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budget.[20] As for meaningful and accurate information about the Legislature's budget, the legislative committees whose charge that would be – the Senate Committee on Investigations and Government Operations; the Assembly Committee on Governmental Operations, and the Assembly Committee on Oversight, Analysis, and Investigation – will offer nothing on the subject.

AS AND FOR A THIRTEENTH CAUSE OF ACTION

Chapter 60, Part E of the Laws of 2015 is Unconstitutional, *As Written* – and the Commission's Judicial Salary Increase Recommendations are Null & Void by Reason Thereof

385. Plaintiffs repeat, reiterate, and reallege ¶¶1-384, with the same force and effect as if more fully set forth herein.

386. The budget bill statute establishing the Commission on Legislative, Judicial and Executive Compensation – Chapter 60, Part E, of the Laws of 2015 – is more egregiously unconstitutional than the materially identical statute it repealed and replaced: Chapter 567 of the Laws of 2010, which established the Commission on Judicial Compensation, as, unlike the predecessor statute, it is the product of behind-closed-doors, three-men-in-a-room budget deal-

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twenty-two of this article. The findings and descriptions contained in the report required by this section shall constitute the expression of legislative intent with respect to the budget to which such report relates."

[20] The Senate Judiciary Committee's 2015 Annual Report's section on the Judiciary budget for fiscal year 2015-2016 is two sentences: "The Legislature adopted a Unified Court System Budget increase to $1.85 billion. This reflects an increase of $36.3 million. The overall Judiciary budget increase was 2%." (Exhibit 33-a).

The Assembly Judiciary Committee 2015 Annual Report's section is a single sentence longer, but only the first sentence contains any numbers: "The 2015-2016 State budget adopted without change the Judiciary's budget request for appropriations in the amount of $2.8 billion." (Exhibit 33-b, underlining added).

Quite apart from the nearly 1 billion dollar difference between their figures as to the dollar cost of the Judiciary budget for fiscal year 2015-2016, the Assembly Judiciary Committee's assertion that the Judiciary's budget request was "adopted without change" is false. There were approximately $9 million dollars cut from the Judiciary's budget request, but in the complete absence of any formatting changes in the amended bill and the complete absence of amended introducer's memoranda, fiscal note, fiscal impact statement, or reports pursuant to Legislative Law §54 and State Finance Law §22-b, the only way to discern is a line-by-line comparison of the original and enacted bill. Apparently the Assembly Judiciary Committee was unwilling to do even that.

making by defendants CUOMO, HEASTIE, and then Temporary Senate President SKELOS, with a timetable reinforcing it as "a devious and underhanded means" for legislators" to obtain "a salary increase without accepting any responsibility therefor".[21]

387. The record of this citizen-taxpayer action already contains a full briefing as to the unconstitutionality of both statutes, *as written*.[22] Below is a synthesis of what is already briefed and before the Court, now exclusively addressed to the unconstitutionality of Chapter 60, Part E, of the Laws of 2015, *as written*:

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"

388. On June 3, 2015, five Assembly members, all in the minority, and including the ranking member of the Assembly Committee on Governmental Operations, introduced a bill to amend Chapter 60, Part E, of the Laws of 2015 to remove its provision giving the Commission's salary increase recommendations "the force of law" and making its report for legislative and executive officers due at the same time as for judicial officers. The bill was A.7997 and its accompanying introducers' memorandum, submitted "in accordance with Assembly Rule III, Sec 1(f)" (Exhibit 34), stated, in pertinent part:

> "On March 31, 2015, a 137 page budget bill (S4610-A/A6721-A) was introduced, and was adopted by the Senate late that evening. The Senate bill was adopted by the Assembly after 2:30am on April 1, 2015.
>
> This budget bill included, inter alia, legislation to establish a special commission on compensation (hereinafter 'Commission') consisting of seven members, with three appointed by the Governor, one appointed by the Temporary

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21 Quote from introducers' memorandum to A.7997, *infra* at ¶388 (Exhibit 34).

22 Plaintiffs' challenge to the constitutionality of Chapter 567 of the Laws of 2010, *as written*, is the second cause of action of their March 30, 2012 verified complaint in their declaratory judgment action, *CJA v. Cuomo, et al.* – a full copy of which plaintiff SASSOWER had handed up to defendants SENATE and ASEMBLY when she testified at their February 6, 2013 "public protection" hearing – and a duplicate of which she furnished the Court in support of plaintiffs' September 22, 2015 cross-motion in support of summary judgment and other relief. Plaintiffs' September 22, 2015 cross-motion and their November 5, 2015 reply papers expanded the challenge to encompass Chapter 60, Part E, of the Laws of 2015, *as written*.

