SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

CENTER FOR JUDICIAL ACCOUNTABILITY, INC., and ELENA RUTH SASSOWER, individually and as Director of the Center for Judicial Accountability, Inc., acting on their own behalf and on behalf of the People of the State of New York & the Public Interest,

Plaintiffs,

-against-

ANDREW M. CUOMO, in his official capacity as Governor of the State of New York, JOHN J. FLANAGAN in his official capacity as Temporary Senate President, THE NEW YORK STATE SENATE, CARL E. HASTIE, in his official capacity as Assembly Speaker, THE NEW YORK STATE ASSEMBLY, ERIC T. SCHNEIDERMAN, in his official capacity as Attorney General of the State of New York, THOMAS DiNAPOLI, in his official capacity as Comptroller of the State of New York, and JANET M. DIFIORE, in her official capacity as Chief Judge of the State of New York and chief judicial officer of the Unified Court System,

Defendants.

AFFIRMATION

Index No. 5122-16

Adrienne J. Kerwin, an attorney licensed to practice in the State of New York, affirms the following under penalty of perjury pursuant to CPLR 2106:

1. I am an Assistant Attorney General of counsel in this matter to Eric T. Schneiderman, Attorney General of the State of New York, attorney for defendants Governor Andrew M. Cuomo, the New York State Senate, the New York State Assembly, John J. Flanagan, Carl E. Hastie, Eric T. Schneiderman, Thomas DiNapoli and Janet M. DiFiore in the above-captioned action.

2. I submit this affirmation in opposition to plaintiffs' application for preliminary injunctive relief, and in support of defendants' motion to dismiss the complaint pursuant to CPLR 3211(a)(7) and (8).

3. This action was commenced by the filing of a summons and complaint on or about September 2, 2016. A copy of the summons and complaint, is annexed hereto at **Exhibit A**.

4. On the same date, plaintiffs presented an order to show cause seeking a temporary restraining order and preliminary injunction restraining the defendants from dispersing certain monies pursuant to the enacted 2016-17 State budget. A copy of the order to show cause, and supporting affidavit of plaintiff Elena Sassower[1], is annexed hereto at **Exhibit B**.

5. On the record at the appearance on plaintiffs' order to show cause, I advised both the court and plaintiff Sassower that the Office of the Attorney General was authorized to accept service of the order to show cause and supporting papers, which included the summons and complaint, for named defendants Eric T. Schneiderman, Thomas DiNapoli, and the New York State Assembly[2] only.

6. Therefore, pursuant to the order to show cause, plaintiffs were required to serve Governor Andrew M. Cuomo, Temporary Senate President John J. Flanagan, the New York Senate and Chief Judge Janet M. DiFiore "by personal service" on or before September 6, 2016. See Exhibit B.

1 Upon information and belief, plaintiff Sassower is not an attorney.

2 AAG Kerwin also accepted service on behalf of Assembly Speaker Carl E. Hastie.

7. Upon information and belief, service was attempted on Governor Andrew M. Cuomo, Temporary Senate President John J. Flanagan, the New York Senate and Chief Judge Janet M. DiFiore on September 2, 2016, by plaintiff Elena Sassower, herself.

PRIOR RELATED PROCEEDINGS

8. Plaintiffs' litigation relating to the New York State Legislative and Judiciary budgets began with the commencement of an action on or about March 28, 2014 in which plaintiffs challenged the legality of the 2014-15 proposed Legislative and Judiciary budgets (hereafter "prior proceeding").[3] A copy of the March 28, 2014 complaint, without exhibits, is annexed to the complaint at Exhibit B.

9. Specifically, plaintiffs argued that that (1) the Legislature did not provide a certified estimate of its financial needs for the 2014-15 fiscal year as required by Article VII, section 1 of the New York State Constitution; (2) the certified estimates of financial needs submitted by the Legislature and Judiciary were not properly itemized pursuant to Article VII, section 1 of the New York State Constitution; (3) the Governor failed to present the certified estimates of the Legislature and Judiciary in his Executive Budget "without revision" as required by Article VII, section 1 of the New York State Constitution; and (4) the Legislature violated its own rules and Legislative Law 32-a. See Complaint at Exh. B.

10. Finding three of the four causes of action not justiciable, the court dismissed plaintiff's claims except as to whether the defendants violated Legislative Law 32-a. A copy of the court's October 9, 2014 Decision and Order is annexed to the complaint at Exhibit E.

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3 The defendants names in the March 28, 2014 were defendants Governor Andrew M. Cuomo, the New York State Senate, the New York State Assembly, Senate Temporary President Dean Skelos, Speaker Sheldon Silver, Attorney General Eric T. Schneiderman and Comptroller Thomas DiNapoli. See Complaint at Exh. B.

11. With the permission of the court, plaintiffs filed a supplemental complaint.[4] A copy of that supplemental complaint, without exhibits, is annexed to the complaint at Exhibit C.

12. The supplemental complaint alleged that (1) the Legislature did not provide a certified estimate of its financial needs for the 2015-16 fiscal years as required by Article VII, section 1 of the New York State Constitution; (2) the certified estimates of financial needs submitted by the Legislature and Judiciary were not properly itemized pursuant to Article VII, section 1 of the New York State Constitution; (3) the Governor failed to present the certified estimates of the Legislature and Judiciary in his Executive Budget "without revision" as required by Article VII, section 1 of the New York State Constitution; and (4) the Legislature failed to follow its own rules and procedures and Legislative Law 32-a. See Complaint at Exh. C.

13. Defendants simultaneously moved to dismiss the supplemental complaint in its entirety, and for summary judgment on plaintiff's Legislative Law 32-a claim that survived defendants' motion to dismiss the original complaint.[5]

14. While that motion was pending, plaintiffs filed a motion for leave to file a second supplemental complaint that related to the 2016-2017 Legislative and Judiciary budgets that contained claims identical to those contained in the original complaint relating to the 2014-2015 Legislative and Judiciary budgets, and in the supplemental complaint relating to the 2015-16 Legislative and Judiciary budgets. See Complaint at Exh. A. However, the proposed second amended complaint also challenged the constitutionality of Legislative/Judiciary Budget Bill

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4 The defendants named in the supplemental complaint were Governor Andrew M. Cuomo, the New York State Senate, the New York State Assembly, Senate Temporary President Dean Skelos, Speaker Sheldon Silver, Attorney General Eric T. Schneiderman and Comptroller Thomas DiNapoli. See Complaint at Exh. C.

5 Plaintiff opposed defendants' motion and cross-moved for summary judgment and other baseless relief.

S.6401/A.9001, and the "behind-closed-doors, three-men-in-a-room budget deal making" of the Governor, Temporary Senate President and Assembly Speaker. See id.

15. By decision and order dated July 14, 2016, amended August 1, 2016, the court granted defendants' motions and denied plaintiffs' motions. A copy of the August 1, 2016 amended decision and order is annexed to the complaint at Exhibit D.

THE PRESENT COMPLAINT

16. The complaint in this action alleges four of the exact same claims that have already been rejected by this court in connection with the 2014-15 and 2015-16 budgets.[6] See Complaint at First, Second, Third and Fourth Causes of Action.

17. Four of the remaining five causes of action were contained in plaintiff's proposed second supplemental complaint in the prior case. Cf. Complaint at Sixth, Seventh, Eighth and Ninth Causes of Action, and Complaint at Exh. A.

18. The only new claim in this action is plaintiffs' Tenth Cause of Action, which challenges the disbursement of money to reimburse counties for District Attorney salaries. See Complaint at Tenth Cause of Action.

19. For the reasons discussed in defendants' memorandum of law submitted herewith and incorporated herein, the complaint fails to state a cause of action and should be dismissed in its entirety.

PLAINITFF'S APPLICATION FOR PRELIMINARY INJUNCTIVE RELIEF

20. In their application for preliminary injunctive relief, the plaintiffs seek an order (1) disqualifying Judge Roger D. McDonough from presiding over this case, (2) vacating the

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6 However, this complaint names Chief Judge Janet M. DiFiore as a defendant and substitutes John J. Flanagan and Carl E. Hastie for Dean Skelos and Sheldon Silver, respectively. See Complaint.

court's August 1, 2016 decision and order in the prior proceeding and (3) enjoining the defendants from disbursing funds pursuant to Legislative/Judiciary Budget Bill #S.6401-a/A.9001-a (or, alternatively, specific appropriations and reappropriations therein) and pursuant to appropriation item "For grants to counties for district attorney salaries" in the Division of Criminal Justice Services ("DCJS") budget (and particular reappropriation items therein). See Exhibit B.

21. The defendants are aware of no legitimate basis requiring the disqualification of Judge McDonough in this proceeding, and defer to the court's own judgment as to whether recusal is warranted.

22. A motion affecting a prior order pursuant to CPLR 2221 must be made within the context of the action in which the order was rendered. Instead of seeking an order vacating the court's August 1, 2016 decision in this proceeding, plaintiffs should have filed a motion for such relief in the prior proceeding, or appealed the court's decision and order to the Appellate Division. Therefore, plaintiffs' application that the court's August 1, 2016 decision be vacated must be denied.

