SUPREME COURT OF STATE OF NEW YORK
ALBANY COUNTY

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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,

Plaintiffs,

Index #1788-14

-against-

ANDREW M. CUOMO, in his official capacity
as Governor of the State of New York,
DEAN SKELOS in his official capacity
as Temporary Senate President,
THE NEW YORK STATE SENATE,
SHELDON SILVER, in his official capacity
as Assembly Speaker, THE NEW YORK
STATE ASSEMBLY, ERIC T. SCHNEIDERMAN,
in his official capacity as Attorney General of
the State of New York, and THOMAS DiNAPOLI,
in his official capacity as Comptroller of
the State of New York,

Defendants.

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PLAINTIFFS' REPLY MEMORANDUM OF LAW

in Further Support of Plaintiffs' Cross-Motion for Summary Judgment & Other Relief

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ELENA RUTH SASSOWER, 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, Apartment 2D-E
White Plains, New York 10603
914-421-1200
elena@judgewatch.org

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INTRODUCTION:
Plaintiffs' Entitlement to the Granting of All Branches of Their Cross-Motion, *as a Matter of Law*

This memorandum of law is submitted in reply to Assistant Attorney General Adrienne Kerwin's October 23, 2015 opposition to plaintiffs' September 22, 2015 cross-motion/opposition to her July 28, 2015 dismissal/summary judgment motion – and in further support of plaintiffs' cross-motion.

Once again, AAG Kerwin continues to violate the basic standard of honesty required of all attorneys practicing before the Court. Her paltry 12-paragraph opposing affirmation and barely five-page opposing memorandum of law are not only frivolous, but – like her July 28, 2015 dismissal/summary judgment motion – "from beginning to end, and in virtually every line, a fraud on the court", consisting, as they do, of bald assertions and characterizations, all false and knowingly so. Indeed, AAG Kerwin does not deny or dispute ANY of the facts and law presented by plaintiffs' opposition/cross-motion, none of which she even identifies, making her opposition, no opposition, *as a matter of law*.

As previously and repeatedly stated, including at the outset of plaintiffs' September 22, 2015 memorandum of law (at pp. 2-3), the Attorney General's litigation fraud, by AAG Kerwin:

> "would be unacceptable if perpetrated by an ordinary lawyer. That it is perpetrated by this state's highest law enforcement officer to subvert the statutory safeguard protecting taxpayer monies provided by State Finance Law Article 7-A (§123, *et seq.*) requires severest action by this Court."

The statutory and rule provisions invoked by the sixth, seventh, and eighth branches of plaintiffs' cross motion – 22 NYCRR §130-1.1, *et seq.*, Judiciary Law §487(1), and 22 NYCRR§100.3(D)(2) – provide the Court with the means and obligation to protect itself and plaintiffs from falsehood and fraud. Such falsehood and fraud reinforce plaintiffs' entitlement to

their other cross-motion branches. As also stated at the outset of their September 22, 2015 memorandum of law (at pp. 3-4):

> "The fundamental legal principle is as follows:
>
> 'when a litigating party resorts to falsehood or other fraud in trying to establish a position, a court may conclude that position to be without merit and that the relevant facts are contrary to those asserted by the party.' Corpus Juris Secondum, Vol 31A, 166 (1996 ed., p. 339);
>
> 'It has always been understood – the inference, indeed, is one of the simplest in human experience – that a party's falsehood or other fraud in the preparation and presentation of his cause…and all similar conduct, is receivable against him as an indication of his consciousness that his case is a weak or unfounded one; and that from that consciousness may be inferred the fact itself of the cause's lack of truth and merit. The inference thus does not necessarily apply to any specific fact in the cause, but operates, indefinitely though strongly, against the whole mass of alleged facts constituting his cause.' II John Henry Wigmore, Evidence §278 at 133 (1979)."

Based on the particularized facts and law presented by plaintiffs' September 22, 2015 opposition/cross-motion – all uncontested – plaintiffs' entitlement to the granting of all ten branches of their cross-motion is, *as a matter of law*:

> "(1) pursuant to CPLR §3211(c), giving notice that Attorney General Eric T. Schneiderman's July 28, 2015 motion to dismiss plaintiffs' verified supplemental complaint by Assistant Attorney General Adrienne Kerwin is being converted by the Court to a motion for summary judgment for plaintiffs on their four causes of action therein;
>
> (2) pursuant to CPLR §3212(b), granting plaintiffs summary judgment on their verified complaint's fourth causes of action;
>
> (3) pursuant to this Court's October 9, 2014 decision/order, granting sanctions & other relief against AAG Kerwin and all complicit with her, following determination of the three issues undetermined by the October 9, 2014 decision/order pertaining to plaintiffs' order to show cause with TRO that the Court signed on June 16, 2014, to wit, whether AAG Kerwin's 4-page document turnover was (a) a 'flagrant fraud on the Court'; (b) constituted evidence of defendants' violation of Legislative Law §67; and (c) a possible contempt of the TRO;
>
> (4) pursuant to Executive Law §63.1 and State Finance Law Article 7-A, directing Attorney General Schneiderman to identify who in the Attorney General's office has independently evaluated the 'interest of the state' in this citizen-taxpayer

action and plaintiffs' entitlement to the Attorney General's representation/intervention;

(5) pursuant to Rule 1.7 of the Rules of Professional Conduct for Attorneys, disqualifying Attorney General Schneiderman for conflict of interest;

(6) pursuant to 22 NYCRR §130-1.1 *et seq.*, imposing maximum costs and $10,000 sanctions against AAG Kerwin and all complicit supervisory lawyers in Attorney General Schneiderman's office by reason of their frivolous and fraudulent July 28, 2015 dismissal/summary judgment motion;

(7) pursuant to Judiciary Law §487(1), assessing penal law penalties against AAG Kerwin and all complicit supervisory lawyers in Attorney General Schneiderman's office, as well as such determination as would afford plaintiffs treble damages against them in a civil action by reason of their frivolous and fraudulent July 28, 2015 dismissal/summary judgment motion;

(8) pursuant to 22 NYCRR §100.3D(2), referring AAG Kerwin and all complicit supervisory lawyers in Attorney General Schneiderman's office to appropriate disciplinary authorities for their knowing and deliberate violations of New York's Rules of Professional Conduct for Attorneys and, specifically, Rule 3.1 'Non-Meritorious Claims and Contentions', Rule 3.3 'Conduct Before A Tribunal'; Rule 8.4 'Misconduct'; and Rule 5.1 'Responsibilities of Law Firms, Partners, Managers and Supervisory Lawyers';

(9) pursuant to CPLR §5015(a)(3), vacating the Court's October 9, 2014 decision/order for 'fraud, misrepresentation, [and] other misconduct' of defendants and their counsel;

(10) for such other and further relief as may be just and proper, including $100 motion costs pursuant to CPLR §8202." (underlining in plaintiffs' September 22, 2015 cross-motion).