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

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

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

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

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

389. The memorandum then specified six different respects in which the bill's provision giving the Commission's salary recommendations "the force of law" was unconstitutional:

"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."

And, additionally:

> "a. Article III, Section 6 of the New York State Constitution states that each member of the legislature shall receive an annual salary 'to be fixed by law.' The Constitution does not state that members of the legislature shall receive a salary 'to be fixed by a commission.'
>
> ...
>
> c. Article III, Section 6 of the New York State Constitution states that legislators shall continue to receive their current salary 'until changed by law.' A non-elected commission cannot 'change the law' since only the State Legislature has the power to change the law." (Exhibit 34).

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);
>
> 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).[23]

392. This outsourcing to an appointed seven-member commission of the duties of examination, evaluation, consideration, hearing, recommendation, which Chapter 60, Part E, of the Laws of 2015 confers upon it, are the duties of a properly functioning Legislature, acting through its committees – and there is NO EVIDENCE that any legislative committee has ever been unsuccessful in engaging in such duties and in producing bills based thereon that could not then be enacted by the Legislature and Governor.

393. The unconstitutionality of "the force of law" provision of Chapter 60, Part E, of the Laws of 2015 – and of the timing for the Commission's recommendation for legislative and

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[23] The City Bar's *amicus* brief is posted on the webpage of this verified second supplemental complaint, on the Center for Judicial Accountability's website, www.judgewatch.org, accessible from the sidebar panel "Judicial Compensation-NY".

executive branch officers – requires the striking of the statute, in its entirety – there being no severability provision in the statute. (*St. Joseph Hospital, et al. v. Novello, et al., id.*).

B. Chapter 60, Part E, of the Laws of 2015 Unconstitutionally Delegates Legislative Power Without Safeguarding Provisions

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.

396. It establishes a seven-member commission – and of these, only two members are legislative appointees, designated by the majority leaders of each house. This is an insufficient number to reflect the diversity of either the Legislature or the State.

397. 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.

398. 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.

399. Additionally, Chapter 60, Part E, of the Laws of 2015 furnishes 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 enumerated factors (§2, ¶3). These six enumerated 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 of the New York State Constitution.

400. 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 judicial salary increase recommendation must be a determination that safeguarding appellate, administrative, disciplinary and removal provisions of Article VI of the New York State Constitution are functioning.*

401. Likewise, it is unconstitutional to raise the salaries of other constitutional officers and public officials who should be removed from office for corruption – and who, by reason thereof, are not earning their current salaries. *Consequently, a prerequisite to any salary increase recommendation as to them must be a determination that mechanisms to remove such constitutional and public officers are functional, lest these corrupt public officers be the beneficiaries of salary increases.*

402. The absence of explicit guidance to the Commission that corruption and the lack of functioning mechanisms to remove corrupt public officers are "appropriate factors" for its consideration in making salary recommendations renders the statute unconstitutional, *as written.*

C. Chapter 60, Part E, of the Law of 2015 Violates Article XIII, §7 of the New York State Constitution

403. Article XIII, §7 of the New York State Constitution states:

> "Each of the state officers named in this constitution shall, during his continuance in office, receive a compensation, to be fixed by law, which shall not be increased or diminished during the term for which he shall have been elected or appointed".

404. This express prohibition was highlighted by the then Governor and the Senate and Assembly in 2009 in defending against the judges' judicial pay raise lawsuits before the New York Court of Appeals. Their November 23, 2009 brief stated:

> "This Court has never decided whether the provision of Article XIII, §7, banning salary increases during a State officer's term of office, applies to judges.... it seems unlikely that this Court could uphold the order below, to the extent it was adverse to Defendants, or grant relief to Plaintiffs on their appeal, without addressing Article XIII, §7."

405. Yet, the Court of Appeals' February 23, 2010 decision in *Maron v. Silver*, 14 N.Y.3d 230, granting judgment in favor of the judges, neither addressed nor even mentioned Article XIII, §7.

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

D. <u>Chapter 60, Part E, of the Laws of 2015 is Unconstitutional because Budget Bill #S.4610/A-6721 Violated Article VII, §6 of the New York State Constitution – and, Additionally, Article VII, §§2 and 3</u>

407. Beyond the six constitutional violations that the legislators' introducers' memorandum for A.7997 itemized concerning "the force of law" provision of Chapter 60, Part E, of the Laws of 2015 (Exhibit 34), their memorandum included a further constitutional violation as to the whole of Part E:

> "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."