WHREFORE, the defendants respectfully request that the court issue an order (1) granting defendants' cross-motion to dismiss the complaint, (2) denying plaintiffs' application for preliminary injunctive relief and (3) granting defendants any further relief that the court deems just, proper and equitable.

Dated: Albany, New York
September 15, 2016

Adrienne J. Kerwin

EXHIBIT

A

SUPREME COURT OF STATE OF NEW YORK
ALBANY COUNTY

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CENTER FOR JUDICIAL ACCOUNTABILITY, INC.
and ELENA RUTH SASSOWER, individually and
as Director of the Center for Judicial Accountability, Inc.,
acting on their own behalf and on behalf of the People
of the State of New York & the Public Interest,

SUMMONS

Plaintiffs,

-against-

Index #

ANDREW M. CUOMO, in his official capacity as Governor of the State of New York, JOHN J. FLANAGAN in his official capacity as Temporary Senate President, THE NEW YORK STATE SENATE, CARL E. HEASTIE, in his official capacity as Assembly Speaker, THE NEW YORK STATE ASSEMBLY, ERIC T. SCHNEIDERMAN, in his official capacity as Attorney General of the State of New York, THOMAS P. DiNAPOLI, in his official capacity as Comptroller of the State of New York, and JANET M. DiFIORE, in her official capacity as Chief Judge of the State of New York and chief judicial officer of the Unified Court System,

Defendants.

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TO THE ABOVE NAMED DEFENDANTS:

You are hereby summoned to serve upon plaintiffs an answer to the verified complaint in this action within 20 days of service of this summons on you, exclusive of the date of service, or within 30 days after service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the verified complaint.

The basis for the designated venue is the county in which the unconstitutional and unlawful disbursements have occurred, are occurring, and will be occurring and where defendant state officers have their principal offices.

Dated: September 2, 2016
White Plains, New York

ELENA RUTH SASSOWER, Plaintiff *Pro Se,* individually
& as Director of the Center for Judicial Accountability, Inc.,
and on behalf of the People of the State of New York &
the Public Interest

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

SUPREME COURT OF STATE OF NEW YORK
ALBANY COUNTY

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CENTER FOR JUDICIAL ACCOUNTABILITY, INC.
and ELENA RUTH SASSOWER, individually and
as Director of the Center for Judicial Accountability, Inc.,
acting on their own behalf and on behalf of the People
of the State of New York & the Public Interest,

Plaintiffs,

-against-

ANDREW M. CUOMO, in his official capacity as Governor of the State of New York, JOHN J. FLANAGAN in his official capacity as Temporary Senate President, THE NEW YORK STATE SENATE, CARL E. HEASTIE, in his official capacity as Assembly Speaker, THE NEW YORK STATE ASSEMBLY, ERIC T. SCHNEIDERMAN, in his official capacity as Attorney General of the State of New York, THOMAS P. DiNAPOLI, in his official capacity as Comptroller of the State of New York, and JANET M. DiFIORE, in her official capacity as Chief Judge of the State of New York and chief judicial officer of the Unified Court System,

Defendants.

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VERIFIED COMPLAINT
Index #

JURY TRIAL DEMANDED

> "It is the purpose of the legislature to recognize that each individual citizen and taxpayer of the state has an interest in the proper disposition of all state funds and properties. Whenever this interest is or may be threatened by an illegal or unconstitutional act of a state officer or employee, the need for relief is so urgent that any citizen-taxpayer should have and hereafter does have a right to seek the remedies provided for herein."
>
> State Finance Law Article 7-A, §123: "Legislative purpose"

Plaintiffs, as and for their verified complaint, respectfully set forth and allege:

1. By this citizen-taxpayer action pursuant to State Finance Law Article 7-A [§123 *et seq.*], plaintiffs seek declaratory judgments as to the unconstitutionality and unlawfulness of the Governor's Legislative/Judiciary Budget Bill #S.6401/A.9001, both the original bill and the enacted amended bill #S.6401-a/A.9001-a. The expenditures of the enacted budget bill – embodying the

Legislature's proposed budget for fiscal year 2016-2017, the Judiciary's proposed budget for fiscal year 2016-2017, and tens of millions of dollars in uncertified and nonconforming legislative and judicial reappropriations – are unconstitutional, unlawful, and fraudulent disbursements of state funds and taxpayer monies, which plaintiffs hereby seek to enjoin.

2. Plaintiffs also seek declarations voiding the judicial salary increases recommended by the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation because they are statutorily-violative, fraudulent, and unconstitutional, with further declarations striking the budget statute establishing the Commission – Chapter 60, Part E, of the Laws of 2015 – as unconstitutional and itself fraudulent – and injunctions to prevent further disbursement of state money pursuant thereto.

3. Additionally, plaintiffs seek declarations that the "process" by which the State budget for fiscal year 2016-2017 was enacted is unconstitutional, specifically including:

- the failure of Senate and Assembly committees and the full chambers of each house to amend and pass the Governor's appropriation bills and to reconcile them so that they might "become law immediately without further action by the governor", as mandated by Article VII, §4 of the New York State Constitution;

- the so-called "one-house budget proposals", emerging from closed-door political conferences of the Senate and Assembly majority party/coalitions;

- the proceedings of the Senate and Assembly joint budget conference committee and its subcommittees, conducted by staff, behind-closed-doors, based on the "one-house budget proposals"; and

- the behind-closed-doors, three-men-in-a-room budget deal-making by the Governor, Temporary Senate President, and Assembly Speaker.

4. Finally, plaintiffs seek declarations as to the unconstitutionality and unlawfulness of the appropriation item entitled "For grants to counties for district attorney salaries" in the Division of Criminal Justice Services' budget for fiscal year 2016-2017, contained in Aid to Localities Budget

Bill #S.6403-d/A.9003-d and of items of reappropriation therein pertaining to previous "grants to counties for district attorney salaries" and "recruitment and retention" incentives – and enjoining disbursement of state monies pursuant thereto.

5. For the convenience of the Court, a Table of Contents follows:

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* * *

VENUE

6. Pursuant to State Finance Law §123(c)(1), this action is properly venued in the Albany County Supreme Court, as Albany County is where the unconstitutional, unlawful, and fraudulent disbursements sought to be enjoined are occurring and where defendant state officers have their principal offices.

THE PARTIES

7. Plaintiff CENTER FOR JUDICIAL ACCOUNTABILITY, INC. (CJA) [hereinafter "CJA"] is a national, non-partisan, non-profit citizens' organization, headquartered in White Plains, New York and incorporated in 1994 under the laws of the State of New York. In addition to the taxes it pays to the State of New York, its New York members pay taxes to the State of New York.

8. Plaintiff ELENA RUTH SASSOWER [hereinafter "SASSOWER"] is a New York-born resident, citizen, and taxpayer of the State of New York. She is co-founder and director of the Center for Judicial Accountability, Inc. (CJA).

9. Defendant ANDREW M. CUOMO [hereinafter "CUOMO"] is Governor of the State of New York and charged with the duty to "take care that the laws are faithfully executed" (New York Constitution, Article IV, §3).

(a) Defendant CUOMO's powers with respect to the state budget are set forth in, and limited by, the New York State Constitution, statutory provisions, and Senate and Assembly rules.

(b) Pursuant to Chapter 60, Part E, of the Laws of 2015 – which arose from defendant CUOMO's behind-closed-doors "three-men-in-a-room" budget deal-making in March 2015 – defendant CUOMO is also the appointing authority of three of the seven members of the Commission on Legislative, Judicial and Executive Compensation, including its chair – and benefits from all its salary increase recommendations.

10. Defendant JOHN J. FLANAGAN [hereinafter "FLANAGAN"] is Temporary Senate President of defendant NEW YORK STATE SENATE.

(a) As Temporary Senate President, defendant FLANAGAN's powers with respect to the state budget are set forth in, and limited by, the New York State Constitution, statutory provisions, and Senate rules.

(b) Pursuant to Chapter 60, Part E, of the Laws of 2015, defendant FLANAGAN, as Temporary Senate President, is also the appointing authority for one of the seven members of the Commission on Legislative, Judicial and Executive Compensation – and benefits from its salary increase recommendations.

11. Defendant NEW YORK STATE SENATE [hereinafter "SENATE"] is the upper house of the New York State Legislature, consisting of 63 members.

(a) According to the Legislature's budget narrative for fiscal year 2016-20157 (at p. 2): "Each Senator represents approximately 308,000 constituents. The Senate conducts its legislative business through the operation of 34 Standing Committees".

(b) The largest Senate committee – and the only one identified in the Legislature's budget narrative (at p. 3) – is the Senate Finance Committee.

(c) Defendant SENATE's powers with respect to the state budget are set forth in, and limited by, the New York State Constitution, statutory provisions, and Senate rules.

(d) All defendant SENATE's 63 members benefit from salary increase recommendations made by the Commission on Legislative, Judicial and Executive Compensation.

12. Defendant CARL E. HEASTIE [hereinafter "HEASTIE"] is Speaker of defendant NEW YORK STATE ASSEMBLY.

(a) As Assembly Speaker, defendant HEASTIE's powers with respect to the state budget are set forth in, and limited by, the New York State Constitution, statutory provisions, and Assembly rules.