As 22 NYCRR §130-1.2 enables the Court to impose $10,000 sanctions for each "single occurrence of frivolous conduct", plaintiffs expressly seek, as part of their cross-motion's tenth branch of "other and further relief", imposition of additional maximum $10,000 sanctions against AAG Kerwin and her collusive superiors in the office of the Attorney General, with an additional award of maximum costs to plaintiffs, as well as further treble damages under Judiciary Law §487(1), based on AAG Kerwin's unabated fraudulent conduct, as hereinafter demonstrated.

Below is a particularization of the serial frauds AAG Kerwin has committed by her October 23, 2015 opposition papers – reinforcing plaintiffs' entitlement to each branch of their cross-motion.

Needless to say, the ONLY inference that can be drawn from the fact that AAG Kerwin has continued her litigation misconduct is that she holds to the view that the Court will NOT discharge its duty to ensure the integrity of the judicial process – not the least reason being because it has a financial interest amounting to some $40,000 a year in "throwing" the case so as not to render the declaration to which plaintiffs are entitled as to the unconstitutionality of Chapter 567 of the Laws of 2010, *as written and as applied*, and the judicial salary increases resulting therefrom, embodied in plaintiffs' second and sixth causes of action.[1] That entitlement, uncontested by AAG Kerwin, is set forth at pages 19-25, *infra*.

Suffice to say, more than a century ago, in *Matter of Bolte*, 97 AD 551 (1904), the Appellate Division, First Department stated:

> "A judicial officer may not be removed for merely making an erroneous decision or ruling, but he may be removed for ***willfully*** making a wrong decision or an erroneous ruling, or for a reckless exercise of his judicial functions without regard to the rights of litigants, or for manifesting friendship or favoritism toward one party or his attorney to the prejudice of another…" (at 568, bold in original, underlining added).
>
> "…Favoritism in the performance of judicial duties constitutes corruption as disastrous in its consequence as if the judicial officer received and was moved by a bribe." (at 574, underlining added).

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[1] This Court's previous response to its financial interest, by its June 24, 2015 decision & order, was to state:

> "The alleged financial conflict that plaintiffs describe is equally applicable to every Supreme and Acting Supreme Court Justice in the State of New York, rendering recusal on the basis of financial interest a functional impossibility (*see*, Matter of Maron v. Silver, 14 NY3d 230, 248-249 [2010]).

However, the "rule of necessity" does not mean that a judge who is unable to rise above his financial interest can constitutionally sit, manifesting his actual bias through decisions that brazenly falsify evidentiary facts and

AAG Kerwin's Fraudulent and Conclusory Opposing Affirmation

AAG Kerwin's excuse for not addressing ANY of the facts and law presented by plaintiffs' cross-motion is her assertion at ¶3 of her affirmation that plaintiffs' submissions are "defamatory" and "rambling", such that, despite "attempts to decipher any legal argument":

> "defendants have failed to locate (1) any admissible relevant evidence or (2) any reasoned argument sufficient to defeat defendants' pending motions or support plaintiffs' cross-motion for summary judgment".

This is a brazen fraud—readily-verifiable from the most cursory examination of plaintiffs' September 22, 2015 opposition/cross-motion, consisting of:

> (1) a 55-page memorandum of law, whose table of contents reflects its organized, meticulous nature – presenting, in addition to a summarizing "Introduction:
>
> - a section entitled "AAG Kerwin's Deficient & Fraudulent Dismissal/Summary Judgment Motion", with subsections separately analyzing, with fact and law, her "Non-Probative, Deceitful Affirmation" (at pp. 4-8) and her "Deficient & Fraudulent Memorandum of Law" (at pp. 8-37);
>
> - a section entitled "Plaintiffs' Cross-Motion", with subsections for each of the nine substantive branches of plaintiffs' cross-motion particularizing the facts and law entitling plaintiffs to the granting of each (at pp. 37-55);
>
> (2) plaintiff Elena Sassower's 8-page affidavit, swearing to the truth of plaintiffs' memorandum of law and furnishing "further pertinent facts and relevant exhibits" to substantiate their entitlement to the granting of their cross-motion.

These resoundingly establish AAG Kerwin's ¶3 as a flagrant deceit – as, likewise, all the paragraphs of her affirmation based thereon, all conclusory. Thus,

- her ¶4, incorporating "as if fully repeated here" her July 28, 2015 affirmation and memorandum of law and her ¶6 baldly purporting that they "fully, completely and accurately address all relevant factual and legal issues relating to the merits of this case" – when the fraudulence of each is particularized, with fact and law, by plaintiffs' September 22, 2015 opposition/cross-motion, without dispute by her as to its accuracy;

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pervert fundamental, black-letter law.

- her ¶5, baldly purporting that "plaintiffs' First, Second, Third, Fifth, Sixth and Seventh Causes of Action, [are] already decided" – citing to Exhibit B of her July 28, 2015 affirmation, which is the Court's October 9, 2014 decision – when the fraudulence of the October 9, 2015 decision with respect to plaintiffs' First, Second and Third Causes of Action, is particularized, with fact and law, by their Fifth, Sixth, and Seventh Causes of Action and reiterated by plaintiffs' September 22, 2015 opposition/cross-motion, without dispute by her as to its accuracy;

- her ¶10, baldly purporting that "plaintiffs' application for sanctions is based on their apparent objection to defense counsel's writing style and method of advocacy, and a complete misunderstanding of the law, litigation and the power of the court"; her ¶11, baldly purporting that "[t]he basis" for plaintiffs seeking sanctions is "the fact that defense counsel is representing her clients and does not agree with plaintiffs' misguided view of reality"; and that "all of defendants' arguments are both legally sound and undeniably appropriate responses" to plaintiffs' complaint and supplemental complaint; and her ¶12, baldly purporting that "Plaintiffs have failed to show any basis, whatsoever, for the imposition of sanctions" . The fraudulence of these conclusory paragraphs is established by plaintiffs' September 22, 2015 opposition/cross-motion – again, without dispute by AAG Kerwin as to its factual and legal accuracy.

Also flagrantly deceitful is AAG Kerwin's ¶7, which relies on her "previous submissions in opposition to plaintiffs' prior cross-motion for various forms of relief in opposition to the same relief sought by plaintiffs' present cross-motion". These unidentified "previous submissions" are AAG Kerwin's May 30, 2014 affirmation and memorandum of law in opposition to plaintiffs' May 16, 2014 cross-motion – and their frivolous, fraudulent nature was detailed by plaintiffs' June 16, 2014 reply memorandum of law. This includes AAG Kerwin's opposition to the cross-motion branches pertaining to the Attorney General's disqualification for conflict of interest and for an order "compelling the Attorney General to identify who is evaluating the 'interest of the state' and plaintiffs' entitlement to the Attorney General's representation/intervention pursuant to Executive Law §63.1 and State Finance Law Article 7-A" – which are the branches of plaintiffs' prior cross-motion to which AAG Kerwin's ¶¶7 and 9 specifically refer as having been replicated in the instant cross-motion. Plaintiffs' June 16, 2014 reply memorandum of law pointed out (at pp. 11-12) that

AAG Kerwin's opposition to each of these cross-motion branches was "frivolous *per se* – and a fraud on this Court"; "completely unsupported, in fact and law", furnishing the substantiating particulars. AAG Kerwin's October 23, 2015 affirmation does not deny of dispute the accuracy of plaintiffs' showing therein in repeating and relying on her identical frauds.

