STATUS REPORT
of the 6th, 7th, and 8th causes of action of plaintiffs' September 2, 2016 verified complaint
Citizen-Taxpayer Action: Center for Judicial Accountability, et al. v. Cuomo, et al.,
Albany Co. #5122-2016[1]

PRESENTED TO WESTCHESTER COUNTY BOARD OF LEGISLATORS ON NOVEMBER 20, 2017
TO FACILITATE THEIR VERIFICATION OF PLAINTIFFS' ENTITLEMENT TO SUMMARY JUDGMENT ON THE THREE CAUSES OF ACTION TO VOID THE JUDICIAL-DISTRICT ATTORNEY SALARY INCREASES

The sixth cause of action (¶¶59-68), challenges, *as written*, Chapter 60, Part E, of the Laws of 2015 – the budget statute that created the Commission on Legislative, Judicial and Executive Compensation – and, additionally, by its Sections D & E (¶¶67, 68), the statute's introduction and enactment

The seventh & eighth causes of action (¶¶69-76; 77-84), challenges, *as applied*, Chapter 60, Part E, of the Laws of 2015 – beginning with the Legislature's refusal to oversee the Commission's operations, under the statute

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#1:
What was defendants' response, by their lawyer, Attorney General Eric Schneiderman, himself a defendant, to plaintiffs' 6th, 7th, and 8th causes of action?

By a September 15, 2016 cross-motion, defendants sought to dismiss plaintiffs' September 2, 2016 verified complaint pursuant to CPLR §3211(a)(7) ["the pleading fails to state a cause of action"] and §3211(a)(8) ["the court has not jurisdiction of the person of the defendant"]. The September 15, 2016 memorandum of law of Assistant Attorney General Adrienne Kerwin, appearing "of counsel", combined her argument for dismissing all three causes of action (at pp. 9-10) as follows:

> "*Sixth and Seventh and Eighth Causes of Action*
>
> Plaintiff's Sixth, Seventh and Eighth Causes of Action allege that Chapter 60, Part E of the Laws of 2015 is unconstitutional both as written and as applied. See Complaint at ¶¶59-76. Specifically, plaintiffs' Sixth and Seventh Causes of Action challenge the legitimacy of the Commission on Legislative, Judicial, and Executive

[1] The September 2, 2016 verified complaint and all the record thereon, as well as the record in CJA's prior citizen-taxpayer action, *Center for Judicial Accountability, et al., v. Cuomo, et al*., (Albany Co. #1788-2014), are posted on CJA's website, www.judgewatch.org, accessible from the prominent homepage link: "CJA's Citizen-Taxpayer Actions to End NYS' Corrupt Budget 'Process' & Unconstitutional 'Three Men in a Room' Governance". The record is also accessible from CJA's webpage "The Larcenous D.A. Salary Increases, The Westchester County Budget – & The Westchester County Board of Legislators", accessible *via* the top panel "Latest News".

Compensation. See id. However, the legitimacy of a commission such as the Commission on Legislative, Judicial, and Executive Compensation – which replaced the Commission on Judicial Compensation – and was modeled on the Berger Commission (Commission on Health Care Facilities in the 21st century) – was upheld in McKinney v. Commissioner of New York State Department of Health, 15 Misc. 3d 743 (Bronx County), aff'd., 41 A.D.3d 252 (1st Dep't.), appeal dismissed, 9 N.Y.3d 891 (2007).

In addition, the Supreme Court, Nassau County, recently dismissed a challenge to the present Commission on Legislative, Judicial and Executive Compensation. See, Coll v. NYS Commission on Legislative, Judicial and Executive Compensation; NYS Legislature; NYS Governor, Index No. 2598-2016 (Nassau County September 1, 2016) (copy attached).

Accordingly, plaintiffs' Sixth, Seventh and Eighth Causes of Action should be dismissed."

#2:

What was plaintiffs' reply to defendants' cross-motion to dismiss their 6th, 7th, and 8th causes of action?

On September 30, 2016, plaintiffs replied, seeking summary judgment on their ten causes of action. Under the title heading, "AAG Kerwin's Fraudulent 'Argument' for Dismissal of Plaintiffs' Sixth, Seventh & Eighth Causes of Action", their reply memorandum stated, as follows (pp. 27-31):

"…AAG Kerwin devotes five sentences to the sixth, seventh, and eighth causes of action of plaintiffs' verified complaint (¶¶59-68 & incorporated ¶¶385-423; ¶¶69-76 & incorporated ¶¶424-452; ¶¶77-80 & incorporated ¶¶453-457). Instead of identifying their allegations – as required in moving to dismiss pursuant to CPLR §3211(a)(7) – she states only that these three causes of action 'allege that Chapter 60, Part E of the Laws of 2015 is unconstitutional both as written and as applied' and that 'Specifically, plaintiffs' Sixth and Seventh Causes of Action challenge the legitimacy of the Commission on Legislative, Judicial, and Executive Compensation', falsely implying that the eighth cause of action does not. Not a single detail is furnished – reflective of her knowledge that revealing them would make it impossible to contrive a defense. Indeed, because the subheadings of the sixth and seventh causes of action disclose the damning violations – any one of which would suffice for obtaining the preliminary injunction/TRO relief sought by plaintiffs' September 2, 2016 order to show cause – her argument conceals them, as likewise the consequence of the violations which the causes of action identify by their titles, *to wit*, 'the Commission's Judicial Salary Increase Recommendations are Null & Void by Reason Thereof'.