(b) Pursuant to Chapter 60, Part E, of the Laws of 2015, defendant HEASTIE, as Assembly Speaker, is also the appointing authority for one of the seven members of the Commission on Legislative, Judicial and Executive Compensation – and benefits from its salary increase recommendations.

13. Defendant NEW YORK STATE ASSEMBLY [hereinafter "ASSEMBLY"] is the lower house of the New York State Legislature, consisting of 150 members.

(a) According to the Legislature's budget narrative for fiscal year 2016-2017 (at p. 2): "Each member of the Assembly represents approximately 129,000 constituents. The Assembly conducts its legislative business through the operation of 38 standing committees".

(b) The largest Assembly committee – and the only one identified in the Legislature's budget narrative (at p. 3) – is the Assembly Ways and Means Committee.

(c) Defendant ASSEMBLY's powers with respect to the state budget are set forth in, and limited by, the New York State Constitution, statutory provisions, and Assembly rules.

(d) All of defendant ASSEMBLY's 150 members benefit from salary increase recommendations made by the Commission on Legislative, Judicial and Executive Compensation.

14. Defendant ERIC T. SCHNEIDERMAN [hereinafter "SCHNEIDERMAN"] is Attorney General of the State of New York.

(a) As Attorney General, defendant SCHNEIDERMAN heads New York's department of law (New York Constitution, Article V, §4). His duty is to "prosecute and defend all actions in which the state is interested"; and to "protect the interest of the state"; where "in his opinion the interests of the state so warrant" (Executive Law §63.1), for which he has extensive investigative and prosecutorial powers (Executive Law §63). Pursuant to State Finance Law Article 7-A, he is expressly empowered to bring citizen-taxpayer actions or to represent/intervene on behalf of plaintiffs. State Finance Law Article 13 also empowers him to bring actions under the false claims act or to represent/intervene on behalf of plaintiffs.

(b) In violation of his duty, defendant SCHNEIDERMAN has colluded in and facilitated all the statutory violations, fraud, and unconstitutionality that have given rise to the instant citizen-taxpayer action. This is chronicled by the records of two prior lawsuits brought by plaintiffs naming him as a defendant – and which, in the absence of any legitimate defense, he corrupted with litigation fraud. These two lawsuits are:

(1) a declaratory action brought in Supreme Court/Bronx County on March 30, 2012 (Bronx. Co. #302951-2012) and transferred to Supreme Court/New York County (NY Co. #401988-2012), entitled:

> CENTER FOR JUDICIAL ACCOUNTABILITY, INC. and ELENA RUTH SASSOWER, individually and as Director of the Center for Judicial Accountability, Inc., acting on their own behalf and on behalf of the People of the State of New York & the Public Interest,
>
> -against-
>
> ANDREW M. CUOMO, in his official capacity as Governor of the State of New York, ERIC T. SCHNEIDERMAN, in his official capacity as Attorney General of the State of New York, THOMAS DiNAPOLI, in his official capacity as Comptroller of the State of New York, DEAN SKELOS, in his official capacity as Temporary President of the New York State Senate, THE NEW YORK STATE SENATE, SHELDON SILVER, in his official capacity as Speaker of the New York State Assembly, THE NEW YORK STATE ASSEMBLY, JONATHAN LIPPMAN, in his official capacity as Chief Judge of the State of New York, the UNIFIED COURT SYSTEM, and THE STATE OF NEW YORK;

(2) a citizen-taxpayer action brought in Supreme Court/Albany County on March 28, 2014 (Albany Co. #1788-2014) entitled:

> CENTER FOR JUDICIAL ACCOUNTABILITY, INC. and ELENA RUTH SASSOWER, individually and as Director of the Center for Judicial Accountability, Inc.,acting on their own behalf and on behalf of the People of the State of New York & the Public Interest,

-against-

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

(c) As Attorney General, defendant SCHNEIDERMAN benefits from the salary increase recommendations made by the Commission on Legislative, Judicial and Executive Compensation.

15. Defendant THOMAS P. DiNAPOLI [hereinafter "DiNAPOLI"] is Comptroller of the State of New York.

(a) As Comptroller, defendant DiNAPOLI heads New York State's "department of audit and control" (New York Constitution, Article V, §§1, 4), is "responsible for ensuring that the taxpayers' money is being used effectively and efficiently to promote the common good" (Comptroller's website: www.osc.state.ny.us/about/response.htm), and disburses the state monies that plaintiffs are seeking to enjoin.

(b) As Comptroller, defendant DiNAPOLI also benefits from salary increase recommendations made by the Commission on Legislative, Judicial and Executive Compensation.

16. Defendant JANET M. DiFIORE [hereinafter "DiFIORE"] is Chief Judge of the State of New York, heading both the New York Court of Appeals and the Unified Court System (New York Constitution, Article VI, §28(a); Judiciary Law §210), having been appointed by defendant CUOMO in December 2015 and confirmed by defendant SENATE in January 2016.

(a) As Chief Judge, defendant DiFIORE directly benefits from the judicial salary increases recommended by the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation.

(b) In her prior capacity as Westchester County District Attorney, which she occupied until her Senate confirmation to the Court of Appeals, defendant DiFIORE also benefited from judicial salary increases – these being the judicial salary increases recommended by the August 29, 2011 report of the predecessor Commission on Judicial Compensation, of which she was a beneficiary because Judiciary Law §183-a statutorily links district attorney and judicial salaries.

FACTUAL ALLEGATIONS

17. The facts, as of March 23, 2016, pertaining to the legislative and judiciary budgets for fiscal year 2016-2017, Governor Cuomo's Legislative/Judiciary Budget Bill #S.6401/A.9001, and the "force of law" judicial salary increases recommended by the Commission on Legislative, Judicial and Executive Compensation are set forth by plaintiffs' March 23, 2016 verified second supplemental complaint in their prior citizen-taxpayer action, *Center for Judicial Accountability, et al. v. Cuomo, et al.* (Albany Co. #1788-2014) (Exhibit A).

18. The March 23, 2016 verified second supplemental complaint, which plaintiffs brought on by order to show cause seeking leave to supplement and a preliminary injunction with TRO, presented eight causes of causes of action, numbered ninth through sixteenth (Exhibit A: ¶¶301-470), detailing violations of constitutional, statutory, and rule provisions pertaining to fiscal year 2016-2017. These replicated identical constitutional, statutory, and rule violations in fiscal year 2014-2015, which plaintiffs' March 28, 2014 verified complaint embodied in four causes of action, numbered first through fourth (Exhibit B: ¶¶76-126), and which their March 31, 2015 verified

supplemental complaint, pertaining to fiscal year 2015-2016, embodied in four causes of action, numbered fifth through eighth (Exhibit C: ¶¶169-236).

19. By an August 1, 2016 amended decision and order (Exhibit D), Albany Supreme Court Justice Roger McDonough stated as follows under the title heading "Leave to Serve a Second Supplemental Complaint":

> "The Court has considered the parties' respective arguments as to the issue of plaintiffs' request for leave to serve a second supplemental complaint. Plaintiffs' second supplemental complaint asserts eight new causes of action. The Court denies leave to serve a second supplemental complaint as to causes of action 9-12, based on the Court's dismissal of plaintiffs' original eight causes of action. Under these circumstances, the Court finds that causes of action 9-12 are 'patently devoid of merit' (Lucido v. Mancuso, 49 AD3d 220, 229 [2nd Dept. 2008]). As to causes of action 13-16, the Court finds that the allegations therein arise out of materially different facts and legal theories as opposed to the original four causes of action and the additional four causes of action set forth in the supplemental complaint. Accordingly, the Court finds that defendants have adequately established the prejudice that would flow from allowing a second supplemental complaint setting forth entirely new facts, theories and causes of action several years after service of the original complaint (*see generally*, Brunetti v Musallam, 59 AD3d 220, 223 [1st Dept. 2009]).
>
> Finally, the Court finds no basis in the record, Judiciary Law, Administrative Code or any relevant statute or case law, for recusal. The Court again notes that the alleged financial conflicts that plaintiffs describe is equally applicable to every Supreme and Acting Supreme Court Justice in the State of New York, rendering recusal on the basis of financial interest a functional impossibility (*see*, Matter of Maron v Silver, 14 NY3d 230, 248-249 [2010])." (Exhibit D: at pp. 7-8).

20. Consequently, the factual allegations and eight causes of action of plaintiffs' March 23, 2016 second supplemental complaint in their prior citizen-taxpayer action are here presented as a separate and new citizen-taxpayer action.

21. Pursuant to CPLR §3014, "A copy of any writing which is attached to a pleading is a part thereof for all purposes". Therefore, in the interest of economy, plaintiffs' March 23, 2016 verified second supplemental complaint is annexed hereto (Exhibit A) and incorporated herein by

reference as if more fully set forth. Likewise, annexed and incorporated by reference as if more fully set forth are plaintiffs' March 28, 2014 verified complaint (Exhibit B) and March 31, 2015 verified supplemental complaint (Exhibit C).[1] The eight causes of action of plaintiffs' March 23, 2016 verified second supplemental complaint each repeat, reiterate, and reallege the paragraphs of these earlier pleadings.