As for AAG Kerwin's ¶8, by which she seeks to explain away the failure of her dismissal/summary judgment motion to address a succession of constitutional and statutory violations, alleged in the complaint and supplemental complaint, she states:

> "To the extent that the complaint or supplemental complaint are read to include claims of violations of article VII, section 7 of the New York State Constitution, see Plaintiffs' Memorandum of Law at p. 18; article III, sections 10 and 16 of the New York State Constitution, see id; and sections 31 and 54-a(2)(d) of the Legislative Law, see id. at pp. 30, 38, defendants are entitled to judgment on these claims for the reasons discussed in the accompanying memorandum of law. Annexed hereto at **Exhibit A** are copies of the publicly available Joint Legislative Budget Schedules for 2014 and 2015 issued in compliance with Legislative Law 54-a. Annexed hereto at **Exhibit B** are the 2014 and 2015 Joint Certificates establishing the General Conference Committee on the Reconciliation of Budgetary Variations and governing the process." (bold in AAG Kerwin's original).

Again, brazen fraud. The pages of plaintiffs' September 22, 2015 memorandum of law that AAG Kerwin cites – pages 18, 30, and 38 – nowhere purport that the complaint and supplemental complaint alleged any violation of Legislative Law §31 or that the violation of Legislative Law §54-a was limited to subdivision (2)(d). Further, AAG Kerwin's implication that there might be some doubt as to whether the complaint and supplemental complaint alleged such violations is false. Her cited pages 18, 30, 38 of plaintiffs' memorandum of law supply the paragraphs of the supplemental complaint (¶¶181, 192, 218-220, 231-234, 236, PRAYER FOR RELIEF/WHEREFORE clause: pp. 39, 40) specifying the violations – including of Public Officers Law VI, whose violation she does not identify. In other words, AAG Kerwin's excuse for omitting the specified violations from her dismissal/summary judgment is sham – proven by the cited pages.

AAG Kerwin's Fraudulent and Conclusory Opposing Memorandum of Law

AAG Kerwin's memorandum of law purports that "[f]or the same reasons" that her July 28, 2015 dismissal/summary judgment should be granted, plaintiffs' cross-motion should be denied", thereupon incorporating the arguments of her July 28, 2015 dismissal/summary judgment motion "as if fully re-stated herein". This is utter nonsense and fraud. Plaintiffs' cross-motion demonstrates that AAG Kerwin's July 28, 2015 dismissal/summary judgment motion is "from beginning to end, and in virtually every line, a fraud on the court". It is total deceit for her to purport that the motion shown to be a fraud by the cross-motion rebuts the cross-motion.

Indeed, her footnote 1 displays this same fraudulent, circular mode of arguing, devoid of ANY facts. Referring to plaintiffs' cross-motion branch to vacate the Court's October 9, 2014 decision/order pursuant to CPLR §5015(a)(3) for "fraud, misrepresentation, or other misconduct of an adverse party", for which she cites pages 53-54 of plaintiffs' September 22, 2105 memorandum of law, the entirety of her response is:

> "for all of the reasons discussed in support of defendants' motion and in opposition to plaintiffs' cross-motion, defendants have not engaged in any fraud, misrepresentation or misconduct. Therefore, plaintiffs' frivolous cross-motion pursuant to CPLR 5015(a)(3) should be denied." (p. 1, fn. 1).

As examination of plaintiffs' 55-page September 22, 2015 memorandum of law establishes, NONE of the "reasons discussed in support of defendants' motion" are factually and legally sustainable – and these are the "same reasons" as AAG Kerwin presents "in opposition to plaintiffs' cross-motion".

AAG Kerwin then devotes the balance of her opposing memorandum of law to the selected constitutional and statutory violations that pages 18-19 and 38 of plaintiffs' September 22, 2015 memorandum of law had pointed out were conceded, *as a matter of law*, having been concealed and not addressed by her July 28, 2015 dismissal/summary judgment motion.

Beginning with an introductory paragraph mirroring her affirmation's above-quoted ¶8, AAG Kerwin states:

> "Though difficult to decipher, plaintiffs' frivolous and offensive fifty-five page memorandum of law seems to assert that plaintiffs believe that the supplemental complaint contains constitutional and statutory claims not previously addressed by defendants. Specifically, plaintiffs allege that the supplemental complaint alleges violations of article VII, section 7 of the New York State Constitution, see Plaintiffs' Memorandum of Law at p. 18; article III, sections 10 and 16 of the New York State Constitution, see id.; and sections 31 and 54-a(2)(d) of the Legislative Law. See id. at p. 30, 38. In an effort to address any conceivable claim that is alleged to be contained in the complaints in this case, defendants will address these alleged claims." (at pp. 1-2).

Again, there is nothing "difficult to decipher", nor "frivolous and offensive" in plaintiffs' fact-specific, law-supported memorandum of law – and there is no basis for her disparagement that it "seems to assert that plaintiffs believe that the supplemental complaint contains constitutional and statutory claims not previously addressed by defendants" and her reference to "alleged claims" – as if plaintiffs are not accurately representing the content of their complaint and supplemental complaint, when they are.

AAG Kerwin then purports to refute the violations of Article VII, §7, Article III, §10, Article III, §16, Judiciary Law §31, and Legislative Law §54-a. In fact, she demonstrates plaintiffs' entitlement to declarations in their favor as to all the violations, other than Judiciary Law §31, which plaintiffs never alleged to have been violated.

In that regard and by her repeated assertions that plaintiffs' claimed violations of these constitutional and statutory provisions "should be dismissed', she continues to wantonly disregard and mislead the Court. As plaintiffs have repeatedly pointed out to AAG Kerwin – including at page 11 of their September 22, 2015 memorandum of law:

> "...because this citizen-taxpayer action seeks a declaratory judgment, it cannot be 'dismissed' – as her motion requests. Rather, a declaration must issue, *Seymour v.*

Cuomo, 180 A.D.2d 215, 217-218 (1992); *Donovan v. Cuomo*, 126 A.D.2d 305, 310 (3rd Dept. 1987). As stated in New York Practice, David D. Siegel, (5th ed. 2011):

> 'If a plaintiff in an ordinary action loses on the merits, the result is a dismissal of the complaint. In a declaratory action, 'the court should make a declaration, even though the plaintiff is not entitled to the declaration he seeks'.[fn1] A mere dismissal is not appropriate.[fn2] The court must determine the rights of the parties to the dispute involved and, if the defendant prevails, the declaration should simply go the defendant's way.[fn3] If the defendant should move to 'dismiss' the complaint for failure to state a cause of action, under CPLR 3211(a)(7), the motion in the declaratory context should be taken as a motion for a declaration in the defendant's favor and treated accordingly.'"