Thus, for the sixth cause of action entitled 'Chapter 60, Part E, of the Laws of 2015 is Unconstitutional, *As Written* – & the Commission's Judicial Salary Increase Recommendations are Null & Void by Reason Thereof' (at pp. 24-26), the subheadings AAG Kerwin conceals, together with the entirety of their content, are the following:

A. Chapter 60, Part E, of the Laws of 2015 Unconstitutionally Delegates Legislative Power by Giving the Commission's Judicial Salary Recommendations 'the Force of Law' (at p. 24);

B. Chapter 60, Part E, of the Laws of 2015 Unconstitutionally Delegates Legislative Power Without Safeguarding Provisions (at p. 24);

C. Chapter 60, Part E, of the Law of 2015 Violates Article XIII, §7 of the New York State Constitution (at p. 25);

D. Chapter 60, Part E, of the Law of 2015 Violates Article VII, §6 of the New York State Constitution – and, Additionally, Article VII, §§2 and 3 (at p. 25);

E. Chapter 60, Part E, of the Laws of 2015 is Unconstitutional because Budget Bill #4610-A/A.6721-A was Procured Fraudulently and Without Legislative Due Process (at p. 26).

For the seventh cause of action entitled 'Chapter 60, Part E, of the Laws of 2015 is Unconstitutional, *As Applied* – & the Commission's Judicial Salary Increase Recommendations are Null & Void by Reason Thereof' (at pp. 26-28), the subheadings that AAG Kerwin conceals, together with the entirety of their content, are the following:

A. *As Applied*, a Commission Comprised of Members who are Actually Biased and Interested and that Conceals and Does Not Determine the Disqualification/Disclosure Issues Before it is Unconstitutional (at p. 27);

B. *As Applied*, a Commission that Conceals and Does Not Determine Whether Systemic Judicial Corruption is an 'Appropriate Factor' is Unconstitutional (at p. 27);

C. *As Applied*, a Commission that Conceals and Does Not Determine the Fraud before It – Including the Complete Absence of ANY Evidence that Judicial Compensation and Non-Salary Benefits are Inadequate – is Unconstitutional (at p. 27);

D. *As Applied*, a Commission that Suppresses and Disregards Citizen Input and Opposition is Unconstitutional (at p. 28).

As for the eighth cause of action entitled 'The Commission's Violations of **Express** Statutory Requirements of Chapter 60, Part E, of the Laws of 2015 Renders its Judicial Salary Increase Recommendations Null and Void' (at p. 28), which has no subheadings, AAG Kerwin conceals that it involves violations of 'express statutory requirements' – and the entirety of what they are.

It is without identifying a single allegation of the approximately 80 allegations of these three causes of action – in flagrant violation of the controlling standard for dismissal pursuant to CPLR §3211(a)(7) – that AAG Kerwin rests the entirety of her argument for dismissing them on two judicial decisions. This is what she says:

> '…the legitimacy of a commission such as the Commission on Legislative, Judicial, and Executive Compensation – which replaced the Commission on Judicial Compensation – and was modeled on the Berger Commission (Commission on Health Care Facilities in the 21st century) – was upheld in McKinney v. Commissioner of New York State Department of Health, 15 Misc. 3d 743 (Bronx County), aff'd, 41 A.D.3d 252 (1st Dep't), appeal dismissed, 9 N.Y.3d 891 (2007).
>
> In addition, the Supreme Court, Nassau County, recently dismissed a challenge to the present Commission on Legislative, Judicial and Executive Compensation. See, Coll v. NYS Commission on Legislative; Judicial and Executive Compensation; NYS Legislature; NYS Governor, Index No. 2598-2016 (Nassau County September 1, 2016) (copy attached).
>
> Accordingly, plaintiffs' Sixth, Seventh and Eighth Causes of Action should be dismissed.'

This is utter fraud. The *McKinney* case – and the Bronx Supreme Court decision therein – substantiate plaintiffs' sixth cause of action as to the unconstitutionality of Chapter 60, Part E, of the Laws of 2015, *as written* – and such is alleged, explicitly, by subsections A and B of plaintiffs' sixth cause of action. These make plain that: (1) the Commission on Legislative, Judicial and Executive Compensation, like the Commission on Judicial Compensation before it, was NOT 'modeled' after the Berger Commission as it does not include the safeguarding provisions of the Berger Commission; and (2) the unidentified 'legitimacy' of the

Berger Commission that *McKinney* upheld was the 'force of law' effect of its recommendations – and only because of the safeguarding provisions, here absent.[fn11]

Thus, subsection A of plaintiffs' sixth cause of action states, in pertinent part:

> '390. In *St. Joseph Hospital, et al. v. Novello, et al.*, 43 A.D.3d 139 (2007), a case challenging a statute that gave 'force of law' effect to a special commission's recommendations – Chapter 63, Part E, of the Laws of 2005 – then Appellate Division, Fourth Department Justice Eugene Fahey, writing in dissent, deemed the statute unconstitutional, violating the presentment clause and separation of powers:
>
> > 'It is apparent that the Legislation inverts the usual procedure utilized for the passage of a bill. According to the usual procedure, a bill is presented to the Governor for his or her signature or veto after passage by the Senate and the Assembly. Should the Governor sign the bill, it becomes law; should the bill be vetoed, the veto may be overridden by a two-thirds vote of the Legislature. Here, the Legislation creates a process that allows the recommendations of the Commission to become law without ever being presented to the Governor after the action of the Legislature.' *Id*, 152.
>
> 391. Justice Fahey's dissent was cited by the New York City Bar Association's *amicus curiae* brief to the Court of Appeals in a different case challenging the same statute, *Mary McKinney, et al. v. Commissioner of the New York State Department of Health, et al*., 15 Misc.3d 743 (S.Ct. Bronx 2006), affm'd 41 A.D.3d 252 (1st Dept. 2007), appeal dismissed, 9 N.Y.3d 891 (2007), appeal denied, 9 N.Y.3d 815; motion granted, 9 N.Y.3d 986. It characterized "the force of law" provision as:
>
> > 'a process of lawmaking never before seen in the State of New York' (at p. 24);

"[fn11] AAG Kerwin's above-quoted assertions as to the Commission on Legislative, Judicial, and Executive Compensation, Commission on Judicial Compensation and *McKinney* are repeated, *verbatim*, from her April 8, 2016 memorandum of law (at p. 8, fn. 2) – notwithstanding rebutted by plaintiffs' April 22, 2016 reply memorandum of law (at pp. 21-22)."