22. Facts subsequent to March 23, 2016 bearing on the eight causes of action are set forth herein in the cause of action to which they are germane – and in the two additional causes of action here presented: the first relating to the violations of Article VII, §§4, 5, 6 of the New York State Constitution in enacting the budget for fiscal year 2016-2017 and the second pertaining to the violations of County Law §§700.10 and 700.11 and Judiciary Law §183-a in the budget's funneling of state aid to the counties for district attorney salary increases resulting from the August 29, 2011 report of the Commission on Judicial Compensation.

CAUSES OF ACTION

AS AND FOR A FIRST CAUSE OF ACTION

The Legislature's Proposed Budget for Fiscal Year 2016-2017, Embodied in the Governor's Budget Bill #S.6401/A.9001, is Unconstitutional & Unlawful

23. Plaintiffs repeat, reiterate, and reallege ¶¶ 1-22 herein with the same force and effect as if more fully set forth.

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[1] Justice McDonough's October 9, 2014 decision, addressed to plaintiffs' complaint, and his June 24, 2015 decision, addressed to their supplemental complaint, are annexed as Exhibits E and F, respectively.

As the record of the prior citizen-taxpayer action is in this Court's Clerk's office, readily accessible to the Court, and is already in the possession of defendants, plaintiffs incorporate it by reference – beginning with the voluminous exhibits substantiating the pleadings annexed herein as Exhibits A, B, and C. The record is additionally accessible from plaintiff CJA's website, www.judgewatch.org, *via* the prominent homepage link: "CJA's Citizen-Taxpayer Action to End NYS's Corrupt Budget 'Process' & Unconstitutional 'Three Men in a Room' Governance".

24. Plaintiffs' first cause of action herein is the ninth cause of action of their March 23, 2016 verified second supplemental complaint in their prior citizen-taxpayer action (Exhibit A: ¶¶301-316). Such is not barred by Justice McDonough's August 1, 2016 decision (Exhibit D) – nor could it be as the August 1, 2016 decision is a judicial fraud, falsifying the record in all material respects to conceal plaintiffs' entitlement to summary judgment on causes of action 1-4 of their verified complaint and causes of action 5-8 of their verified supplemental complaint and, based thereon, to the granting of their motion for leave to file their verified second supplemental complaint with its causes of action 9-16.

25. Establishing that the August 1, 2016 decision is a judicial fraud – and that Justice McDonough was duty-bound to have disqualified himself for pervasive actual bias born of his financial interest in the litigation – is plaintiffs' analysis of the decision, annexed hereto (Exhibit G).

26. As highlighted by the analysis (Exhibit G: pp. 24-28), plaintiffs' first and fifth causes of action (Exhibit B: ¶¶76-98; Exhibit C: ¶¶169-178) – which correspond to their ninth cause of action (Exhibit A: ¶¶301-316) – were each dismissed by Justice McDonough in the same fraudulent way: by completely disregarding the fundamental standards for dismissal motions, distorting the few allegations he cherry-picked, baldly citing inapplicable law, and resting on "documentary evidence" that he did not identify – and which does not exist.

27. Plaintiffs analysis is accurate, true, and correct in all material respects.

28. In addition to the facts set forth by plaintiffs' ninth cause of action establishing that the Legislature's proposed budget, *on its face*, is not 'itemized estimates of the financial needs of the legislature" is yet a further fact: its section entitled "Senate and Assembly Joint Entities" (at pp. 11-15) omits most of the joint commissions that the Legislature is required to establish and fund pursuant to Legislative Law, Article 5-A (§§82, 83). Among these, the Legislative Commission on

State-Local Relations and the Legislative Commission on Government Administration. Additionally, the Administrative Regulations Review Commission, required to be established and funded pursuant to Legislative Law, Article 5-B (§§86-88) is omitted.

29. Upon information and belief, the Legislature's joint entities, mandated by Legislative Law Articles 5-A and 5-B, to the extent they exist, have only appointed chairs, collecting stipends. They have no funding, or virtually none – a fact concealed by the legislative budget's violation of the Article VII, §1 requirement of "itemized estimates of the financial needs of the legislature, certified by the presiding officer of each house".

30. The consequence of the Legislature's facial violation of Article VII, §1 by its budget is the unconstitutionality of that budget, *as applied.* Without funding, the joint legislative commissions are not functioning – and cannot function – as Legislative Law Article 5-A and 5-B intended them to[2]. They are sham, just as the Legislature's standing committees, which, excepting the Senate Finance Committee and Assembly Ways and Means Committee, have no appreciable funding.

31. As illustrative, neither the Legislative Commission on State-Local Relations, nor the Legislative Commission on Government Administration, nor any of the Legislature's standing committees, such as the Senate Committee on Local Government, the Assembly Committee on Local Governments, the Senate Judiciary Committee, or the Assembly Judiciary Committee have engaged in <u>any</u> oversight of the statutory link between judicial salaries and district attorney salaries, established more than 40 years ago by Judiciary Law §183-a, or of the related provisions of County Law §§700.10 and 700.11 pertaining to district attorney salaries and state aid to the counties for

[2] Likewise not functioning, for lack of funding, is another commission established by the Legislative Law: the Law Revision Commission, established by Legislative Law Article 4-A.

those salaries, or of the outpouring of state dollars to the counties, *via* the budget, for district attorney salary reimbursement that violates these express statutory provisions.

32. Nor are these legislative committees and commissions – or the Senate Finance Committee and Assembly Ways and Means Committee – remotely responsive and responsible, upon being given notice of their duty to protect the counties and the state from the costs of district attorney salary increases having absolutely no basis other than Judiciary Law §183-a and whose consequence is to compound the theft of taxpayer monies resulting from the Commission on Legislative, Judicial and Executive Compensation's December 24, 2015 report. The legislative defendants are perfectly willing to countenance and continue a run-away "gravy train" of district attorney salary increases that are the by-product of the statutorily-violative, fraudulent, and unconstitutional December 24, 2015 report.

33. As stated by ¶94 of the verified complaint (Exhibit B) – and reiterated by ¶315 of the verified second supplemental complaint (Exhibit C):

> "In every respect, defendants SENATE and ASSEMBLY have fallen beneath a constitutionally acceptable threshold of functioning – and it appears the reason is not limited to Senate and Assembly rules that vest in the Temporary Senate President and Speaker strangulating powers, the subject of the Brennan Center's 2004, 2006, and 2008 reports on the Legislature. Rather, it is because – without warrant of the Constitution, statute, or Senate and Assembly rules, as here demonstrated, the Temporary Senate President and Speaker have seized control of the Legislature's own budget, throwing asunder the constitutional command: 'itemized estimate of the financial needs of the legislature, certified by the presiding officer of each house'."

AS AND FOR A SECOND CAUSE OF ACTION

The Judiciary's Proposed Budget for 2016-2017, Embodied in the Governor's Budget Bill #S.6401/A.9001, is Unconstitutional & Unlawful

34. Plaintiffs repeat, reiterate, and reallege ¶¶ 1-33 herein with the same force and effect as if more fully set forth.

35. Plaintiffs' second cause of action herein is the tenth cause of action of their March 23, 2016 verified second supplemental complaint in their prior citizen-taxpayer action (Exhibit A: ¶¶317-331). Such is not barred by Justice McDonough's August 1, 2016 decision (Exhibit D) – nor could it be as the August 1, 2016 decision is a judicial fraud, falsifying the record in all material respects to conceal plaintiffs' entitlement to summary judgment on causes of action 1-4 of their verified complaint and causes of action 5-8 of their verified supplemental complaint and, based thereon, to the granting of their motion for leave to file their verified second supplemental complaint with its causes of action 9-16.

36. Establishing that the August 1, 2016 decision is a judicial fraud -- and that Justice McDonough was duty-bound to have disqualified himself for pervasive actual bias born of his financial interest in the litigation – is plaintiffs' analysis of the decision, annexed hereto (Exhibit G).

37. As highlighted by the analysis (Exhibit G: pp. 24-28), plaintiffs' second and sixth causes of action (Exhibit B: ¶¶99-108; Exhibit C: ¶¶179-193) – which correspond to their tenth cause of action (Exhibit A: ¶¶317-331) – were each dismissed by Justice McDonough in the same fraudulent way: by completely disregarding the fundamental standards for dismissal motions, distorting the few allegations he cherry-picked, baldly citing inapplicable law, and resting on "documentary evidence" that he did not identify – and which does not exist.

38. Plaintiffs analysis is accurate, true, and correct in all material respects.

39. In addition to the facts set forth by the tenth cause of action of plaintiffs' March 23, 2016 verified second supplemental complaint (Exhibit A: ¶¶317-331) is the further fact, anticipated by its ¶331, namely, that the Judiciary is funding the 2016 phase of the judicial salary increase recommended by the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation from its §3 reappropriations, *via* its §2 interchange provision. Such reinforces the unconstitutionality of the interchange provision and the reappropriations, detailed at ¶¶320-331– key features of the Judiciary's slush-fund budget.

