commission on

Legislative, Judicial and Executive Compensation – the subject of Resolution #2024-02, approved by the Commissioners at the October 23, 2024 meeting.

Thank you.

Elena Sassower, Director
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CENTER *for* JUDICIAL ACCOUNTABILITY, INC.*

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White Plains, New York 10602 ***Website: www.judgewatch.org***

August 6, 2024

TO: The Seven NEW Law School Deans of the Independent Review Committee (IRC)

SUNY-Buffalo Law School Dean S. Todd Brown
(predecessor Aviva Abramovsky)
Albany Law School Dean Cinnamon P. Carlarne
(predecessor Alicia Ouellette)
Brooklyn Law School Dean David D. Meyer
(predecessor Michael T. Cahill)
Fordham Law School Dean Joseph Landau
(predecessor Matthew Diller)
Hofstra Law School Dean Jenny Roberts
(predecessor Gail Prudenti)
St. John's University Law School Dean Jelani Jefferson Exum
(predecessor Michael A. Simons)
Syracuse University Law School Dean Terence J. Lau
(predecessor Craig M. Boise)

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

RE: Have Your Predecessor Law School Deans & the IRC's Other Law School Deans Apprised You of What Has Been Going On? – & IRC's Ethical, Professional, and Civic Responsibilities Going Forward, including by Intervention & as *Amicus Curiae* at the Court of Appeals in *CJA v. JCOPE, et al.*

I am the director and co-founder of the non-partisan, non-profit citizens' organization Center for Judicial Accountability (CJA) and write to alert you to what your seven predecessor law school deans have presumably not disclosed to you, namely, that the Independent Review Committee (IRC), to which you are now members replacing them, is corrupt and has enabled an unconstitutionally-enacted Commission on Ethics and Lobbying in Government (COELIG) to flagrantly violate Executive Law §94(10) and other provisions of the "ethics commission reform act of 2022" of which it is part, including by:

- purportedly voting "to close" CJA's sworn, fully-documented July 8, 2022 complaint and October 6, 2022 supplement against Attorney General Letitia James for corrupting the judicial process in *CJA v. JCOPE, et al.* (Albany #904235-22) , in which COELIG and the IRC deans were and are directly interested;

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* **Center for Judicial Accountability, Inc.** (CJA) is a national, non-partisan, non-profit citizens' organization working to ensure that safeguards are functioning to prevent judges from "throwing" cases by fraudulent judicial decisions, obliterating and falsifying facts and law – and that judicial selection and discipline processes are not, as they presently are, sham "window-dressing".

- ignoring CJA's sworn and fully-documented October 2, 2023 complaint against COELIG's commissioners, its executive director, general counsel, and other high-ranking staff, which simultaneously resubmitted, for COELIG's formal reconsideration, the July 8, 2022 complaint and October 6, 2022 supplement – not acknowledged by COELIG until June 5, 2024, and this by nothing more than an "Automatic reply" e-mail to CJA's own June 5, 2024 e-mail;

- ignoring CJA's sworn and fully-documented January 29, 2024 complaint against the members of the (3rd) Commission on Legislative, Judicial and Executive Compensation, embodying the record of *CJA v. JCOPE, et al.*, then, as now, at the Appellate Division, Third Department (#CV-23-0115) – not acknowledged by COELIG until June 5, 2024, and this by nothing more than an "Automatic reply" e-mail to CJA's own June 5, 2024 e-mail;

- failing to produce ANY records in response to CJA's FOIL requests of July 26, 2022, November 16, 2022, and December 27, 2022 for COELIG's

> "written procedures for receipt, docketing, acknowledgment, preliminary review, and investigation of complaints",

rephrased on December 5, 2023 and June 5, 2024 as:

> "written procedures/manual for receipt, docketing, acknowledgment, preliminary review, investigation of complaints, notification of disposition to complainants – and reconsideration".

You can assess the situation for yourselves, as it is established by the open-and-shut, *prima facie* EVIDENCE posted and accessible from CJA's webpage for COELIG, including a webpage for the IRC which posts a DEVASTATING "paper trail" of my correspondence to the IRC's 15 deans from June 12, 2022 to February 7, 2023, with a further February 8, 2023 e-mail to Chair Crowell for forwarding to the IRC's other 14 law school deans.