A. AAG Kerwin's Fraud with Respect Plaintiffs' Entitlement to a Declaration that the Judiciary Reappropriations for Fiscal Years 2014-2015 and 2015-2016 Violate Article VII, §7 and are Unconstitutional

AAG Kerwin three-sentence argument pertaining to defendants' violations of New York Constitution, Article VII, §7 is as follows:

> "To the extent plaintiffs' alleged claim pursuant to [Article VII, §7] relates to the enacted 2014-2015 and 2015-2016 Legislative and Judiciary Budgets, the exhibits annexed to the July 28, 2015 Kerwin affirmation establish that these budgets were properly considered and enacted. To the extent that plaintiffs allege that money paid out of the state treasury pursuant to these enacted budgets were unconstitutional, there are no facts in the original or supplemental complaint about anything allegedly done by the defendants beyond the enacting of the budgets. Therefore, any claim in the complaints alleging a violation of article VII, section 7 should be dismissed." (at p. 2).

Deceit and fraud permeate these sentences.

First, there is nothing "alleged" about plaintiffs' "claim".

Second, plaintiffs' allegations with respect to Article VII, §7 concern the judiciary reappropriations – and in fiscal year 2014-2015 these are the same in the "enacted" (amended) legislative/judiciary budget bill, the original legislative/judiciary budget bill – and in the Judiciary's "single budget bill". Likewise, in fiscal year 2015-2016, the judiciary reappropriations in the "enacted" (amended) and original legislative/judiciary budget bills are the same and identical to

those in the Judiciary's "single budget bill".

Third, the "facts" pertaining to the judiciary reappropriations for fiscal year 2014-2015 are presented by plaintiffs' ¶¶105-107, resting on the specifics of their "Questions for Chief Administrative Judge Prudenti" – Exhibit K-2 to their complaint. Its Question #14 described the $41,525,000 judiciary reappropriations as follows:

> "...except for the last two reappropriations of $10 million each... all the listed reappropriations...are pretty barren, essentially referring to chapter 51, section 2 of the laws of 2013, 2012, 2011, 2010, 2009 and also chapter 51, section 3 of those laws – which are the enacted budget bills pertaining to the Judiciary for those years, its appropriations and reappropriations, respectively. They furnish no specificity as to their purpose other than a generic 'services and expenses, including travel outside the state and the payment of liabilities incurred prior to April 1...'; or 'services and expenses as provided by section 94-b of the state finance law– Contractual Services'; or 'Contractual Services'."

As for the "facts" pertaining to the $26,935,000 judiciary reappropriations for fiscal year 2015-2016, they are presented by plaintiffs' ¶143 as follows:

> "Identically to last year, the descriptions of [the] reappropriations...were pretty barren. Most referred to chapter 51, section 2 of the laws of 2014, 2013, 2012, 2011, 2010 and also chapter 51, section 3 of those laws – which are the enacted budget bills pertaining to the Judiciary for those years, its appropriations and reappropriations, respectively. Yet they were completely devoid of specificity as to their purpose other than a generic 'services and expenses, including travel outside the state and the payment of liabilities incurred prior to April 1...'; or 'services and expenses as provided by section 94-b of the state finance law– Contractual Services'; or 'Contractual Services'." (underlining in the original).

Fourth, the accuracy of these descriptions is uncontested by AAG Kerwin – and is readily verified from the documentary evidence she herself has furnished: the Judiciary's "single budget bills" for each of those two fiscal years, the Governor's original budget bill for those years, and the "enacted" (amended) budget bills – annexed to her July 28, 2015 affirmation as her Exhibits F, J, G, K, H, L.

Fifth, AAG Kerwin neither asserts, nor shows, that the judiciary reappropriations therein

conform to Article VII, §7:

> "No money shall ever be paid out of the state treasury or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made within two years next after the passage of such appropriation act; and every such law making a new appropriation or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object or purpose to which it is to be applied; and it shall not be sufficient for such law to refer to any other law to fix such sum."

Indeed, AAG Kerwin does not even assert, let alone show, that the judiciary reappropriations are certified, including as to the appropriateness of their designation as reappropriations.

Consequently, plaintiffs are entitled to a declaration that the judiciary reappropriations for fiscal years 2014-2015 and 2015-2016 violate Article VII, §7 and are unconstitutional by reason thereof. Indeed, inasmuch as the Attorney General's office has all the resources available to it to furnish textual analyses of that constitutional provision and affidavits from professionals in its Law Department, in the Legislature, and in the Comptroller's Office, her failure to do so underscores plaintiffs' entitlement.

B. AAG Kerwin's Fraud with Respect to Plaintiffs' Entitlement to a Declaration that the Judiciary Reappropriations for Fiscal Years 2014-2015 and 2015-2016 Violate Article III, §16 and are Unconstitutional

AAG Kerwin addresses defendants' violations of New York Constitution, Article III, §16 and Article III, §10, simultaneously, by a three-sentence argument:

> "Plaintiffs offer no facts to support a claim that defendants violated either of these constitutional provisions. To the extent that plaintiffs allege that the Assembly and/or Senate failed to follow their own internal rules, violations of such rules are not reviewable by the court. Urban Justice Ctr. v. Pataki, 38 A.D.3d 20, 27 (1st Dept 2006), lv. Denied 8 N.Y.3d 958 (2007). Any attempt by plaintiffs to cloak these claims as constitutional violations must be seen as such, and plaintiffs' claims under sections of article III should be dismissed." (at p. 3).

Here, again, AAG Kerwin engages in fraud and deceit. Article III, §16 states:

> "No act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of said act, or which shall enact that any existing law,

or part thereof, shall be applicable, except by inserting it in such act."

Establishing the violation of Article III, §16 – just as the violation of Article VII, §7 – requires nothing more than examining the judiciary reappropriations in the enacted budget bills for fiscal years 2014-2015 and 2015-2016. As these are identical to the judiciary reappropriations in the original budget bills – and in the judiciary's "single budget bills" – the descriptions furnished by plaintiffs' ¶¶105-107, 143 constitute the "facts" supporting their "claim" that the Judiciary reappropriations for fiscal years 2014-2015 and 2015-2016 violate Article III, §16. Here, too, AAG Kerwin's own exhibits – the Judiciary's "single budget bills" for each of those two fiscal years, the Governor's original budget bills for those years, and the enacted budget bills – annexed to her July 28, 2015 affirmation as her Exhibits F, J, G, K, H, L – establish the violations. And, once again, and notwithstanding all the legal resources and constitutional experts available to her, she does not assert, let alone show, that the judiciary reappropriations conform to Article VII, §16.

Consequently, plaintiffs are entitled to a declaration that the judiciary reappropriations for fiscal years 2014-2015 and 2015-2016 violate Article VII, §16 and are unconstitutional by reason thereof.[2]

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[2] Plaintiffs are also entitled to a declaration that the judiciary reappropriations violate State Finance Law §25 – as AAG Kerwin conceals the violation thereof, asserted by the supplemental complaint (¶¶181, 192, PRAYER FOR RELIEF/WHEREFORE clause, at p. 39), which she also does not deny.