AS AND FOR AN THIRD CAUSE OF ACTION

The Governor's Budget Bill #S.6401/A.9001 is Unconstitutional & Unlawful Over & Beyond the Legislative & Judiciary Budgets it Embodies "Without Revision"

40. Plaintiffs repeat, reiterate, and reallege ¶¶ 1-39 herein with the same force and effect as if more fully set forth.

41. Plaintiffs' third cause of action herein is the eleventh cause of action of their March 23, 2016 verified second supplemental complaint in their prior citizen-taxpayer action (Exhibit A: ¶¶332-335). Such is not barred by Justice McDonough's August 1, 2016 decision – nor could it be as the August 1, 2016 decision is a judicial fraud, falsifying the record in all material respects to conceal plaintiffs' entitlement to summary judgment on causes of action 1-4 of their verified complaint and causes of action 5-8 of their verified supplemental complaint and, based thereon, to the granting of their motion for leave to file their verified second supplemental complaint with its causes of action 9-16.

42. Establishing that the August 1, 2016 decision is a judicial fraud – and that Justice McDonough was duty-bound to have disqualified himself for pervasive actual bias born of his financial interest in the litigation – is plaintiffs' analysis of the decision, annexed hereto (Exhibit G).

43. As highlighted by the analysis (Exhibit G: pp. 24-28), plaintiffs' third and seventh causes of action (Exhibit B: ¶¶109-112; Exhibit C: ¶¶194-202) – which correspond to their eleventh cause of action (Exhibit A: ¶¶332-335) – were each dismissed by Justice McDonough in the same fraudulent way: by completely disregarding the fundamental standards for dismissal motions, distorting the few allegations he cherry-picked, baldly citing inapplicable law, and resting on "documentary evidence" that he did not identify – and which does not exist.

44. Plaintiffs analysis is accurate, true, and correct in all material respects.

45. Plaintiffs' third cause of action herein pertains to the tens of millions of dollars in reappropriations for the Legislature that were never part of the Legislature's proposed budget for fiscal year 2016-2017 transmitted by the December 1, 2015 letter of defendants FLANAGAN and HEASTIE to defendant CUOMO, but which appear in an out-of-sequence section at the back of defendant Cuomo's Legislative/Judiciary Budget Bill #S.6401/A.9001, spanning 24 pages. The only difference from plaintiffs' eleventh cause of action is the supervening fact that on March 31, 2016 Legislative/Judiciary Budget Bill #S.6401/A.9001 was amended to alter almost 90 of these legislative reappropriations – most of which were reduced, sometimes dramatically.

46. As plaintiffs' eleventh cause of action (¶335) asked whether the legislative reappropriations in Legislative/Judiciary Budget Bill #S.6401/A.9001 would be changed by an amended bill, that question has now been answered. However, the further questions indicated therein are now applicable to Legislative/Judiciary Budget Bill #S.6401-a/A.9001-a – and yet to be answered:

> (a) what is the dollar difference in the cumulative totals of the legislative reappropriations in the unamended bill and in the amended one?
>
> (b) why were the legislative reappropriations so significantly changed– and by what process were the changes determined? Were these changed legislative reappropriations certified? And by whom?

(c) why were the changed legislative reappropriations in Budget Bill #S.6401-a/A.9001-a not flagged by the safeguarding device identified on the first page of #S.6401-a/A.9001-a by its pre-printed "EXPLANATION – Matter in italics (underscored) is new; matter in brackets [] is old to be omitted". Were such changes flagged in any introducer's memo, as required by Senate Rule VII, §4(b) and Assembly Rule III, §1(f) and §6?

47. These questions are additional to the basic questions about the 24 pages of legislative reappropriations in the unamended bill:

(a) Where they came from?;

(b) Who in the Legislature, if anyone, certified that the monies proposed for reappropriations were suitable for that purpose?;

(c) What is the cumulative total of the legislative reappropriations in Budget Bill #S.6401/A.9001?; and

(d) What is the cumulative total of the legislative reappropriations and appropriations in Budget Bill #S.6401/A.9001?

As stated by plaintiffs' ¶¶334-336, absent answers to these basic questions, the legislative reappropriations are unconstitutional and unlawful.

AS AND FOR A FOURTH CAUSE OF ACTION

Nothing Lawful or Constitutional Can Emerge From a Legislative Process that Violates its Own Statutory & Rule Safeguards – and the Constitution

48. Plaintiffs repeat, reiterate, and reallege ¶¶ 1-47 herein with the same force and effect as if more fully set forth.

49. Plaintiffs' fourth cause of action herein is the twelfth cause of action of their March 23, 2016 verified second supplemental complaint in their prior citizen-taxpayer action (Exhibit A: ¶¶336-384). Such is not barred by Justice McDonough's August 1, 2016 decision – nor could it be as the August 1, 2016 decision is a judicial fraud, falsifying the record in all material respects to

conceal plaintiffs' entitlement to summary judgment on causes of action 1-4 of their verified complaint and causes of action 5-8 of their verified supplemental complaint and, based thereon, to the granting of their motion for leave to file their verified second supplemental complaint with its causes of action 9-16.

50. Establishing that the August 1, 2016 decision is a judicial fraud – and that Justice McDonough was duty-bound to have disqualified himself for pervasive actual bias born of his financial interest in the litigation – is plaintiffs' analysis of the decision, annexed hereto (Exhibit G).

51. As highlighted by the analysis (Exhibit G: pp. 21-23, 28-29), plaintiffs' fourth and eighth causes of action (Exhibit B: ¶¶113-126; Exhibit C: ¶¶203-236) – which correspond to their twelfth cause of action (Exhibit A: ¶¶336-384) – were each dismissed by Justice McDonough in the same fraudulent way: by completely disregarding the fundamental standards for dismissal motions, distorting the few allegations he cherry-picked, baldly citing inapplicable law, and resting on "documentary evidence" that he did not identify – and which does not exist.

52. Plaintiffs analysis is accurate, true, and correct in all material respects.

53. Subsequent events confirm predictions made at ¶¶381-383 of the twelfth cause of action that the same constitutional, statutory, and rule violations as had occurred in fiscal years 2014-2015 and 2015-2016 would be repeated in fiscal year 2016-2017. Thus, as predicted:

a. the Joint Budget Conference Committee and joint "public protection" conference subcommittee produced no reports, in violation of Legislative Law §54-a and the Legislature's own Permanent Joint Rules III, §1 and II, §1;

b. the "real action" took place out of public view, largely by the so-called professional staff, and culminated in behind-closed-doors, "three-men-in-a-room" budget deal-making by defendants CUOMO, FLANAGAN, and HEASTIE;

c. Following the "three-men-in-a-room" huddle, the unamended Legislative/Judiciary Budget Bill #S.6401/A.9001– without discussion or vote by any committee or on the floor of the Senate and Assembly – turned

into an amended bill, #S.6401-a/A.9001-a, with significant alterations to legislative reappropriations, in particular. Indeed, the ONLY changes made to the original bill were to the legislative reappropriations;

d. In violation of Legislative Law §54.2(b), there was NO report on amended Legislative/Judiciary Budget Bill #S.6401-a/A.9001-a, and, in violation of Legislative Law §54.1, there was (i) NO "introductory memoranda or fiscal committee memoranda" furnishing "summary of changes" or "description of changes" for it *prior* to its passage; and (ii) NO "summary of changes" or "description of changes" to it "upon passage...by both the senate and assembly";

e. in violation of State Finance Law §22-b, entitled "Report of the legislature on the enacted budget", there is NO report on the enacted budget pursuant to State Finance Law §22-b, replicating the absence of any such reports in 2014 and 2015.

AS AND FOR A FIFTH CAUSE OF ACTION

The "Process" by which the State Budget for Fiscal Year 2016-2017 was Enacted Violated Article VII, §§4, 5, 6 of the New York State Constitution

54. Plaintiffs repeat, reiterate, and reallege ¶¶ 1-53 herein with the same force and effect as if more fully set forth.

55. By the March 23, 2016 verified second supplemental complaint (Exhibit A), which plaintiffs brought on by an order to show cause with TRO, defendants were furnished with particularized notice that the "process" by which the state budget was being enacted was violative of Article VII, §§4, 5, 6 of the New York State Constitution in a succession of material respects.

56. These respects were laid out, in the main, by plaintiffs' twelfth cause of action and, in particular, by its ¶¶362-383 and by their sixteenth cause of action, in its entirety (¶¶458-470).

57. Nevertheless, in the full week that defendants had prior to the April 1, 2016 start of fiscal year 2016-2017, they took no remedial steps to correct the specified violations of Article VII, §§4, 5, 6 of the New York State Constitution that had already occurred, were then occurring, and which plaintiffs predicted would occur relating to:

- the failure of the Senate and Assembly, by their committees and by their full chambers, to amend and pass the Governor's appropriation bills and to reconcile them so that they might "become law immediately without further action by the governor", as mandated by Article VII, §4 of the New York State Constitution;

- the so-called "one-house budget proposals", emerging from closed-door political conferences of the Senate and Assembly majority party/coalitions;

- the proceedings of the Senate and Assembly Joint Budget Conference Committee and its subcommittees, conducted by staff, behind-closed-doors, based on the "one-house budget proposals";

- the behind-closed-doors, three-men-in-a-room budget deal-making by the Governor, Temporary Senate President, and Assembly Speaker.

