

2<sup>nd</sup> citizen taxpayer action (Albany Co # 5122-16)  
CVA v. Cuomo, et al. Sept. 2, 2016 verified complaint

**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**

68. Plaintiffs' showing that the Commission statute is unconstitutional because it was procured fraudulently and without legislative due process is set forth by the incorporated Exhibit A: ¶¶413-423. It is accurate, true, and correct in all material respects.

**AS AND FOR A SEVENTH 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**

69. Plaintiffs repeat, reiterate, and reallege ¶¶ 1-68 herein with the same force and effect as if more fully set forth.

70. Plaintiffs' seventh cause of action herein is the fourteenth cause of action of their incorporated March 23, 2016 verified second supplemental complaint in their prior citizen-taxpayer action (Exhibit A: ¶¶424-452). It is accurate, true, and correct in all material respects.

71. The first and overarching ground upon which Chapter 60, Part E, of the Laws of 2015 is unconstitutional, *as applied*, was set forth at ¶425. Its importance was such that its pertinent words were capitalized and the whole of it was underscored, 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).”

72. Subsequent events reinforce this key ground of unconstitutionality. Thus, even upon being given notice of, and furnished with, plaintiffs' March 23, 2016 verified second supplemental

complaint (Exhibit A), the legislative defendants have continued to willfully and deliberately refuse to discharge ANY oversight duties with respect to the constitutionality and operations of the statute:

a. On April 1, 2016, with full knowledge that the judicial salary increases recommended by the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation are statutorily-violative, fraudulent, and unconstitutional for all the multitude of reasons particularized by the verified second supplemental complaint (§§385-457), the legislative defendants allowed its judicial salary recommendations for fiscal year 2016-2017 to take effect.

b. Since mid-April 2016, the legislative defendants have sought to have the state reimburse the counties for the district attorney salary increases resulting from the April 1, 2016 fraudulent, statutorily-violative, and unconstitutional judicial salary increases, disregarding notice from plaintiffs on the subject, including as to the necessity of repealing Judiciary Law §183-a, statutorily-linking district attorney and judicial salaries – as to which there had been no oversight by the legislative defendants since its enactment 40 years ago.

**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**

73. Plaintiffs' showing is set forth by the incorporated Exhibit A: §§428-432. It is accurate, true, and correct in all material respects.

**B. As Applied, a Commission that Conceals and Does Not Determine Whether Systemic Judicial Corruption is an "Appropriate Factor" is Unconstitutional**

74. Plaintiffs' showing is set forth by the incorporated Exhibit A: §§433-435. It is accurate, true, and correct in all material respects.

**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**

75. Plaintiffs' showing is set forth by the incorporated Exhibit A: §§436-444. It is accurate, true, and correct in all material respects.

**D. As Applied, a Commission that Suppresses and Disregards Citizen Input and Opposition is Unconstitutional**

76. Plaintiffs' showing is set forth by the incorporated Exhibit A: ¶¶445-452. It is accurate, true, and correct in all material respects.

**AS AND FOR AN EIGHTH CAUSE OF ACTION**

**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**

77. Plaintiffs repeat, reiterate, and reallege ¶¶ 1-76 herein with the same force and effect as if more fully set forth.

78. Plaintiffs' eighth cause of action herein is the fifteenth cause of action of their March 23, 2016 verified second supplemental complaint in their prior citizen-taxpayer action, Exhibit A: ¶¶453-457. It is accurate, true, and correct in all material respects.

79. A further "appropriate factor" that the Commission failed to "take into account", in violation of §2, ¶3 of the Commission statute, is the statutory link between judicial salaries and district attorneys, plainly impacting upon "the state's ability to fund increases in compensation and non-salary benefits" – one of the six factors enumerated by §2, ¶3 of the Commission statute.

80. The Commission's disregard of this "appropriate factor" for its consideration was not inadvertent. Plaintiffs' advocacy alerted the Commissioners to the statutory link between judicial salaries and district attorney salaries and its financial impact to the state.<sup>3</sup>

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<sup>3</sup> Plaintiffs' October 27, 2011 opposition report (at p. 24); the video of plaintiff Sassower's testimony before the Legislature at its February 6, 2013 "public protection" budget hearing, accessible from the links plaintiffs furnished.