> "Every appropriation reappropriating moneys shall set forth clearly the year, chapter and part or section of the act by which such appropriation was originally made, a brief summary of the purposes of such original appropriation, and the year, chapter and part or section of the last act, if any, reappropriating such original appropriation or any part thereof, and the amount of such reappropriation. If it is proposed to change in any detail the purpose for which the original appropriation was made, the bill as submitted by the governor shall show

C. AAG Kerwin's Fraud with Respect to Plaintiffs' Entitlement to a Declaration that the Legislative/Judiciary Budget Bills for Fiscal Years 2014-2015 and 2015-2016 Violate Article III, §10 and are Unconstitutional

New York Constitution Article III, §10 states, in pertinent part:

> "Each house of the legislature shall keep a journal of its proceedings, and publish the same, except such parts as may require secrecy. The doors of each house shall be kept open, except when the public welfare shall require secrecy…"

Plaintiffs' complaint and supplemental complaint are, throughout, particularized by "facts" supporting their "claim" that the Legislature violated Article III, §10 with respect to:

> (1) the Legislature's own proposed legislative budgets for fiscal years 2014-2015 and 2015-2016 – whose "process" creating it legislators and legislative committees either do not know or will not reveal and as to which the Legislature (*via* FOIL) has NO public information or documentation, including NO certification that the proposed legislative budgets are "itemized estimates" of its "financial needs", as Article VII, §I mandates – and as facially they are not;
>
> (2) the tens of millions of dollars of legislative reappropriations for fiscal years 2014-2015 and 2015-2016 – not part of the Legislature's proposed budgets that magically appeared, untallied, in the Governor's original legislative/judiciary budget bills in an out-of-sequence section at the back – and whose figures are significantly and magically changed in the amended legislative/judiciary budget bills –as to which legislators, legislative committees, and the Legislature (*via* FOIL) have NO public information or documentation as to either, including NO certification that they are appropriate reappropriations;
>
> (3) the Legislature's "General State Charges" for fiscal years 2014-2015 and 2015-2016 – whose very existence, dollar amounts, and whereabouts in the budget legislators and legislative committees either do not know or will not reveal – and as to which the Legislature (*via* FOIL) has NO public information or documentation;
>
> (4) the Governor's original and amended (enacted) legislative/judiciary budget bills for fiscal years 2014-2015 and 2015-2016 – unaccompanied by sponsor memos and/or fiscal statements as required by legislative rules – and whose total dollar costs legislators and legislative committees either do not know or will not reveal – and as to which the Legislature (*via* FOIL) has no or scant public information or documentation, including NONE as to their total dollar costs;
>
> (5) the Legislature's joint budget conference committees for fiscal years 2014-2015 and 2015-2015 and their "public protection" subcommittees, which operated behind-

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clearly any such change." (underlining added).

closed-doors, preventing the public from observing any "process", such as deliberations, if any, and votes, if any – and which did not render the reports required by Legislative Law §54-a(2)(d).

Among the innumerable paragraphs of plaintiffs' complaint and supplemental complaint furnishing these and other "facts": ¶¶37-39, 43-45, 69-71,74, 75, 78, 87, 92, 98, 111-112, 118, 122-126, 163, 230, 234-236. Indeed, plaintiffs have not only furnished a mountain of "facts" that the Legislature has gone, behind-closed doors, shutting out and public and/or maintaining no "journal of its proceedings", but by their FOIL/records requests, annexed to their pleadings – and to plaintiff Sassower's September 22, 2015 affidavit – have furnished evidentiary proof that documents that defendants should have for public inspection, they do not.[3] As illustrative, defendant Assembly's

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[3] Tellingly, AAG Kerwin conceals that plaintiffs' complaint (¶126, PRAYER FOR RRELIEF/WHEREFORE clause, at p. 44) and supplemental complaint (¶236, PRAYER FOR RELIEF/WHEREFORE clause, at p. 40) each allege that defendants also violated Public Officers Law, Article VI – the Freedom of Information Law [FOIL], which applies not only to the legislative defendants, but the executive ones.

Public Officers Law, Article VI [FOIL]begins with a "Legislative declaration", §84, as follows:

> "The legislature hereby finds that a free society is maintained when government is responsive and responsible to the public, and when the public is aware of governmental actions. The more open a government is with its citizenry, the greater the understanding and participation of the public in government. As state and local government services increase and public problems become more sophisticated and complex and therefore harder to solve, and with the resultant increase in revenues and expenditures, it is incumbent upon the state and its localities to extend public accountability wherever and whenever feasible. The people's right to know the process of governmental decision-making and to review the documents and statistics leading to determinations is basic to our society. Access to such information should not be thwarted by shrouding it with the cloak of secrecy or confidentiality.
>
> The legislature therefore declares that government is the public's business and that the public, individually and collectively and represented by a free press, should have access to the records of government in accordance with the provisions of this article."

Its §88, entitled "Access to state legislative records", states, in pertinent part:

> "2. The state legislature shall, in accordance with its published rules, make available for public inspection and copying:
>
> (a) bills and amendments thereto, fiscal notes, introducers' bill memoranda, resolutions and amendments thereto, and index records;
>
> ...

April 14, 2015 response to plaintiffs' FOIL/records request, which stated:

> "Please note that there are no records of votes in relation to Joint Budget Conference Committee meetings or meetings of the subcommittee on Public Protection, Criminal Justice, and Judiciary." (Exhibit 14-C, annexed to plaintiff Sassower's September 22, 2015 affidavit, underlining added).

Here, too, AAG Kerwin does not even assert, let alone show, compliance by the Legislature with Article III, §10 with respect to the legislative and judiciary budgets. Consequently, plaintiffs are entitled to a declaration that the Legislature violated Article III, §10 in fiscal years 2014-2015 and 2015-2016 with respect to both those two budgets, which are unconstitutional by reason thereof.

> (d) transcripts or minutes, if prepared, and journal records of public sessions including meetings of committees and subcommittees and public hearings, with the records of attendance of members thereat and records of any votes taken;
> ...
> (h) final reports or recommendations and minority or dissenting reports and opinions of members of committees, subcommittees, or commissions of the legislature;
> 3. Each house shall maintain and make available for public inspection and copying:
> (a) a record of votes of each member in every session and every committee and subcommittee meeting in which the member votes; ..."

AAG Kerwin nowhere asserts or shows that defendants have complied with Public Officers Law, Article VI [FOIL]. Indeed, it would appear that the reason AAG Kerwin pops in the sentence "To the extent that plaintiffs allege that the Assembly and/or Senate failed to follow their own internal rules, violation of such rules are not reviewable by the court...", is because defendants' FOIL responses and non-responses have revealed the many violations of the Legislature's rules by the Legislature – and Governor.

Neither here nor elsewhere does AGG Kerwin assert or show that the Legislature has complied with its own rules – instead regurgitating her deceit that the issue is non-reviewable. In so doing, she neither identifies nor confronts plaintiffs' argument on the subject, set forth at page 25 of their September 22, 2015 memorandum of law, including as follows:

> "...none of her cited caselaw...articulates the proposition – which AAG Kerwin would have this Court adopt – that the Legislature, being constitutionally enabled to make its own rules, is thereupon free to violate the rules it has made. Indeed, as stated by the Appellate Division, Third Department in *Seymour v. Cuomo*, 180 A.D.2d 215, 217 (1992):
>
> > 'The rules established by the Senate and Assembly to govern the proceedings in each house (NY Const, art 3, §9) are the functional equivalent of a statute.'
>
> Just as the Legislature is not free to violate statutes – and AAG Kerwin makes no argument that it is – so, too, is the Legislature not free to violate its own functionally-equivalent rules." (underlining in plaintiffs' original).