58. The specified violations of Article VII, §4, 5, 6 of the New York State Constitution, particularized by and comprising this separate cause of action, pertaining to the "process" by which the fiscal year 2016-2017 budget was enacted, are accurate, true, and correct.

AS AND FOR A SIXTH 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

59. Plaintiffs repeat, reiterate, and reallege ¶¶ 1-58 herein with the same force and effect as if more fully set forth.

60. Plaintiffs' sixth cause of action herein is the thirteenth cause of action of their incorporated March 23, 2016 verified second supplemental complaint in their prior citizen-taxpayer action, Exhibit A: ¶¶385-423. It is accurate, true, and correct in all material respects.

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"

61. Plaintiffs' showing as to the unconstitutionality of the statute's delegation of "force of law" legislative power is set forth by the incorporated Exhibit A: ¶¶388-393. It is accurate, true, and correct in all material respects.

62. Also true and correct is the constitutional significance of ¶392. Containing underscoring and capitalization for emphasis, it reads, in full:

> "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." (underlining and capitalization in the original).

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

63. Plaintiffs' showing as to the unconstitutionality of the statute's delegation of legislative power without safeguarding provisions is set forth by the incorporated Exhibit A: ¶¶394-402. It is accurate, true, and correct in all material respects.

64. Also accurate, true, and correct is the constitutional significance of ¶¶400-402. Containing underscoring and italics for emphasis, it reads, in full:

> "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.*"

65. As Judiciary Law §183-a statutorily links district attorney salaries with judicial salaries, the failure of the Commission statute to include an express provision requiring the Commission to take into account such "appropriate factor" means that district attorneys become the beneficiary of judicial salary increase recommendations, without ANY evidence, or even claim, that existing district attorney salaries are inadequate – and, likewise, without ANY evidence, or even claim, that district attorneys are discharging their constitutional and statutory duties to enforce the penal law and that mechanisms to remove them for corruption are functional. Such additionally renders the Commission statute unconstitutional, *as written.*

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

66. Plaintiffs' showing that the Commission statute violates Article XIII, §7 of the New York State Constitution is set forth by the incorporated Exhibit A: ¶¶403-406. It is accurate, true, and correct in all material respects.

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

67. Plaintiffs' showing that the Commission statute violates Article VII, §6, 2, 3 of the New York State Constitution is set forth by the incorporated Exhibit A: ¶¶407-412. It is accurate, true, and correct in all material respects.

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.[3]

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[3] 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.

AS AND FOR AN NINTH CAUSE OF ACTION

Three-Men-in-a-Room, Budget Dealing-Making is Unconstitutional, *As Unwritten* and *As Applied*

81. Plaintiffs repeat, reiterate, and reallege ¶¶ 1-80 herein with the same force and effect as if more fully set forth.

82. Plaintiffs' ninth cause of action herein is the sixteenth cause of action of their March 23, 2016 verified second supplemental complaint in their prior citizen-taxpayer action, Exhibit A: ¶¶458-470. It is accurate, true, and correct in all material respects.

A. **Three-Men-in-a-Room Budget Deal-Making is Unconstitutional, *As Unwritten***

83. Plaintiffs' showing is set forth by the incorporated Exhibit A: ¶¶459-466. It is accurate, true, and correct in all material respects.

B. **Three-Men-in-a-Room Budget Deal-Making is Unconstitutional, *As Applied***

84. Plaintiffs' showing is set forth by the incorporated Exhibit A: ¶¶467-470. It is accurate, true, and correct in all material respects.

AS AND FOR A TENTH CAUSE OF ACTION

The Appropriation Item Entitled "For grants to counties for district attorney salaries", in the Division of Criminal Justice Services' Budget, Contained in Aid for Localities Budget Bill #S.6403-d/A.9003-d, Does Not Authorize Disbursements for Fiscal Year 2016-2017 and is Otherwise Unlawful and Unconstitutional. Reappropriation Items are also Improper, if not Unlawful

85. Plaintiffs repeat, reiterate, and reallege ¶¶ 1-84 herein with the same force and effect as if more fully set forth.

86. Defendant CUOMO's Aid to Localities budget bill for fiscal year 2016-2017, #S.6403/A.9003, was over 900 pages. In addition to the first two amendments to the Aid to

Localities budget bill – and to seven other budget bills – recounted at ¶¶354-382 of plaintiffs' March 23, 2016 verified second supplemental complaint – the Aid to Localities budget bill was amended twice on March 31, 2016 following the three-men-in-a-room budget deal-making by defendants CUOMO, FLANAGAN, and HEASTIE. The second time, the Aid to Localities budget bill, now designated #S.6403-d/A.9003-d, was 1,212 pages.

87. The amending of the bill on March 31, 2016, as likewise on March 11/12, 2016, was completely opaque, not reflected by any votes of legislators introducing and approving the amendments.

88. Within the massive bill, which defendants SENATE and ASSEMBLY passed on March 31-April 1, 2016, on a "message of necessity", is the Division of Criminal Justice Services' budget, at pages 72-130. It begins with a tally of the appropriations, whose "All Funds" total is $205,775,000, and a tally of the reappropriations, whose "All Funds" total is $299,384,451 (Exhibit H, at p. 72).

89. The $205,775,000 in appropriations is itemized by the first 14 pages of the Division of Criminal Justice Services' nearly 60-page budget. Among the items is one entitled "For grants to counties for district attorney salaries", appropriating $4,212,000. It reads, as follows:

> "**Notwithstanding the provisions of subdivisions 10 and 11 of section 700 of the county law or any other law to the contrary**, for state fiscal year 2014-15 the state reimbursement to counties for district attorney salaries shall be equal to the amount received by a county for such purpose in 2013-14 and 100 percent of the difference between the minimum salary for a full-time district attorney established pursuant to section 183-a of the judiciary law prior to April 1, 2014, [and] the minimum salary on or after April 1, 2014. **For those counties whose salaries are not covered by section 183-a of the judiciary law**, the state reimbursement for these counties will be pursuant to a plan prepared by the commissioner of criminal justice services and approved by the director of the budget (20244)." (Exhibit H: pp. 72-73, bold and underlining added)

90. So little scrutiny is given to the disbursement of state money to the counties for district attorney salaries, that no one noticed – or no one cared – that the above item of appropriation is erroneous, *on its face*. Apart from its omission of the word "and", without which it makes no sense, it also makes no sense because it provides for reimbursement "for state fiscal year 2014-2015". Indeed, this *verbatim* identical item, excepting the "(20244)", was originally in defendant CUOMO's Aid to Localities Budget Bill for state fiscal year 2014-2015 – and replicated in last year's Aid to Localities bill, without any updating of the fiscal year to 2015-2016.

91. Consequently, *as written*, there is NO item in Aid to Localities Budget Bill #S.6403-d/A.9003-a authorizing disbursements of state money to the counties for district attorney salaries for this fiscal year – not $4,212,000 or any other sum.

92. Yet, apart from this obvious error, repeating the same obvious error as was in last year's Aid to Localities budget bill, the aforesaid "grants to counties for district attorney salaries" is both unlawful and unconstitutional, *as written*:

> (a) it violates and overrides three specific statutory provisions: "subdivision 10 and 11 of section 700 of the county law"; AND "section 183-a of the judiciary law" – and does so without any stated explanation or justification;
>
> (b) it violates and overrides "any other law to the contrary" – which, apart from being unconstitutionally vague, would include the New York State and United States Constitutions, which it cannot constitutionally supersede;
>
> (c) it unconstitutionally rests on "the amount received by a county for such purpose in 2013-14" – without specifying the amount each county received "for such purpose in 2013-14" or the document containing that straight-forward information;
>
> (d) it unconstitutionally rests on "a plan prepared by the commissioner of criminal justice services and approved by the director of the budget" – seemingly not then existent.

93. The "grants to counties for district attorney salaries" item is also unlawful and unconstitutional, *as applied* – as the information as to how much state aid each county received for

district attorney salary in fiscal year 2013-14 and how much each county is slated to receive in fiscal year 2016-17 – which should be readily available – is not.

94. Indeed, upon plaintiffs' July 13, 2016 FOIL request to defendant Comptroller for such information (Exhibit I-1), based on his statutory duty under County Law §700.11(c), which states:

> "...the comptroller shall annually determine the amount of state aid payable to each county pursuant to paragraphs (a) and (b) hereof for each calendar year and shall pay such amount on his audit and warrant to the chief fiscal officer of each such county during the month of September in each such year. Where a county first becomes entitled to state aid pursuant to paragraphs (a) and (b) hereof on a day other than January first, nineteen hundred ninety-nine or January first of any other year thereafter, the amount of state aid payable to such county in the year it first becomes entitled to such state aid shall be prorated accordingly."

his response, on July 22, 2016, was that "after a diligent search, [the Comptroller is] unable to locate any records" (Exhibit I-3).

95. Likewise upon plaintiffs' July 11, 2016 FOIL requests to the Division of Criminal Justice Services and Division of the Budget for the referred-to "plan prepared by the commissioner of criminal justice services and approved by the director of the budget" (Exhibit J-1), their responses were to defer production to the end of October (Exhibits J-2, J-3).