> 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).[fn6]

Subsection B of plaintiffs' sixth cause of action states, in pertinent part:

> '394. By contrast to *McKinney*, where the Supreme Court upheld the statute because of the safeguarding provisions it contained, such safeguards are here absent.
>
> 395. Unlike the statute in *McKinney*, Chapter 60, Part E, of the Laws of 2015 does not provide for a commission of sufficient size and diversity, nor furnish the commission with sufficient guidance as to standards and factors governing its determinations.'

As for AAG Kerwin's reliance on the Nassau County Supreme Court decision in *Coll v. NYS Commission on Legislative, Judicial and Executive Compensation; NYS Legislature; NYS Governor*, which she purports 'recently dismissed a challenge to the present Commission on Legislative, Judicial and Executive Compensation' (at p. 10, underlining added) – implying, by the word 'present', that the challenge was to the commission statute, *as applied* – and as to which she annexes the paltry three-sentence decision purporting that the action was 'to declare that the Commission on Legislative, Judicial and (sic) Compensation acted in an unconstitutional manner', this is false. Indeed, had AAG Kerwin furnished any details of the challenge in that

case – which, considering the defense was handled by the Attorney General's office, she readily could have done – it would have been evident that the case had nothing to do with the Commission on Legislative, Judicial and Executive Compensation 'act[ing] in an unconstitutional manner'. Rather, and as may be seen from the complaint therein (Exhibit P), it challenged the commission statute, *as written* – and, in particular, the 'force of law' power that the statute confers on commission salary recommendations.

In short, except for two judicial decisions which substantiate the first two subsections of plaintiffs' sixth cause of action, AAG Kerwin has NO DEFENSE whatever to plaintiffs' sixth, seventh, and eighth causes of action, ALL of whose allegations she conceals." (underlining in the original).

#3:

What did Judge Denise Hartman, who has a HUGE financial interest in the 6th, 7th, and 8th causes of action & relationships with the defendants, do?

By decision dated December 21, 2016, Judge Denise Hartman, without addressing, or even identifying, the threshold integrity issues presented by plaintiffs' September 30, 2016 memorandum of law (at pp. 1-5, 42-53) – as, for instance, her HUGE financial interest in the 6th, 7th, and 8th causes of action and her relationships with defendants, including Attorney General Eric Schneiderman, for whom she worked, as likewise for former Attorney General, now Governor, Andrew Cuomo, who appointed her to the bench – dismissed nine of plaintiffs' ten causes of action – preserving the sixth. Without identifying the grounds upon which AAG Kerwin had moved to dismiss the sixth, seventh and eighth causes of action – or plaintiffs' rebuttal – her December 21, 2016 decision disposed of the seventh and eighth causes of action in two sentence (at p. 5):

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

Her December 21, 2016 decision was more expansive with regard to the sixth cause of action, stating (at p. 7):

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

challenges to the form and timing of the bill by which the legislation was introduced, among other things.

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

#4:

What was plaintiffs' response to Judge Hartman's December 21, 2016 decision and what was Judge Hartman's response to their request for "the shortest return date possible" for their February 15, 2017 order to show cause?

On February 15, 2017, plaintiffs responded to Judge Hartman's December 21, 2016 decision by an order to show cause to disqualify her for demonstrated actual bias, born of interest and relationships with the defendants – and to vacate her December 21, 2016 decision, as the manifestation thereof. Annexed, in support, as Exhibit U, was an analysis of the December 21, 2016 decision, demonstrating it to be "a criminal fraud", "falsif[ying] the record in all material respects to grant defendants relief to which they [were] not entitled, *as a matter of law*, and to deny plaintiffs relief to which they [were] entitled, *as a matter of law*" – and asserting (at p. 1) that plaintiffs' September 30, 2016 memorandum of law, whose very existence the decision concealed, was a "paper trail" of the record before Judge Hartman, enabling verification "within minutes" of the decision's fraudulence.

The analysis stated (at p. 16) with respect to Judge Hartman's dismissal of the seventh and eighth causes of action:

> "Justice Hartman's description that plaintiffs' seventh and eighth causes of action (¶¶69-76, ¶¶77-80) 'both challenge the actions of the Commission on Legislative, Judicial, and Executive compensation' is false. The seventh cause of action (¶¶69-76) is explicitly – and by its title – a challenge to the constitutionality of Chapter 60, Part E, of the Laws of 2015 'As Applied' – and the 'first and overarching ground' of this unconstitutionality, highlighted at ¶71 of plaintiffs' complaint, is as follows:
>
> > 'Defendants' refusal to discharge ANY oversight duties with respect to the constitutionality and operations of a statute they enacted without legislative due process renders the statute unconstitutional, *as applied*. Especially is this so, where their refusal to discharge oversight is in face of DISPOSITIVE evidentiary proof of the statute's unconstitutionality, *as written and as applied* – such as

> plaintiffs furnished them (Exhibits 38, 37, 39, 40, 41, 42, 43, 44, 46, 47, 48).' (underlining and capitalization in plaintiffs' ¶71).