408. In fact, Part E, which was Part E of defendant CUOMO's Budget Bill #S.4610/A.6721 (Exhibit 35-a), violated not only Article VII, §6, but Article VII, §§2 and 3.

409. In pertinent part, Article VII, §§2 and 3 state:

> §2. ...on or before the second Tuesday following the first day of the annual meeting of the legislature..., the governor shall submit to the legislature a budget containing a complete plan of expenditures proposed to be made before the close of the ensuing fiscal year and all moneys and revenues estimated to be available therefor, together with an explanation of the basis of such estimates and recommendations as to proposed legislation, if any, which the governor may deem necessary to provide moneys and revenues sufficient to meet such proposed expenditures. It shall also contain such other recommendations and information as the governor may deem proper and such additional information as may be required by law.
>
> §3. At the time of submitting the budget to the legislature the governor shall submit a bill or bills containing all the proposed appropriations and reappropriations included in the budget and the proposed legislation, if any, recommended therein. The governor may at any time within thirty days thereafter and, with the consent of the legislature, at any time before the adjournment thereof, amend or supplement the budget and submit amendments to any bills submitted by him or her or submit supplemental bills..."

410. Pursuant to Article VII, §2, defendant CUOMO submitted his executive budget for fiscal year 2015-2016 on January 21, 2015. No Budget Bill #S.4610/A.6721 was part of his submission – nor any legislation proposing a Commission on Legislative, Judicial and Executive Compensation.

411. On March 31, 2015, following behind-closed-doors, three-men-in-a-room budget deal-making, Budget Bill #S.4610/A.6721, bearing the date March 31, 2015, was introduced (Exhibit 35-a) – containing a Part E (pp. 93-95), summarized at the outset of the bill as:

> "establishing a commission on legislative, judicial and executive compensation, and providing for the powers and duties of the commission and for the dissolution of the commission and repealing chapter 567 of the laws of 2010 relating to establishing a special commission on compensation, and providing for their powers and duties; and to provide periodic salary increases to state officers".

412. Such Budget Bill #S.4610/A.6721 was unconstitutional, *on its face*:

(a) it was untimely – Article VII, §3 required defendant CUOMO to submit his "bills containing all the proposed appropriations and reappropriations" when he submitted

his executive budget, on January 21, 2015. Likewise his proposed legislation relating thereto. No new budget bill, embracing never-proposed legislation, could be constitutionally submitted by him on March 31, 2015 (*Winner v. Cuomo*, 176 A.D.2d 60, 63 (3rd Dept. 1992));[24]

(b) its content was improper – Part E was not legislation capable of providing "monies and revenues" for expenditures of the budget, as Article VII, §2 specifies and, compared to other Parts of the bill, it had the most tenuous connection to the budget, having no relation at all. (*Pataki v. Assembly*, 4 NY3d 75 (2004)).[25]

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[24] *Winner v. Cuomo*, at p. 63: "As Members of the State Assembly, plaintiffs are charged with acting on the Executive Budget (NY Const, art VII, § 4). Defendant, in turn, has a constitutional and statutory obligation to timely submit his budget bills to the Legislature (NY Const, art VII, §3; State Finance Law §24). By reducing the time available to review the budget bills, defendant impinges upon the Legislature's opportunity to timely review his proposals and hampers the ability to question Executive Department heads regarding the budget (Legislative Law § 31)."

State Finance Law §24, "Budget bills": "1. The budget submitted annually by the governor shall be simultaneously accompanied by a bill or bills for all proposed appropriations and reappropriations and for the proposed measures of taxation or other legislation, if any, recommended therein. Such bills shall be submitted by the governor and shall be known as budget bills."

[25] While the three-judge plurality opinion in *Pataki v. Assembly*, 4 NY 3d. at 99, "le[ft] for another day the question of what judicially enforceable limits, if any, beyond the anti-rider clause of article VII, §6, the Constitution imposes on the content of appropriation bill", the concurrence of Judge Rosenblatt, which had made the plurality a majority, took issue with their approach stating (at 101-102):