96. The only thing clear about the appropriation is that for counties covered by Judiciary Law kj§183-a, whatever they get includes:

> "100 percent of the difference between the minimum salary for a full-time district attorney established pursuant to section 183-a of the judiciary law prior to April 1, 2014 [and] the minimum salary on or after April 1, 2014."

97. April 1, 2014 is the date on which the third and final phase of the judicial salary increases recommended by the Commission on Judicial Compensation's August 29, 2011 report took effect. Consequently, the meaning is that the state is paying for the FULL "100 percent" increase in

district attorney salaries resulting from the Commission on Judicial Compensation's August 29, 2011 report.

98. Whether and by how much the counties should be reimbursed for the district attorney salary increases that took effect on April 1, 2014, April 1, 2013, and April 1, 2012 because of the Commission on Judicial Compensation's August 29, 2011 report are POLICY DETERMINATIONS. They do not belong in a budget bill, but, rather, in the statute governing state aid for district attorney salaries: County Law §700.10 and §700.11.

99. When district attorney salaries were previously increased in 1999 as a result of the increase in judicial salaries, County Law §700.11 was amended to reflect the aid the state would be providing the counties based thereon. The amendment, County Law §700.11(b), reads as follows:

> "(b) In addition to the state aid provided in paragraph (a) of this subdivision, each county, the salary of the district attorney of which is determined pursuant to section one hundred eighty-three-a of the judiciary law, shall be entitled to receive state aid in the amount of forty-one percent of the difference between the amount required to be paid to such district attorney pursuant to section one hundred eighty-three-a of the judiciary law on and after January first, nineteen hundred ninety-nine and the amount required to be paid pursuant to such section immediately prior to such date, except that in the county of Dutchess the amount shall be forty-two percent of such difference in the county of Putnam the amount shall be forty percent of such difference in the county of Monroe the amount shall be thirty-nine percent of such difference and in the counties of Erie, Nassau, Suffolk and Westchester the amount shall be thirty-six percent of such difference." (underlining added).

100. In other words, for the prior district attorney salary increase resulting from the increase in judicial salaries, the state did not pick up the full 100% tab, but, rather between 36-42%.

101. County Law §700.11 controls – and it does not authorize state aid "after January first, nineteen hundred ninety-nine" at a rate beyond 36-42%.

102. Moreover, the predicate for state aid under County Law §700.11 is that a county is covered by Judiciary Law §183-a. Absent amendment to Judiciary Law §183-a or to County Law

§700.8 which it incorporates, it is unlawful for the state to provide aid to a county not within the purview of these two statutes.

103. The unspecified counties not covered by Judiciary Law §183-a are counties with populations of less than 40,000. Nothing in Judiciary Law §183-a or County Law §700.8 dictates the salaries of the district attorneys of those counties, irrespective of whether their district attorneys are part-time or full-time. Their boards of supervisors are free to set the salaries of their full-time district attorneys at whatever levels they deem appropriate to the county budgets and local conditions. Consequently, there is no basis for the state to reimburse those counties for their district attorney salaries.

104. The state budget has become a backdoor to securing what should be, but, apparently, cannot be, secured through normal legislative channels – in this case, 100% reimbursement to the counties for the district attorney increases resulting from the Commission on Judicial Compensation's August 29, 2011 report and inclusion of counties of less than 40,000 in state aid for district attorney salaries.

105. The budget is also a slush fund – particularly by its reappropriations – and most of the Division of Criminal Justice Services budget in Aid for Localities Budget Bill #S.6403-d/A.9003-d is reappropriations (pp. 86-130).

106. New York's Division of Budget website has a "Citizen's Guide": https://www.budget.ny.gov/citizen/index.html, with a glossary of "Financial Terminology". Its definition of "reappropriation", for which it also furnishes an example, is as follows:

> "A reappropriation is a legislative enactment that continues all or part of the undisbursed balance of an appropriation that would otherwise lapse (see lapsed appropriation). Reappropriations are commonly used in the case of federally funded programs and capital projects, where the funding amount is intended to support activities that may span several fiscal years.

For example, funds for capital projects are customarily recommended and appropriated in amounts sufficient to cover the total estimated cost of each phase of a specific project (such as land acquisition, design, construction and equipping). As contracts within each phase are established, portions of the capital construction appropriation are allocated. However, disbursements are made only to meet the actual costs incurred as each phase of the project progresses. In ensuing years, the balances not disbursed are reappropriated to cover the costs of subsequent construction phases in the project."

107. The hyper-linked definition of "lapsed appropriation" is as follows:

"A lapsed appropriation is an appropriation which has expired and against which obligations can no longer be incurred, nor payment made. An appropriation lapses, and is no longer available to authorize any encumbrance or cash payments, on June 30 for State operations and on September 15 for aid to localities, capital projects, and debt service."

108. Based upon these definitions, it appears that a substantial number of reappropriation items in the Division of Criminal Justice Services budget should have lapsed. Among them:

"By chapter 53, section 1, of the laws of 2013:

"For grants to counties for district attorney salaries. Notwithstanding the provisions of subdivisions 10 and 11 of section 700 of the county law or any other law to the contrary, for state fiscal year 2012-13 the state reimbursement to counties for district attorney salaries shall be equal to the amount received by a county for such purpose in 2011-12 and 100 percent of the difference between the minimum salary for a full-time district attorney established pursuant to section 183-a of the judiciary law prior to April 1, 2012, and the minimum salary on or after April 1, 2013. .....$3,862,000.....(re. $56,000)" (Exhibit H: at p. 94).

"By chapter 53, section 1, of the laws of 2012:

...

For additional grants to counties for district attorney salaries. Notwithstanding the provisions of subdivisions 10 and 11 of section 700 of the county law or any other law to the contrary, for state fiscal year 2012-13 the state reimbursement to counties for district attorney salaries shall be equal to the amount received by a county for such purpose in 2011-12 and 100 percent of the difference between the minimum salary for a full-time district attorney established pursuant to section 183-a of the judiciary law prior to April 1, 2012, and the

minimum salary on or after April 1, 2013. .....$700,000.....(re. $56,000)" (Exhibit H: at pp. 96-97).

"By chapter 50, section 1, of the laws of 2008, as amended by chapter 53, section 3, of the laws of 2008:

For additional grants to counties for district attorney salaries pursuant to subdivisions 10 and 11 of section 700 of the county law.

Notwithstanding the provisions of any other law to the contrary, for state fiscal year 2008-2009 the liability of the state and the amount to be distributed or otherwise expended by the state pursuant to subdivisions 10 and 11 of section 700 of the county law shall be determined by first calculating the amount of the expenditure or other liability pursuant to such law, and then reducing the amount so calculated by two percent of such amount .....2,869,000.....(re. $113,000)" (Exhibit H: at p. 100).

"By chapter 50, section 1, of the laws of 2008:

For recruitment and retention of district attorneys in counties located outside a city of a population of 1,000,000 or more persons to be distributed in accordance with a formula based upon the population of each county receiving a grant of a portion of such funds, provided that no county shall receive an award of less than $4,000 1,500,000.....(re. $550,000)" (Exhibit H: at p. 124)

"By chapter 50, section 1, of the laws of 2007, as amended by chapter 50, section 1, of the laws of 2008:

For services and expenses related to the district attorney loan forgiveness program and the recruitment and retention of district attorneys, pursuant to the following sub-schedule:

sub-schedule

For recruitment and retention of district attorneys in counties located outside a city of a population of 1,000,000 or more persons 11 to be distributed in accordance with a formula based upon the population of each county receiving a grant of a portion of such funds, provided that no county shall receive an award of less than $4,000 ..... 1,500,000 .....(re. $55,000)" (Exhibit H: at p. 125).

109. The very outset of Aid to Localities Budget Bill #S.6403-d/A.9003-d, states as follows in its section 1, paragraph d:

> "No moneys appropriated by this chapter shall be available for payment until a certificate of approval has been issued by the director of the budget, who shall file such certificate with the department of audit and control, the chairperson of the senate finance committee and the chairperson of the assembly ways and committee." (Exhibit H: at p. 2).

110. Plaintiffs September 1, 2016 FOIL request for such filed certificate of approval from the director of the budget for the Division of Criminal Justice Services' budget for fiscal year 2016-2017– and for any certification of the Division of Criminal Justice Services' budget by the Division of Criminal Justice Services itself – is annexed (Exhibit K).