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

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

As to Judge Hartman's dismissal of plaintiffs' sixth cause of action, their Exhibit U analysis stated (at p.20):

> "This is the only place in the decision where Justice Hartman recites any allegations of the cause of action she purports to be addressing. However, she materially understates the record before her, as it establishes not only "cognizab[ility]", but plaintiffs' entitlement to summary judgment on each of the five separate sections of their sixth cause of action, whose content she could have more accurately described by relying on their title headings:…"
>
> Plaintiffs' September 30, 2016 memorandum of law (at pp. 27-31) summarized the record that was before Justice Hartman on the sixth, seventh, and eighth causes of action, which AAG Kerwin sought to have her collectively dismiss based on two judicial decisions – the first being *McKinney* – neither decision having any relevance except to subsections A and B of the sixth cause of action and both decisions, in fact, substantiating those subsections. Plaintiffs demonstrated that AAG Kerwin's dismissal cross-motion had falsified the facts relating to each decision, and, in addition to concealing that plaintiffs' A and B subsections of their sixth cause of action had explicitly cited *McKinney*, in substantiation of their allegations, concealed ALL the approximately 80 allegations of plaintiffs' sixth, seventh, and eighth causes of action." (underlining in original).

Plaintiffs requested (at ¶6) that Judge Hartman fix "the shortest return date possible", stating "No amount of time will enable defendants to refute the analysis, as it is factually and legally accurate, mandating the granting of the disqualification/vacatur relief sought by this order to show cause, *as a matter of law*."

Judge Hartman made plaintiffs' February 15, 2017 order to show cause returnable more than five weeks later, on March 24, 2017, giving defendants until March 22, 2017 to serve their answering papers on plaintiffs.

#5:

What was defendants' response to plaintiffs' February 15, 2017 order to show cause & its analysis of the December 21, 2016 decision, annexed as its Exhibit U?

On March 22, 2017, AAG Kerwin served opposition papers, requesting that Judge Hartman deny plaintiffs' February 15, 2017 order to show cause "in all respects". Her March 22, 2017 memorandum of law did not deny or dispute the accuracy of plaintiffs' Exhibit U analysis, instead besmirching and mischaracterizing it (at p. 7) as "consist[ing] of flawed reasoning, unsupportable assertions, and a fundamental misunderstanding of what questions are examined by a court in the context of a motion to dismiss a pleading." Its response to what the analysis detailed about Judge Hartman's dismissal of the seventh and eighth causes of action was two sentences (at p. 9) that erroneously referred to them as "causes of action eight and nine" and concealed all particulars the Exhibit U analysis had recited:

> "As for causes of action eight and nine, which are alleged against the Commission, Plaintiff only makes the unsupportable argument that an entity whose conduct is challenged does not need to be a party. Pl.'s Ex U at 16. The Court did not overlook or misapprehend any facts or law in dismissing those causes of action."

And, as for Judge Hartman's disposition of plaintiffs' sixth cause of action, AAG Kerwin's March 22, 2017 opposing memorandum of law simply recited what the December 21, 2016 had done (at p. 4), without reference to plaintiffs' Exhibit U analysis:

> "The Court held that the sixth cause of action states a cognizable claim. Decision & Order at 7. The sixth cause of action asserts that the 2015 legislation that created the Commission is unconstitutional, because, among other things, it violates the separation of powers doctrine and improperly delegates legislative function to the Commission."

#6:

What was Judge Hartman's response to plaintiffs' notice that AAG Kerwin's March 22, 2017 papers in opposition to their February 15, 2017 order to show cause were "utterly fraudulent"?

On March 24, 2017, the return date of plaintiffs' February 15, 2017 order to show cause, plaintiffs sent a letter to Judge Hartman.[2] Stating that Judge Hartman had given defendants more than a month to respond to the February 15, 2017 order to show cause – and plaintiffs less than two days to reply – Plaintiffs requested a four-day adjournment so as to have the opportunity to reply, in writing, if not orally, in conjunction with oral argument of a further order to show cause that plaintiffs would be bringing. The letter advised that AAG Kerwin's opposition papers were "utterly fraudulent, revealed as such by the most cursory examination of Exhibit U to plaintiffs' February 15th order to show cause" and asked that the letter "be deemed their reply" if the requested adjournment were denied.

By a March 24, 2017 so-ordered letter, Judge Hartman, though granting the adjournment, denied plaintiffs the opportunity to reply at the oral argument of their further order to show cause.

#7:

What was Judge Hartman's decision on plaintiffs' February 15, 2017 order to show cause with its substantiating Exhibit U analysis of her December 21, 2016 decision?

Not until May 5, 2017 did Judge Hartman render a 1-1/2 page decision on plaintiffs' February 15, 2017 show cause. Without identifying plaintiffs' Exhibit U analysis of her December 21, 2016 decision, it denied their February 15, 2017 order to show cause "in its entirety". No mention of the indefensibility of her dispositions of plaintiffs' sixth, seventh, and eighth causes of action, detailed by the Exhibit U analysis, without contest as to its accuracy by defendants. Concomitant with the May 5, 2017 decision and order, Judge Hartman issued an amended May 5, 2017 decision & order, which was the December 21, 2016 decision amended to add a CPLR §2219(a) listing of "Papers Considered" – a list identifying plaintiffs' September 30, 2016 memorandum of law.

#8:

What was plaintiffs' response to Judge Hartman's May 5, 2017 decision – and Judge Hartman's response to plaintiffs' June 12, 2017 order to show cause?

On June 12, 2017, plaintiffs served a (then unsigned) order to show cause for reargument/renewal/ and vacatur of Judge Hartman's May 5, 2017 decision and order and its accompanying May 5, 2017

[2] Plaintiffs' March 24, 2017 letter is Exhibit 6-a to plaintiff Sassower's May 15, 2017 reply affidavit. Judge Hartman's so-ordered responding letter is Exhibit 6-b.

amended decision and order, based thereon. The moving affidavit described (at ¶4) the May 5, 2017 decision as:

> "factually and legally insupportable and fraudulent, further demonstrating the actual bias that [Judge Hartman] demonstrated by [her] December 21, 2016 decision that was the basis for plaintiffs' February 15, 2017 order to show cause, whose substantiating proof was plaintiffs' 23-page, single-spaced analysis of the December 21, 2016 decision, annexed as Exhibit U."