D. AAG Kerwin's Fraud with Respect to Plaintiffs' Entitlement to a Declaration that the Legislative/Judiciary Budget Bills for Fiscal Years 2014-2015 and 2015-2016 Violate Legislative Law§ 54-a

AAG Kerwin's purports to address the violations of Legislative Law §54-a, stating:

> "...section 54-a of the Legislative Law requires that the Senate and Assembly have a procedure for establishing joint budget conference committees, and set a schedule to consider and act upon the Governor's proposed budget. See N.Y. Leg. Law §54-a. As demonstrated by the exhibits annexed to the July 28, 2015 affirmation of Adrienne J. Kerwin, the Legislature did, in fact, establish joint budget committees for consideration of the Governor's proposed Legislative and Judiciary budgets – the only budgets at issue in this case – for 2014-2015 and 2015-16, see July 28, 2105 (sic) Kerwin aff. at Exhs. M, N, P, Q, the committees held hearings, see id. at Exhs. O. R, and the houses voted on both budgets. See id. at Exhs. H, L. Additionally, in both 2014 and 2015 the General Committee on the Reconciliation of Budgetary Variations was established by Joint Certificates, see October 23, 2015 Kerwin affirmation at Exh. B, the Legislature promulgated schedules for the issuance of Joint Committee Reports. See id. at Exh. A. Therefore, to the extent that the complaints in this action are read to state a claim under Legislative Law §54-a, such claim should be dismissed." (at p. 4).

This is an utter deceit, as AAG Kerwin well knows in failing to identify and address the nature of the Legislative Law §54-a violations recited by plaintiffs' supplemental complaint. These violations, which are therefore completely undenied by her, are recited at ¶¶231-4, as follows:

> 231. Upon information and belief, defendants SENATE and ASSEMBLY have perverted the intent behind Legislative Law §54-a. This statute is entitled 'Scheduling of legislative consideration of budget bills' and its §1 provides for:
>
> > 'establishing a joint budget conference committee or joint budget conference committees within ten days following the submission of the budget by the governor pursuant to article seven of the constitution, to consider and reconcile such budget resolution or budget bills as may be passed by each house...'
>
> 232. Obviously, the requirement of establishing one or more joint budget committees 'within ten days following the submission of the budget by the governor' is so that they can promptly become operational and do what conference committees are supposed to do: reconcile different versions of bills passed by the two legislative houses.

233. However, because none of the Senate or Assembly committees are deliberating upon, amending, and voting out of committee any of defendant CUOMO's budget bills – which, consequently, are not being brought before defendant SENATE and ASSEMBLY for deliberation, amendment, and votes – the Joint Budget Conference Committee has become part of the legislative window-dressing for non-existent process.

234. Upon information and belief, the reports that the Joint Budget Conference Committee were required to render, pursuant Legislative Law§54-a, 2(d) and Senate and Assembly Joint Rule III, §2, are perfunctory and superficial with respect to the Governor's combined legislative/judiciary budget bills. Both this year and last year, these last-minute reports, to the extent they exist, have not met the schedule promulgated pursuant to Legislative Law §54-a, 2(d) and Senate and Assembly Joint Rule III, §2."

Indeed, the exhibits that AAG Kerwin has supplied – especially the two annexed to her October 23, 2015 affirmation – are wholly irrelevant to the violations alleged by plaintiffs and, most tangibly, to the violation of Legislative Law §54-a,2(d) that is the subject of ¶234, as to which the September 22, 2015 affidavit of plaintiff Sassower had stated:

"a. Plaintiffs are now able to documentarily substantiate defendant Senate and Assembly's violations of Legislative Law §54-a(2)(d) and Senate and Assembly Joint Rule III, §2 with respect to the reports that the Joint Budget Conference Committees for fiscal years 2014-2015 and 2015-2016 were required to render. This is the subject of ¶234, stated 'upon information and belief'. Annexed hereto are pages 10-11 of defendant Comptroller DiNapoli's April 2015 Report on the State Fiscal Year 2015-16 Enacted Budget (Exhibit 13). Under the heading 'Transparency and Accountability', it identifies, with respect to the 'Joint Budget Conference subcommittee process' that 'final reports were never delivered'[fn2]. It would appear that no final reports, or any reports, were ever rendered by the Joint Budget Conference Committee or its subcommittee on 'public protection'– and not just for fiscal year 2015-2016, but fiscal years 2014-2015 and 2013-2014, as may be seen from the response of the Assembly Records Access Officer to plaintiffs' April 7-April 8, 2015 records request (Exhibit 14-a, 14-b, 14-c) and both her response and that of the Secretary of the Senate to plaintiffs' March 28, 2013 records request (Exhibit 15-a, 15-b, 15-c)."

AAG Kerwin does not deny or dispute that for fiscal years 2014-2015 and 2015-2016 reports were never rendered by the Joint Budget Conference Committees – as Legislative Law §54-a(2)(d) requires – including by the "public protection" subcommittees. Indeed, she does not deny or dispute

that the legislative budget was not even within the announced jurisdiction of the "public protection" conference subcommittee.

Consequently, plaintiffs are entitled to a declaration that the legislative/judiciary budget bills for fiscal years 2014-2015 and 2015-2016 violate Legislative Law§54-a.

AAG Kerwin Does Not Contest Plaintiffs' Entitlement to Declarations that the Judicial Salary Increases Recommended by the August 29, 2011 Report of the Commission on Judicial Compensation, Embedded in the Judiciary's Proposed Budgets and Legislative/Judiciary Budget Bills, are Fraudulent, Statutorily-Violative, and Unconstitutional – & that Chapter 567 of the Laws of 2010 – Now Materially Replicated in Chapter 60 of the Laws of 2015 – was Unconstitutional, *as Written & as Applied*

Plaintiffs' second and sixth causes of action (¶108, PRAYER FOR RELIEF/WHEREFORE clause, at p. 44; ¶¶179-181, 190, PRAYER FOR RELIEF/WHEREFORE clause, at p. 39) challenge the lawfulness of the judicial salary increases embedded in the Judiciary's proposed budgets for fiscal years 2014-2015 and 2015-2016 and the legislative/judiciary budget bills embodying them.

As set forth at ¶5 of plaintiffs' complaint, these salary increases were recommended by the August 29, 2011 Report of the Commission on Judicial Compensation, established by Chapter 567 of the Laws of 2010. Plaintiffs demonstrated the fraudulence, statutory violations and unconstitutionality of that Report by their October 27, 2011 Opposition Report. The very first page of its Introduction called for repeal of the commission statute – Chapter 567 of the Laws of 2010 – as "deleterious to the public and unconstitutional, *as written and as applied.*[fn2]", stating, by its annotating footnote 2:

> "As to whether, without constitutional amendment, the legislative and executive branches can, by statute, delegate judicial compensation to an appointed commission, whose recommendations do not require affirmative legislative and executive action to become law, such will be separately presented." (underlining in the original).