> "A proper resolution of these lawsuits requires a test, consisting of a number of factors, no single one of which is conclusive, to determine when an appropriation becomes unconstitutionally legislative. To begin with, anything that is more than incidentally legislative should not appear in an appropriation bill, as it impermissibly trenches on the Legislature's role. The factors we consider in deciding whether an appropriation is impermissibly legislative include the effect on substantive law, the durational impact of the provision, and the history and custom of the budgetary process.
>
> In determining whether a budget item is or is not essentially an appropriation, one must look first to its effects on substantive law. The more an appropriation actively alters or impairs the State's statutes and decisional law, the more it is outside the Governor's budgetary domain. A particular 'red flag' would be non-pecuniary conditions attached to appropriations.
>
> History and custom also count in evaluating whether a Governor's budget bill exceeds the scope of executive budgeting. The farther a Governor departs from the pattern set by prior executives, the resulting budget actions become increasingly suspect. I agree that customary usage does not establish an immutable model of appropriation (*see* plurality op at 98). At the same time, it would be wrong to ignore more than 70 years of executive budgets that basically consist of line items.
>
> The more an executive budget strays from the familiar line-item format, the more likely it is to be unauthorized, nonbudgetary legislation. As an item exceeds a simple identification of a sum of money along with a brief statement of purpose and a recipient, it takes on a more legislative character. Although the degree of specificity the Governor uses in describing an appropriation is within executive discretion (*see People v Tremaine*, 281 N.Y. 1, 21 N.E.2d 891 [1939]), when the specifics transform an appropriation into proposals for programs, they poach on powers reserved for the Legislature.

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

413. Budget Bill #S.4610/A.6721, both introduced and amended on March 31, 2015 (Exhibits 35-a, 35-b), stated in its first section:

> "This act enacts into law major components of legislation which are necessary to implement the state fiscal plan for the 2015-2016 state fiscal year. Each component is wholly contained within a Part identified as Parts A through J."

414. This was false and fraudulent with respect to Part E. Part E was in no way a "component[] of legislation necessary to implement the state fiscal plan for the 2015-2016 state fiscal year", let alone a "major" one.

415. Also materially false and fraudulent was the prefatory paragraphs to the amended Budget Bill #S.4610-A/A.6721-A (Exhibit 35-b), insofar as they connote legitimate legislative process:

> "IN SENATE – A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution – read twice and ordered printed, and when printed to be committed to the Committee on Finance – committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee
>
> IN ASSEMBLY – A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution – read once and referred to the Committee on Ways and Means – again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee".

In addition, the more a provision affects the structure or organization of government, the more it intrudes on the Legislature's realm. The executive budget amendment contemplates funding – but not organizing or reorganizing – state programs, agencies and departments through the Governor's appropriation bills.

The durational consequences of a provision should also be taken into account. As budget provisions begin to cast shadows beyond the two-year budget cycle, they look more like nonbudget legislation. The longer a budget item's potential lifespan, the more legislative is its nature. Similarly, the more a provision's effects tend to survive the budget cycle, the more it usurps the legislative function."

416. The amending of Budget Bill #S.4610/A.6721 was completely opaque, both in the Senate and Assembly. Upon information and belief, the amendments were not voted on in any committee or on the Senate and Assembly floor and no amended introducers' memorandum revealed the changes to the bill. Reflecting this – as relates to the Senate Finance Committee – is the video of its two-minute March 31, 2015 meeting,[26] whose sole agenda item was #S.4610-A/A.6721-A. Notwithstanding audio unintelligibility in parts, the following can be discerned:

Chair DeFrancisco:	Senate Finance Committee meeting for this budget cycle and would you please read.
Clerk:	Senate Bill 4610-A, a budget bill, enacts various provisions of law necessary to implement the state fiscal plan for the 2015-2016 state fiscal year.
Chair DeFrancisco:	Is there a motion?
Unidentified woman:	Yes.
Chair DeFrancisco:	Senator Squadron. Yes, Senator Squadron.
Senator Squadron:	I note this is an A. When did the original..?
Chair DeFrancisco:	Sometime before the A, I don't know.
	Laughter
Chair DeFrancisco:	I simply don't, I simply don't. And is there some relevance to when it was actually?
Senator Squadron:	I was just curious as to highlight, when this bill came out.
Chair DeFrancisco:	It was before the Governor's original submission was the bill number 4610. This is an A because it made changes
Senator Squadron:	They were both submitted then?
Chair DeFrancisco:	They were what?

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[26] http://www.nysenate.gov/calendar/meetings/finance/march-31-2015/finance-meeting-1. The Senate webpage shows the vote as having been 29 ayes, 2 nays, with 6 ayes without rec.

Senator Squadron: They were both submitted then?

Chair DeFrancisco: The Governor's bill was submitted a long time ago.

Senator Squadron: The original 4610 wasn't [unintelligible].

Chair DeFrancisco: Clarification.