Among its particulars, it stated:

> "6. In denying plaintiffs' February 15, 2017 order to show cause, this Court's barely 1-1/2-page May 5, 2017 decision (Exhibit A-2) makes no mention of plaintiffs' Exhibit U analysis, whose accuracy it does not contest. Nor does it mention or contest the accuracy of plaintiffs' 53-page September 30, 2016 memorandum of law on which the Exhibit U analysis principally relies. Instead, the decision disposes of the February 15, 2017 order to show cause by two short conclusory paragraphs of two sentences and three sentences, respectively, neither identifying a single fact other than that 'Plaintiff correctly points out that the Court['s December 21, 2016 decision] failed to 'recite the papers used on the motion,' as required by CPLR 2219(a).' These two paragraphs follow upon a two-sentence introductory paragraph which conceals the alternative relief specified by the first branch of the February 15, 2017 order to show cause in the event the Court did not disqualify itself, *to wit*, 'disclosure, pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct, of facts bearing upon [its] fairness and impartiality.' The May 5, 2017 decision makes no disclosure."

Based thereon, the moving affidavit identified the grounds for reargument:

> "7. In keeping with the euphemistic phrasing of CPLR §2221, the grounds for reargument are that the Court 'overlooked or misapprehended' ALL the facts, law, and legal argument presented by plaintiffs' February 15, 2017 order to show cause, other than the violation of CPLR §2219(a) in its December 21, 2016 decision/order. Such facts, law, and legal argument are dispositive of plaintiffs' entitlement to the granting of their February 15, 2017 order to show cause 'in its entirety' – and to adjudication of the four threshold integrity issues specified at the outset of plaintiffs' Exhibit U analysis as concealed, without adjudication, by the December 21, 2016 decision *to wit*:
>
> (1) Justice Hartman's duty to disqualify herself and, absent that, to make on-the-record disclosure of facts pertaining to her financial interest and multitudinous associations and relationships with the defendants;

> (2) plaintiffs' entitlement to the Attorney General's representation/intervention, pursuant to Executive Law §63.1 and State Finance Law Article 7-A;
>
> (3) plaintiffs' entitlement to the disqualification of defendant Attorney General Schneiderman from representing his fellow defendants;
>
> (4) plaintiffs' entitlement to sanctions, and disciplinary and criminal referrals of AAG Kerwin and those supervising her in the Attorney General's office, responsible for her legally-insufficient, fraudulent September 15, 2016 dismissal cross-motion."

Judge Hartman did not sign the June 12, 2017 order to show cause until June 16, 2017, setting a return date five weeks later, July 28, 2017, with defendants' answering papers to be served on plaintiffs by July 21, 2017.

#9:
What was defendants' response to plaintiffs' June 12, 2017 order to show cause?

On July 21, 2017, AAG Kerwin opposed plaintiffs' June 12, 2017 order to show cause for reargument/renewal/vacatur by a cross-motion, seeking summary judgment on plaintiffs' sixth cause of action and dismissing plaintiffs' September 2, 2016 complaint "in its entirety, with prejudice pursuant to CPLR 3212", as well as sanctions against plaintiffs. Just as she had not previously contested the accuracy of plaintiffs' Exhibit U analysis of the December 21, 2016 decision – nor furnished legal authority to substantiate Judge Hartman's *sua sponte*, without-legal-authority dismissal of the seventh and eighth causes of action, so, here, she did not contest the Exhibit U analysis nor furnish legal authority to substantiate dismissal of those two causes of action. The extent of AAG Kerwin's discussion of Judge Hartman's disposition of the seventh and eighth causes of action, under the title heading "Decision and Order dated December 21, 2016 (Amended May 5, 2017)" (at p. 3), was a single sentence:

> "The seventh and eighth causes of action were dismissed because they challenged actions by the Commission, which is not a party to this litigation."

In other words, she rested on the December 21, 2016 decision, reiterated by the May 5, 2017 amended decision.

As for AAG Kerwin's cross-motion for summary judgment to defendants on plaintiffs' sixth cause of action, her July 21, 2017 memorandum of law (at pp. 10-17) materially rested on Judge Hartman's June 26, 2017 decision denying the order to show cause that plaintiffs had brought on March 29, 2017– the first branch of which was:

> "granting summary judgment to plaintiffs on each of the five sections of the sixth cause of action of their September 2, 2016 verified complaint (¶¶59-68) – and declaring null and void the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation and enjoining further disbursement of monies pursuant to its 'force of law' judicial salary increase recommendations".

By her June 26, 2017 decision, Judge Hartman purported to deny the first four sections of the sixth cause of action – which she denominated "sub-causes" – and then, as to the fifth, stated, as follows (at p. 10), under the title heading:

> "Sub-Cause E – Fraud and Due Process
>
> The final allegation in plaintiff's sixth cause of action is that the budget bills creating the Commission were enacted fraudulently and in violation of due process. <u>These allegations have already been rejected by the Court in its Amended Decision</u>." (underlining added).

This was a judicial fraud – adopting the fraud advanced by Assistant Attorney General Helena Lynch in her April 21, 2017 memorandum of law in opposition to plaintiffs' March 29, 2017 order to show cause, purporting that Judge Hartman's December 21, 2016 decision had:

> "dismissed all claims asserted in the Complaint except <u>subparts one and three of the sixth cause of action</u>." (at p. 3, underlining added).