Plaintiffs then "separately presented" that issue by their March 30, 2012 verified complaint in their declaratory judgment action *CJA v. Cuomo I*, whose second cause of action, entitled "Chapter

567 of the Laws of 2010 is Unconstitutional, *As Written*", included the following subsection:

"B. **Chapter 567 of the Laws of 2010 Unconstitutionally Delegates Legislative Power Without Essential Safeguarding Provisions & Guidance**

145. Such case law as *Mary McKinney, et al. v. Commissioner of the New York State Department of Health, et al.*, 15 Misc.3d 743; 836 N.Y.S.2d 794 (Supreme Court/Bronx Co. 2007), affirmed by the Appellate Division, First Department, 41 A.D.3d 252 (2007), appeal dismissed, 9 N.Y.3d 891 (2007), appeal denied, 9 N.Y.3d 815 (N.Y., Nov. 27, 2007); motion granted 9 N.Y.3d 986 (N.Y., Nov. 27, 2007), reflects further grounds upon which Chapter 567 of the Laws of 2010 is unconstitutional, *as written*.

146. Article III, §1 of the New York State Constitution vests the legislative power in the Senate and Assembly. There is no provision in the Constitution for delegating decision-making power over judicial salaries to an appointed commission, let alone to an appointed commission whose recommendations are self-executing so as to become law automatically without affirmative legislative or executive action by the People's elected representatives.

147. Such delegation, moreover, could only be constitutional if the appointed commissioners were of a sufficient number and diversity, and untainted by an agenda or other bias and interest.

148. At bar, Chapter 567 of the Laws of 2010 provides for only seven commissioners – and of these, only two are appointed by the Legislature. This is an insufficient number to reflect the diversity of either the Legislature or the State.

149. Nor does the statute specify neutrality as a criteria for appointment – and having two commissioners appointed by the chief judge assures that at least two of the seven commissioners will have been appointed to achieve the judiciary's agenda of pay raises.

150. As the judiciary would otherwise have no deliberative role in determining judicial pay raises legislatively and the chief judge is directly interested in the determination, the chief judge's participation as an appointing authority is, at very least, a constitutional infirmity.

151. Nor could such delegation be constitutional unless the statute defined the constitutional considerations relevant to the Commission's evaluation of judicial compensation levels.

152. Chapter 567 of the Laws of 2010 is not sufficiently-defined and provides insufficient guidance to the Commission as to the 'appropriate

> factors' for it to consider. The statute requires the Commission to 'take into account all appropriate factors, including but not limited to' six listed factors. These six listed factors are all economic and financial – and are completely untethered to any consideration as to whether the judges whose salaries are being evaluated are discharging their constitutional duty to render fair and impartial justice and afford the People their due process and equal protection rights under Article I.
>
> 153. It is unconstitutional to raise the salaries of judges who should be removed from the bench for corruption or incompetence – and who, by reason thereof, are not earning their current salaries. Consequently, a prerequisite to any pay raise recommendation must be a determination that safeguarding appellate, administrative, disciplinary and removal provisions of Article VI are functioning.
>
> 154. The absence of such explicit factor to guide the Commission renders the statute unconstitutional, *as written*."

Seven months ago, Chapter 567 of the Laws of 2010 was repealed – and how it happened is described by Plaintiffs' September 22, 2015 memorandum of law:

> "In the behind-closed doors, 'three-men-in-a-room' budget negotiations for fiscal year 2015-2016, defendants Cuomo, Skelos and Heastie amended budget bills which, at the 11th hour, were introduced and passed by the Legislature in rubber-stamp fashion. Among these was Budget Bill #S.4610-A/A.6721-A and its amendments included repeal of Chapter 567 of the Laws of 2010, so as to replace the Commission on Judicial Compensation, with a Commission on Legislative, Judicial, and Executive Compensation.
>
> The amendment – Part E of Budget Bill #S.4610-A/A.6721-A – largely replicates the provisions of Chapter 567 of the Laws of 2010. *As written*, it suffers from the same constitutional infirmities as were directly challenged by the verified complaint in *CJA v. Cuomo I* [Second Cause of Action: ¶¶140-154] – and which are indirectly challenged by the verified complaint herein…" (at p. 48).

Among the provisions that Part E of Budget Bill #S.4610-A/A.6721-A replicates is "the force of law" power given to commission recommendations, absent affirmative legislative action – the unconstitutionality of which was the subject of plaintiffs' second cause of action in *CJA v. Cuomo I*.

On June 3, 2015, a handful of Assembly members introduced Assembly Bill #07997, whose

purpose, expressly stated by its sponsors' memo, is to:

> "...eliminate the provisions in the 2015 budget that stated that the salary determinations of the special commission on compensation could become effective automatically 'with the force of law,' and could 'supersede' any inconsistent provisions of the Judiciary Law, Executive Law, and Legislative Law, without any further legislative action." (Exhibit 22-b to plaintiff Sassower's accompanying reply affidavit).

According to the memo, "this budget bill language violates several fundamental provisions of the New York State Constitution". The memo then furnishes seven specifics – five of which identically apply to Chapter 567 of the Laws of 2010:

> "b. Article III, Section 1 of the New York State Constitution states that the legislative power 'shall be vested in the Senate and Assembly.' A non-elected commission cannot be delegated legislative power to enact recommendations 'with the force of law' that can 'supercede' inconsistent provisions of law.
>
> ...
>
> d. Article III, Section 13 of the New York State Constitution states that 'no law shall be enacted except by a bill,' yet the salary commission was given the power to enact salary recommendations 'with the force of law' without any legislative bill approving of such salaries being considered by the legislature.
>
> e. Article III, Section 14 of the New York State Constitution states that no bill shall be passed 'or become law' except by the vote of a majority of the members elected to each branch of the legislature. The budget bill, however, stated that the recommendations of the salary commission would 'have the force of law' without any vote whatsoever by the legislators. Such a provision deprives the members of the legislature of their Constitutional right to vote on every bill prior to its enactment into law.
>
> f. Article IV, Section 7 of the New York State Constitution gives the Governor the authority to veto any bill, but there is no corresponding ability of the Governor to veto any recommendations of the salary commission before such recommendations would become effective.
>
> g. Article VII, Section 6 of the New York State Constitution states in relevant part that '(n)o provision shall be embraced in any appropriation bill unless it relates specifically to some particular appropriation in the bill,' yet there was no appropriation in the budget bill relating to the salary commission. Thus, this legislation was improperly submitted and considered by the legislature as an unconstitutional rider to a budget bill."