This "paper trail" puts the LIE to the IRC's self-promoting March 28, 2023 "Summary of Activities" and Chair Crowell's March 29, 2023 "Remarks" at COELIG's first annual hearing – both of which the IRC's website posts under "News and Reports".

Suffice to note that notwithstanding the IRC's "Summary of Activities" states – by Chair Crowell's prefacing signed letter to "Fellow New Yorkers" – "We will be watching COELIG's work with great interest…" and his comparable statement at COELIG's March 29, 2023 hearing "…we will be watching your operations and outcomes closely", the IRC's "News and Reports" section has no posting for 15 months – and then only Governor Hochul's July 3, 2024 press release "*Governor Hochul Announces Nominee for the Commission on Ethics and Lobbying in Government*".

With respect to Governor Hochul's July 3, 2024 announcement, are you aware of my comment thereto, which I made on July 10, 2024 *via* her web portal, as required? I received no communication from anyone about it – and there has been no announcement of "formal" nomination, either by the Governor or the IRC. Based on past experience, this means that the IRC is in process of approving "Nominee" James Caras, Esq.

The Governor's July 3, 2024 announcement and my July 10, 2024 opposition comment are accessible from CJA's webpage for COELIG's "Selection Members". The direct link to its indicated webpage for Mr. Caras, posting the opposition comment, is here.

* * *

This letter is also being sent to the IRC's six other law school deans – and to your seven predecessor law school deans whose departure from the IRC scene does not relieve them of their ethical, professional, and civic responsibilities to staunch the vast injury to the People of the State of New York and destruction of constitutional, lawful state governance which, as IRC members, they collusively abetted, ever since my first letter to them, on June 12, 2022, alerting them to the then newly-commenced *CJA v. JCOPE, et al.* (Albany Co. #904235-22) and its sixth cause of action to VOID the "ethics commission reform act of 2022" because it was enacted unconstitutionally through the budget and by fraud and requesting their intervention, *amicus curiae* assistance, and scholarship.[1]

I am available to answer questions as to the foregoing – and to discuss the IRC's ethical, professional, and civic responsibilities at this juncture. This includes, and I here expressly request, the IRC's intervention and/or *amicus curiae* participation at the Court of Appeals in *CJA v. JCOPE, et al.* (AD3-CV23-0115) in support of CJA's anticipated appeal of right to the Court of Appeals on the constitutional questions directly involved, to be combined with a motion for leave to appeal, with the case to be heard in tandem with *Cuomo v. COELIG* (AD3-CV23-1778).

The state of the record with respect to *CJA v. JCOPE, et al.* and *Cuomo v. COELIG*, the latter granted leave to appeal by the Appellate Division, Third Department, is summarized by CJA's *sub judice* July 4, 2024 motion to the Appellate Division, whose final submission, my July 28, 2024 reply affirmation, details Attorney General James' litigation fraud on the motion.

Thank you.

s/Elena Ruth Sassower

cc: See next page

[1] This June 12, 2022 letter to the IRC's 15 law school deans entitled "Lawsuit to VOID the 'ethics commission reform act of 2022' TRO to stay the statute from taking effect on July 8th – & your ethical, professional, and civic responsibilities with respect thereto…" and my July 2, 2022 e-mail to them entitled "TIME IS OF THE ESSENCE…" are part of the lower court record in *CJA v. JCOPE, et al.* (#69, #68, #67, ¶¶17-18) – and appear at R.557-568 of the Record on Appeal.

cc: The Seven Predecessor IRC Law School Deans
IRC Chair & New York Law School Dean Anthony Crowell
Columbia University Law School Dean Gillian Lester
Cornell University Law School Dean Jens David Ohlin
Touro College Law School Elena B. Langan
Yeshiva University Cardozo Law School Dean Melanie Leslie
New York University Law School Dean Troy McKenzie
Pace University Law School Dean Horace E. Anderson, Jr.
CUNY-Queens College Law School Dean Sudha Setty