According to AAG Lynch:

> "The Court ruled that Plaintiff's sixth cause of action states a claim insofar as it alleges that the statute creates an unconstitutional delegation of legislative powers by according certain actions of the Commission the 'force of law' and insofar as it alleges that the legislation violates Article XIII, §7, of the New York State Constitution, which states that the compensation of public officers 'shall not be increased or diminished during the term for which he or she shall have been elected or appointed.' *See* Ex. 2 (Decision and Order) at 7. Therefore, <u>only the first and third sections of Plaintiff's sixth cause of action survived the motion to dismiss</u>. *See* Ex. 2 at 7. To the extent Plaintiff seeks summary judgment on any other subpart of her sixth cause of action, it must be denied at the outset." (at p. 6, underlining added).

Plaintiffs' May 15, 2017 reply memorandum of law (at pp. 16-17) had responded to this deceit, labelling it 'utterly false' and <u>quoting, in refutation</u>:

> (1) Judge Hartman's December 21, 2016 decision (at p. 7) <u>and</u> its pertinent ordering paragraph (at p. 8);

(2) AAG Kerwin's own March 22, 2017 memorandum of law in opposition to plaintiffs' February 15, 2017 order to show cause (at p. 4); as well as

(3) Judge Hartman's subsequent May 5, 2017 decision, which had "also made plain that plaintiffs' sixth cause of action had been preserved, without qualification".

Motivating AAG Lynch's bald-faced LIE that only the first and third sub-causes of the sixth cause of action had been preserved by the December 21, 2016 decision was her inability to muster ANY argument in opposition to ANY of the five sub-causes. Indeed, other than her pretense that only the first and third sub-causes had been preserved, the entirety of what her April 21, 2017 opposing memorandum of law had to say (pp. 5-7) in opposition to plaintiffs' March 29, 2017 order to show cause for summary judgment on their sixth cause of action, were three paragraphs: the first, quoting and citing caselaw for general propositions pertaining to facial constitutional challenges; the second, consisting of two conclusory sentences:

> "Plaintiff has established only that, under the liberal construction of pleadings afforded pro se plaintiffs, parts of her sixth cause of action states a cognizable claim. Plaintiff makes no legal or factual showing, much less a showing beyond a reasonable doubt, that Chapter 60, Part E of the Laws of 2015 violates the separation of powers doctrine or Article XIII, section 7 of the New York State Constitution." (at p. 6);

and then a third, stating:

> "Further, Plaintiff is not entitled to summary judgment in such an expedited manner, *i.e.*, via Order to Show Cause. Dispositive relief should be considered only after full briefing on a properly submitted motion for summary judgment. Plaintiff's motion for summary judgment on her sixth cause of action should be denied." (at p. 7).

Plaintiffs' response, by their May 15, 2017 reply memorandum (at pp. 19-23) was to expose the falsity and deceit of all three paragraphs – plus AAG Lynch's opening claim that: "Plaintiff has made no showing of entitlement to summary judgment" (at p. 5) – stating:

> "This bald assertion is outright fraud – as AAG Lynch well knows in not identifying, let alone rebutting, plaintiffs' showing in ANY of the five sections of their sixth cause of action – each section entitling them to summary judgment, *as a matter of law*….
>
> Indeed, AAG Lynch does not even confront plaintiffs' showing in sections A and C –notwithstanding her pretense in this Point I that these are the only two sections of the sixth cause of action preserved by the Court's December 21, 2016 decision – further asserting (at p. 5): 'To the extent Plaintiff seeks summary judgment on any other subpart of her sixth cause of action, it must be denied at the outset."

For that matter, AAG Lynch conceals the very issue presented by section A. Thus, she euphemistically asserts that it 'alleges that the statute creates an unconstitutional delegation of legislative powers by according certain actions of the Commission the 'force of law''—using the phrase 'certain actions of the Commission' presumably because disclosing that these are its salary recommendations is too immediately revealing of their unconstitutionality, including with respect to section C of plaintiffs' sixth cause of action pertaining to Article XIII, §7 of the New York State Constitution barring the increasing or diminishing of the compensation of public officers during their elected or appointive terms.

Further fraudulent is AAG Lynch's citation to, and quoting from, caselaw for the proposition that statutes have a presumption of constitutionality, as to which plaintiffs bear a heavy burden to prove unconstitutionality (at p. 6) – implying that plaintiffs have not overcome the presumption and not met their burden…

This is false. Plaintiffs' showing is so overwhelmingly that AAG Lynch dares not reveal the succession of provisions of the New York State Constitution that plaintiffs' section A recites as violated by the 'force of law' provision of Chapter 60, Part E of the Laws of 2015: Article III, §1; Article III, §13, Article III, §14; Article IV, §7; Article III, §6 – or the legislative source specifying the violations: the introducers' memorandum to Assembly Bill #7997 – constituting an 'admission against interest' – or the quoted dissenting opinion of then Appellate Division, Fourth Department Justice Eugene Fahey in *St. Joseph Hospital, et al. v. Novello, et al.*, 43 A.D.3d 139 (2007), or the devastating *amicus curiae* brief to the New York Court of Appeals by the Association of the Bar of the City of New York in *McKinney, et al. v. Commissioner of the New York State Department of Health, et al.* This, apart from not offering the slightest refutation to plaintiffs' section C pertaining to the Article XIII, §7 violation.