As recounted by plaintiff Sassower's accompanying affidavit, she alerted AAG Kerwin to

Assembly Bill #07997and its relevance to plaintiffs' challenge herein to the judicial salary increases. Yet, AAG Kerwin has not come forward with any response. For that matter, she has not come forward with any response to plaintiffs' October 27, 2011 Opposition Report and to the four causes of action of their March 30, 2012 verified complaint in *CJA v. Cuomo, I*[4] – copies of which plaintiffs' furnished the Court by their September 22, 2015 opposition/cross-motion, including for purposes of establishing their entitlement to their cross-motion's third branch pertaining to AAG Kerwin's fraud and violations with respect to their June 16, 2014 order to show cause with TRO, which required the legislative defendants to preserve those very documents and turn them over to the Court.[5]

It must be noted that from April to September 2013, plaintiffs repeatedly apprised defendants Legislators and Governor of the background history of "the force of law" provision of Chapter 567 of the Laws of 2010, directly challenged by their *CJA v. Cuomo I* second cause of action (¶¶145-154). The context was plaintiffs' efforts to prevent enactment of legislation establishing "a special commission on compensation for state employees designated managerial or confidential", A.246/S.2953, containing an identical "force of law" provision. Their April 20, 2013 memo furnished, repeatedly, to all Legislators and to the Governor[6] stated:

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[4] These are: "As and for A First Cause of Action: Evisceration of Separation of Powers: Collusion of the Three Government Branches against the People" (¶¶128-139); "As and for a Second Cause of Action: Chapter 567 of the Laws of 2010 is Unconstitutional, *As Written*" (¶¶140-154); "As and for a Third Cause of Action: Chapter 567 of the Laws of 2010 is Unconstitutional, *as Applied*" (¶¶155-166); "As and for a Fourth Cause of Action: "The Commission's Judicial Pay Raise Recommendations are Statutorily-Violative" (¶¶167-172).

[5] *See* pp. 42-44 of plaintiffs' September 22, 2015 memorandum of law: "Plaintiffs' Entitlement to Sanctions and Other Relief against AAG Kerwin & Those Complicitous in her Fraud and Contempt of the Order to Show Cause, with TRO, Signed by the Court on June 16, 2014".

[6] Plaintiffs' correspondence to the Legislators and Governor pertaining to the managerial/confidential employees compensation commission is posted on CJA's website, www.judgewatch.org, on a webpage entitled

"The express basis of ¶¶145-154 of the verified complaint's second cause of action, appearing beneath the title heading 'Chapter 567 of the Laws of 2010 Unconstitutionally Delegates Legislative Power Without Safeguarding Provisions and Guidance', is the 2007 decision of Bronx Supreme Court Justice Mary Ann Brigantti-Hughes in *Mary McKinney, et al. v. Commissioner of the New York State Department of Health, et al.*, 15 Misc.3d 743 (2007).[fn] At issue in *McKinney* was a statute which allowed recommendations of a special commission to become law, without affirmative legislative action. Judge Brigantti-Hughes upheld the statute – Chapter 63 (Part E) of the Laws of 2005 – only because it contained safeguarding provisions. Such safeguarding provisions, however, are absent from Chapter 567 of the Laws of 2010 and from A.246/S.2953 – each also allowing commission recommendations to become law, without affirmative legislative action.

That Chapter 63 (Part E) of the Laws of 2005 should have been stricken as unconstitutional may be seen from the *amicus curiae* brief that the New York City Bar Association filed with the Court of Appeals, in support of the motion of the McKinney plaintiffs for leave to appeal.[fn] The *amicus* brief described the statute delegating legislative power to a commission, without requiring the legislature to affirmatively vote on its recommendations before they would become law, as:

> 'a process of lawmaking never before seen in the State of New York' (at p. 24);
>
> a 'novel form of legislation…in direct conflict with representative democracy [that] cannot stand constitutional scrutiny (at p. 24)';
>
> a 'gross violation of the State Constitution's separation-of-powers and…the centuries-old constitutional mandate that the Legislature, and no other entity, make New York State's laws' (at p. 25);
>
> 'most unusual [in its]…self-executing mechanism by which recommendations formulated by an unelected commission automatically become law…without any legislative action' (at p. 28);
>
> unlike 'any other known law' (at p. 29);
>
> 'a dangerous precedent' (at p. 11) that
>
> 'will set the stage for the arbitrary handling of public resources under the guise of future temporary commissions that are not subject to any public scrutiny or accountability (at p. 36).

"Fighting Off the Progeny of the Judicial Compensation Statute – & Securing a Functioning Legislative Process", accessible from the left sidebar panel "Judicial Compensation-State-NY".

> Indeed, Appellate Division, Fourth Department Justice Eugene Fahey deemed the statute unconstitutional, violating due process, the presentment clause, and separation of powers, in his dissenting opinion in *St. Joseph Hospital, et al. v. Novello*, 43 A.D.3d 139 (2007) – another case challenging Chapter 63 (Part E) of the Laws of 2005, which came up to the Court of Appeals in the same period as *McKinney*.
>
> The Court of Appeals' response to these two important cases, simultaneously before it, was in keeping with its corrupt, politicized conduct chronicled by the *CJA v. Cuomo* verified complaint. It dismissed both the *McKinney* and *St. Joseph Hospital* appeals of right, '*sua sponte*', on its standard boilerplate, 'no substantial constitutional question is directly involved', thereafter denying leave to appeal without reasons.
>
> These were not the only challenges generated by Chapter 63 (Part E) of the Laws of 2005. There are five others identified by the New York City Bar Association's May 2007 report '*Supporting Legislative Rules Reform: The Fundamentals*' (at pp. 9-10), whose discussion of the statute was in the context of describing it as the product of New York's dysfunctional Legislature, whose rules vest disproportionate power in the leadership, leaving committees, which should be the locus for developing legislation and discharging oversight responsibilities, as nothing more than shells.[fn]" (Exhibit 23 to plaintiff Sassower's accompanying affidavit, underlining in the original).[7]

As the record before this Court is devoid of even an assertion by AAG Kerwin that the judicial salary raises recommended by the Commission on Judicial Compensation complied with the statutory prerequisites of Chapter 567 of the Laws of 2010 and does not contest the accuracy of plaintiffs' October 27, 2011 Opposition Report and the four causes of action of the March 30, 2012 verified complaint in *CJA v Cuomo I*, plaintiffs are entitled to a two-fold declaration by the Court, based on the massive documentary evidence before it, that the judicial pay raises are statutorily-violative, fraudulent, and unconstitutional and that Chapter 567 of the Laws of 2010 – now materially replicated in Chapter 60 of the Laws of 2015 – was unconstitutional, *as written and as applied.*

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[7] CJA's website contains a webpage relating to the litigation challenges to Chapter 63 (Part E) of the Laws of 2005, which posts the City Bar's *amicus* brief in *McKinney v. NYS Dept. of Health* and Justice Fahey's dissenting opinion in *St. Joseph Hospital v. Novello*. The direct link is here:

CONCLUSION

The record herein requires the granting of all ten branches of plaintiffs' cross-motion, *as a matter of law*, and denial of AAG Kerwin's dismissal/summary judgment motion, *as a matter of law*, in all respects.

ELENA RUTH SASSOWER, 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

November 5, 2015

http://www.judgewatch.org/web-pages/judicial-compensation/mckinney-etc.htm .