Ranking Member Krueger: The section C in this bill between the, sorry, Senator Squadron? In the amended version, section C is different than in the previous version. And, also, the fact sheet has not been updated, so that it's actually not correct, so you might just want to double check section C.

Senator Squadron: Thank you very much.

Chair DeFrancisco: The bill has been moved. The bill has been moved and seconded. All in favor.

Voices: Aye.

Chair DeFrancisco: Opposed.

Silence.

Senator Squadron: Without rec.

Chair DeFrancisco: Without rec, Senator Squadron, Rivera, Dilan. Perkins?

Chair DeFrancisco: No, for Senator Perkins. The bill is reported direct to the third reading. (gavel) We are adjourned.

417. Such video additionally establishes that the vote by the Senate Finance Committee – without which Budget Bill #S.4610-A/A.6721-A could not have proceeded to the Senate floor – was fraudulently procured by then Senate Judiciary Committee Chair DeFrancisco and Ranking Member Krueger, both of whom knew – including from the very face of the bill which identified that day's date – that it was not introduced "a long time ago".

418. Part E, which was not amended when Budget Bill #S.4610/A.6721 was amended, was entirely new legislation. However, notwithstanding the bill's "EXPLANATION – Matter in <u>italics</u>

(underscored) is new; matter in brackets [ ] is old law to be omitted", nothing in either the unamended bill nor the amended bill revealed that Part E was new (Exhibits 35-a, 35-b).

419. In fact, Part E did not belong in Budget Bill #S.4610/A.6721. If it belonged in any budget bill, it would have been defendant CUOMO's Budget Bill #S.2005/A.3005, introduced on January 21, 2015 as his "Public Protection and General Government Article VII Legislation" (Exhibit 36-a) – and containing a Part I (eye) establishing a Commission on Executive and Legislative Compensation, structured differently from Chapter 567 of the Laws of 2010, which it did not repeal. Most significantly, the salary recommendations of the Commission on Executive and Legislative Compensation would not have "the force of law" (Exhibits 36-a, 36-b, 36-c).

420. On March 27, 2015, by an opaque amendment process, this Protection/General Government Budget Bill #S.2005/A.3005 was amended twice – the first time, retaining Part I (eye) (pp. 42-44), and second time, dropping it as "Intentionally Omitted" (p. 21). The Assembly memorandum for this second amendment, A.3005-B, (Exhibit 36-d) gave no explanation for why Part I (eye) was dropped – or, for that matter, what the now omitted Part I (eye) had consisted of.

421. Four days later, on March 31, 2015, and without any accompanying introducer's memorandum, in violation of Senate Rule VII, §1 and Assembly Rule III, §§1f, 2(a), defendant CUOMO's Budget Bill #S.4610/A.6721 (Exhibits 35-a, 35-b) was untimely introduced in violation of Article VII, §§2, 3 of the New York State Constitution and State Finance Law §24 based thereon, and then, in violation of Senate Rule VII, §4b and Assembly Rule III, §§1f, 6, amended in an even more opaque fashion (Exhibits 35-a, 35-c) and without any amended introducer's memorandum (Exhibit 35-d). Its Part E repealed Chapter 567 of the Laws of 2010, thereupon modeling the Commission on Legislative, Judicial and Executive Compensation on the repealed statute – including its provision for giving the Commission's salary recommendations "the force of law".

422. The fact that this just-introduced/just-amended S.4610-A/A.6721-A, with its Part E, was then sped through to the Senate and Assembly floor, on a "message of necessity", to meet an April 1 fiscal year deadline, which had no relevance to it, only exacerbates the injury to the public which, pursuant to Legislative Law §32-a, had a right to be heard at a legislative hearing on the budget about a budget bill containing Part E (*Winner v. Cuomo*, *supra*, at p. 62, fn. 24.)

423. At bar, defendants' violations of multitudinous constitutional, legislative, and mandatory Senate and Assembly rule provisions, denying the People legislative due process and perpetrating fraud, render Chapter 60, Part E, of the Laws of 2015 unconstitutional. "*Albany's Dysfunction Denies Due Process*", 30 Pace L. Rev. 965, 982-983 (2010) Eric Lane, Laura Seago.

AS AND FOR A FOURTEENTH CAUSE OF ACTION

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

424. Plaintiffs repeat, reiterate, and reallege ¶¶1-423, with the same force and effect as if more fully set forth herein.

425. 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).

426. The Commission on Legislative, Judicial and Executive Compensation operated unconstitutionally in at least four specific respects – and plaintiffs presented these to the Commission as threshold issues for its determination.