Likewise fraudulent is AAG Lynch's concluding paragraph… There was nothing expedited by plaintiffs' March 29, 2017 order to show cause – the Court having afforded AAG Lynch over three weeks for her answering papers, until April 21, 2017, which is more than double the nine days she would have had had plaintiffs proceeded by ordinary motion, served by express mail. Indeed, defendants have had more than a year to formulate their defense to the five sections of this sixth cause of action – as it was furnished to them as the thirteenth cause of action (¶¶385-423) of plaintiffs' March 23, 2016 verified second supplemental complaint in their predecessor citizen-taxpayer action, *Center for Judicial Accountability v. Cuomo, et al.* (Albany Co. #1788-2014), with component parts furnished previously therein by their September 22, 2015 cross-motion for summary judgment and November 5, 2015 reply papers. Indeed, component parts were furnished as far back as March 30, 2012, when plaintiffs commenced their declaratory judgment action, *Center for Judicial Accountability, Inc. v. Cuomo, et al.* (Bronx Co. #302951-2012; New York Co. #401988-2012), with a verified complaint containing a second cause of action (¶¶140-154) entitled 'Chapter 567 of the Laws of 2010 is Unconstitutional, *As Written*'.

> Defendants having had ample opportunity to refute the facts, law, and legal argument presented by each of the five sections of plaintiffs' sixth cause of action, including by their own motion for summary judgment – and having failed to do so, TOTALLY – and not only here, but at any point previously in either this citizen-taxpayer action, the previous citizen-taxpayer action, or in the declaratory judgment action, plaintiffs are entitled to the granting of the first branch of their March 29, 2017 order to show cause for summary judgment in their favor as to each of the five sections of their sixth cause of action. And making this grant of summary judgment even more compelled is that defendants, throughout, have been represented by New York State's highest legal officer, the New York State Attorney General, unable to offer up <u>any</u> defense at <u>any</u> point in time – and whose duty, from the outset, in face of plaintiffs' notice, was to seek judicial declarations of unconstitutionality and, concurrently, to disqualify himself from representing himself and his fellow defendants in all these litigations, spanning the past five years." (underlining in the original).

<u>This was the record before Judge Hartman when, by her June 26, 2017 decision, she came to defendants' rescue, fashioning for them arguments for denying the first four of plaintiffs' sub-causes, which defendants had not made.</u> However, because Judge Hartman had NO argument for the fifth sub-cause, she adopted AAG Lynch's fraud that the December 21, 2016 decision had dismissed it, ignoring AAG Lynch's companion fraud that the December 21, 2016 decision had also dismissed plaintiffs' fourth and second sub-causes.

In denying plaintiffs' summary judgment on their fourth sub-cause, the June 26, 2017 decision generated its own *sua sponte* indefensible concoction – and, to conceal that it had no grounds for denying plaintiffs summary judgment on their second sub-cause, merged it with the first, thereby also concealing that it had no grounds to deny them summary judgment on their first sub-cause, as well.

#10:
<u>What was plaintiffs' response to defendants' July 21, 2017 opposition/cross-motion?</u>

On August 25, 2017, plaintiff served their papers in reply to AAG Kerwin's July 21, 2017 opposition to their June 12, 2017 order to show cause, and in opposition to her cross-motion. Their August 25, 2017 memorandum of law demonstrated that AAG Kerwin's July 21, 2017 opposition/cross-motion was fraudulent throughout and that once again, just as by her March 22, 2017 opposition to plaintiffs' February 15, 2017 order to show cause, AAG Kerwin had not denied or disputed the accuracy of plaintiffs' Exhibit U analysis of Judge Hartman's December 21, 2016 decision, in any respect. Such made AAG Kerwin's opposition to plaintiffs' June 12, 2017 order to show cause frivolous, *as a matter of law* – the Exhibit U analysis and September 30, 2016 memorandum of law on which it rested being just as dispositive of plaintiffs' entitlement to the granting of their June 12, 2017 order to show cause as of their February 15, 2017 order to show cause.

Identifying that AAG Kerwin's July 21, 2017 memorandum of law (at pp. 10-17) "conceal[ed] ALL the allegations of plaintiffs' sixth cause of action" – replicating Judge Hartman's June 26, 2017 decision, which had concealed "virtually all" – plaintiffs' August 25, 2017 memorandum of law showed that AAG Kerwin's cross-motion for summary judgment to defendants on plaintiffs' sixth cause of action was "based ENTIRELY on the deceits of the June 26, 2017 decision". The most dramatic example of this was with regard to sub-causes E and D – as to which AAG Kerwin's July 21, 2017 memorandum of law devoted two sentences, each annotated by a record reference (at p. 17):

> "First, plaintiff's claims that the Act was enacted fraudulently and/or in violation of due process were dismissed in connection with defendants' motion to dismiss. See Kerwin aff. at Exhibs. G & H. Second, plaintiff's claims that the Act violates Article VII, §§2, 3 and 6 of the New York State Constitution must also fail for the reasons stated by this court in its June 26, 2017 decision and order. See id. at Exh. H, p. 9."

Her twice-cited Exhibit H is Judge Hartman's June 26, 2017 decision.

To demonstrate that Judge Hartman's June 26, 2017 decision was of the same ilk as her December 21, 2016 decision, plaintiffs furnished a virtual line-by-line analysis of the June 26, 2017 decision, annexed as Exhibit I to plaintiff Sassower's August 25, 2017 affidavit in reply and opposition. The introduction to the analysis, resembling the introduction to plaintiffs' analysis of the December 21, 2016 decision, states as follows:

> "This analysis constitutes a 'legal autopsy' of the June 26, 2017 decision and order of Acting Supreme Court Justice Denise A. Hartman, denying, 'in its entirety', plaintiffs' March 29, 2017 order to show cause for summary judgment on the sixth cause of action of their verified complaint, for leave to add a supplemental complaint, and for injunctive relief. It supplements plaintiffs' 'legal autopsy' of Judge Hartman's December 21, 2016 decision and order, annexed as Exhibit U to their February 15, 2017 order to show cause for her disqualification for interest and for the actual bias manifested by her December 21, 2016 decision.
>
> Just as plaintiffs' Exhibit U analysis demonstrates that Judge Hartman's December 21, 2016 decision is a criminal fraud, falsifying the record in all material respects to grant defendants relief to which they were not entitled, *as a matter of law*, and to deny plaintiffs relief to which they were entitled, *as a matter of law*', and that it violates a multitude of provisions of New York's Penal Law, including:
>
> Penal Law §175.35 ('offering a false instrument for filing in the first degree');
> Penal Law §496 ('corrupting the government') – part of the 'Public Trust Act';
> Penal Law §155.42 ('grand larceny in the first degree');
> Penal Law §190.65 ('scheme to defraud in the first degree');
> Penal Law §195.20 ('defrauding the government');

Penal Law §105.15 ('conspiracy in the second degree');
Penal Law §20.00 ('criminal liability for conduct of another');
Penal Law §195 ('official misconduct'),

this analysis demonstrates the same with respect to her June 26, 2017 decision, likewise, 'so totally devoid of evidentiary support as to render [it] unconstitutional under the Due Process Clause' of the United States Constitution, *Garner v. State of Louisiana*, 368 U.S. 157, 163 (1961); *Thompson v. City of Louisville*, 362 U.S. 199 (1960).

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

ALL the facts, law, and legal argument presented by plaintiffs' May 15, 2017 reply memorandum of law – and by plaintiff Sassower's May 15, 2017 reply affidavit accompanying it – are omitted from Judge Hartman's June 26, 2017 decision. Indeed, the only mention of these two documents in Judge Hartman's decision is in its last page listing of 'Papers Considered'. That is also the only place where the decision mentions the April 21, 2017 opposition papers of Assistant Attorney General Helena Lynch, whose fraudulence, from beginning to end and in virtually every line, is particularized by plaintiffs' May 15, 2017 reply memorandum of law in support of requested threshold relief:

> (1) for sanctions, and disciplinary and criminal referrals of AAG Lynch and those supervising her in the Attorney General's office, responsible for her litigation fraud;
>
> (2) for the disqualification of defendant Attorney General Schneiderman from representing his co-defendants; and
>
> (3) for the Attorney General's representation of plaintiffs or intervention on their behalf, pursuant to Executive Law §63.1 and State Finance Law Article 7-A.

None of these three threshold issues are adjudicated by Judge Hartman's June 26, 2017 decision, which conceals them all. Ditto, the even more threshold issue presented by plaintiffs' May 15, 2017 reply memorandum of law of Judge Hartman's duty to make disclosure, absent her disqualifying herself. This, based on facts further demonstrating her actual bias subsequent to those embodied by plaintiffs' February

15, 2017 order to show cause. Among these, her denial of the February 15, 2017 order to show cause by a three-paragraph May 5, 2017 decision that concealed plaintiffs' Exhibit U analysis of her December 21, 2016 decision and baldly LIED that she had 'no interest in this litigation…or affinity to any party hereto' and that plaintiffs' 'allegations of bias and fraud' were 'conclusory' and 'meritless'.

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

Among the line-by-line particulars of Judge Hartman's June 26, 2017 decision that the analysis challenged was its one-sentence description of the December 21, 2016 decision as having "dismissed nine of the ten causes of action asserted in the complaint for failure to state a cause of action". Describing this as "materially false" and "a re-write of the facts", the analysis stated, as follows, with respect to the seventh and eighth causes of action:

"Judge Hartman's dismissal of the seventh and eighth causes of action (¶¶69-80) was on the ground that the Commission on Legislative, Judicial and Executive Compensation was 'not a party to this action'. Not only is this not failure to state a cause of action, but AAG Kerwin's September 15, 2016 cross-motion did not seek dismissal based on the Commission not being a party – which would have been pursuant to CPLR §3211(a)(10): 'the court should not proceed in the absence of a person who should be a party'. As highlighted by plaintiffs' Exhibit U analysis (at p. 16), this was Judge Hartman's own *sua sponte* ground for dismissal, which she popped into her December 21, 2016 decision without citation to ANY legal authority – because dismissal on such ground 'is only a last resort' where the absent party is a 'necessary party', which she did not claim the Commission to be, nor claim any prejudice to defendants by reason of the non-joinder[fn3] – just as AAG Kerwin never

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

The annotating footnote, with legal authority, is:

> "*Chamber of Commerce v. Pataki*, 100 NY2d 801 (2003), quoting Siegel, NY Practice 'Dismissal of the action for nonjoinder of a given person is a possibility under the CPLR, but it is only a last resort'. Also see CPLR §2001, 'At any stage of an action, the court may permit a mistake, omission, defect or irregularity to be corrected, upon such terms as may be just, or, if a substantial right of a party is not prejudiced, the mistake, omission, defect or irregularity shall be disregarded.'"

As bluntly stated by plaintiffs' August 25, 2017 memorandum of law (at p. 30), the reason for Judge Hartman's *sua sponte* dismissal of plaintiffs' seventh and eighth causes of action, without law, was because the evidentiary proof plaintiffs had furnished in substantiation of those causes of action "OVERWHELMINGLY established their entitlement to summary judgment" as to each cause.

#11:
What was defendants' response to plaintiffs' August 21, 2017 reply/opposition papers – and to the analysis of Judge Hartman's June 26, 2017 decision it annexed as Exhibit I?

Neither AAG Kerwin, nor any of her superiors in the Attorney General's office, including defendant Attorney General Schneiderman – to whom plaintiffs' furnished notice – responded. This, notwithstanding their entitlement to have submitted reply papers in support of their July 21, 2017 cross-motion.

#12:
What has been Judge Hartman's response to plaintiffs' fully-submitted June 12, 2017 order to show cause and defendants' fully-submitted July 21, 2017 cross-motion?

Plaintiffs' June 12, 2017 order to show cause and defendants' July 21, 2017 cross-motion, both of which were returnable September 1, 2017, more than two months ago, are yet *sub judice* before Judge Hartman.