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully pray:

1. **For a declaratory judgment pursuant to State Finance Law §123 *et seq.* – Article 7-A, "Citizen-Taxpayer Actions":**

A. that the Legislature's proposed budget for fiscal year 2016-2017, embodied in Legislative/Judiciary Budget Bill #S.6401-a/A.9001-a, is a wrongful expenditure, misappropriation, illegal, unconstitutional – and fraudulent – because: **(1)** it is not based on "itemized estimates of the financial needs of the legislature, certified by the presiding officer of each house", as Article VII, §1 of the State Constitution expressly mandates; **(2)** it is missing "General State Charges"; **(3)** its section of "Senate and Assembly Joint Entities" is materially incomplete; and **(4)** its budget figures, identical to the past five budgets, are contrived by the Temporary Senate President and Assembly Speaker to fortify their power and deprive members and committees of the monies they need to discharge their constitutional duties;

B. that the Judiciary's proposed budget for fiscal year 2016-2017, embodied in Legislative/Judiciary Budget Bill #S.6401-a/A.9001-a, is a wrongful expenditure, misappropriation, illegal and unconstitutional – and fraudulent – because: **(1)** the Judiciary budget is so incomprehensible that the Governor, the Senate majority and Senate minority, and Assembly majority and Assembly minority cannot agree on its cumulative cost and percentage increase; **(2)** its §3 reappropriations were not certified, including as to their suitability for that purpose, and violate Article VII, §7 and Article III, §16 of the New York State Constitution and State Finance Law §25; and **(3)** the transfer/interchange provision in its §2 appropriations, embracing its §3 reappropriations, undermines the constitutionally-

required itemization and violates Judiciary Law §215(1), creating a "slush fund" and concealing relevant costs; **(4)** it has *sub silentio* enabled the funding of judicial salary increases that are statutorily-violative, fraudulent, and unconstitutional;

C. that Legislative/Judiciary Budget Bill #6401-a/A.9001-a is a wrongful expenditure, misappropriation, illegal, unconstitutional – and fraudulent – by its inclusion of reappropriations for the Legislature that were not part of its proposed budget and not certified either as to their suitability as reappropriations or as to their amounts;

D. that Legislative/Judiciary Budget Bill #6401-a/A.9001-a is a wrongful expenditure, misappropriation, illegal, unconstitutional – and fraudulent – because nothing lawful or constitutional can emerge from a legislative process that violates Article VII, §§1-7 and Article IV, §7 of the New York State Constitution pertaining to the budget, and from statutes based thereon, including Legislative Law §32-a (*hearings for the public*); Legislative Law §53 and §54-a (*joint budget schedule; joint budget conference*), Legislative Law §54 (*summary of/description of changes*); State Finance Law §22-b (*report on enacted budget*), and from Senate and Assembly rules, *inter alia*: **(1)** Senate Rule VIII, §7, Senate Rule VII, §1, and Assembly Rule III, §1(f) and §2(a) (*fiscal notes, fiscal impact statements, and introducer's memoranda*), applicable to defendant Governor by Senate Rule VII, §6 and Assembly Rule III, §2(g); **(2)** Senate Rule VII, §4 and Assembly Rule III, §§1, 2, 8 (*bills*); **(3)** Senate Rule VIII, §§3, 4, 5 and Assembly Rule IV, §§2, 4, 6, (*public meetings, recorded votes, committee reports*); **(4)** Senate Rule VII, §4(b); and Assembly Rule III, §§1(f) and 6 (*amendments)*; **(5)** Senate Rule VIII, §4(c) and Assembly Rule IV, §1(d) (*committee oversight*); **(6)** Senate and Assembly Permanent Joint Rule III (*budget*); **(7)** Senate and Assembly Joint Rule II, §1 (*conference committee*).

Also, nothing lawful or constitutional can emerge from a legislative process that violates New York State Constitution, Article III, §10: "Each house of the legislature shall keep a journal of its proceedings, and publish the same.... The doors of each house shall be kept open..."; Public Officers Law, Article VI; Senate Rule XI, §1, and Assembly Rule II, §1.

E. that the behind-closed-doors Senate and Assembly majority and minority political conferences, which serve as the venue for discussing, debating, and voting on bills that are not being discussed, debated, voted on, and amended in committee are unconstitutional, as is Public Officers Law, §108.2 exempting them from the Open Meetings Law and FOIL;

F. that three-men-in-a-room, budget dealing-making is unconstitutional, *as unwritten and as applied.* Neither the Constitution, nor statute, nor Senate and Assembly rules authorize the Governor, Temporary Senate President, and Assembly Speaker to huddle together for budget negotiations and the amending of budget bills – and it violates Article VII, §§3, 4 and Article IV, §7, transgressing the separation of powers, for them to do so. That it takes place behind-closed-doors, out of public view, is a further constitutional violation.

G. that the "process" by which the state budget for fiscal year 2016-2017 was enacted violates Article VII, §§4, 5, 6 of the New York State Constitution by the failure of Senate and Assembly committees and the full chambers of each house to amend and pass the Governor's appropriation bills and to reconcile them so that they might "become law immediately without further action by the governor", as Article VII, §4 mandates, substituting instead one-house budget proposals, emerging from closed-door political

conferences of the Senate and Assembly majority party/coalitions, and serving as the basis for convening the Senate and Assembly budget conference committee and its subcommittees, whose proceedings, behind-closed-doors by staff, are then supplanted and cut short by behind-closed-doors deal-making by the Governor, Temporary Senate President, and Assembly Speaker to produce amended budget bills, sped to adoption on messages of necessity;

H. that Chapter 60, Part E, of the Laws of 2015, establishing the Commission on Legislative, Judicial and Executive Compensation – is unconstitutional, *as written* – and the Commission's "force of law" judicial salary increase recommendations are null and void by reason thereof because: **(1)** the statute unconstitutionally delegates legislative power by giving the Commission's judicial salary recommendations "the force of law"; **(2)** the statute unconstitutionally delegates legislative power without safeguarding provisions; **(3)** the statute violates Article XIII, §7; **(4)** the statute – a budget statute – violates Article VII, §6 (*anti-rider*) and, additionally, §§3 and 4 (*timeliness, content*); **(5)** the statute was fraudulently procured and without legislative due process;

I. that Chapter 60, Part E, of the Laws of 2015, establishing the Commission on Legislative, Judicial and Executive Compensation is unconstitutional, *as applied* – and the Commission's "force of law" judicial salary increase recommendations are null and void by reason thereof because: **(1)** the legislative defendants willfully and deliberately failed and refused to discharge their oversight duties with respect to the statute's constitutionality and operation; **(2)** the Commission concealed and did not determine the disqualification/disclosure issues before it pertaining to its members' actual bias and interest; **(3)** the Commission concealed and did not determine whether systemic judicial corruption is

an "appropriate factor" barring judicial salary increases; **(4)** the Commission concealed and did not determine issues of fraud, including the complete absence of evidence to justify a salary increase; **(5)** the Commission suppressed and disregarded the "appropriate factor" of citizen input and opposition;

J. that the Commission on Legislative, Judicial and Executive Compensation violated the express statutory requirements of Chapter 60, Part E, of the Laws of 2015 – and that its "force of law" judicial salary increase recommendations are null and void by reason thereof because, in violation of the statute: **(1)** the Commission made no finding and furnished no evidence that current "compensation and non-salary benefits' or "pay levels and non-salary benefits" of New York State judges are inadequate; **(2)** the Commission examined only judicial salary, not "compensation and non-salary benefits"; **(3)** the Commission did not "take into account all appropriate factors", such as systemic judicial corruption and citizen opposition – and made no claim that it had; **(4)** the Commission did not "take into account three of the six statutorily-listed "appropriate factors"; **(5)** the Commission's appointing authorities – defendants CUOMO, FLANAGAN, HEATIE, and former Chief Judge Lippman – constituted the Commission four months late, such that it had less than two months to execute its statutory charge; **(6)** the Commission did not utilize its significant investigative powers and available resources;

K. that Chapter 60, Part E, of the Laws of 2015, establishing the Commission on Legislative, Judicial and Executive Compensation – is unconstitutional, *as written* – and the Commission's "force of law" judicial salary increase recommendations are null and void by reason thereof because: **(1)** the statute unconstitutionally delegates legislative power by giving the Commission's judicial salary recommendations "the force of law"; **(2)** the statute

unconstitutionally delegates legislative power without safeguarding provisions; **(3)** the statute violates Article XIII, §7; (4) the statute – a budget statute – violates Article VII, §6 (*anti-rider*) and, additionally, §§3 and 4 (*timeliness, content*); **(5)** the statute was fraudulently procured and without legislative due process;

L. that Chapter 60, Part E, of the Laws of 2015, establishing the Commission on Legislative, Judicial and Executive Compensation is unconstitutional, *as applied* – and the Commission's "force of law" judicial salary increase recommendations are null and void by reason thereof because: **(1)** the legislative defendants willfully and deliberately failed and refused to discharge their oversight duties with respect to the statute's constitutionality and operation; **(2)** the Commission concealed and did not determine the disqualification/disclosure issues before it pertaining to its members' actual bias and interest; **(3)** the Commission concealed and did not determine whether systemic judicial corruption is an "appropriate factor" barring judicial salary increases; **(4)** the Commission concealed and did not determine issues of fraud, including the complete absence of evidence to justify a salary increase; **(5)** the Commission suppressed and disregarded the "appropriate factor" of citizen input and opposition;

M. that the Commission on Legislative, Judicial and Executive Compensation violated the express statutory requirements of Chapter 60, Part E, of the Laws of 2015 – and that its "force of law" judicial salary increase recommendations are null and void by reason thereof because, in violation of the statute: **(1)** the Commission made no finding and furnished no evidence that current "compensation and non-salary benefits' or "pay levels and non-salary benefits" of New York State judges are inadequate; **(2)** the Commission examined only judicial salary, not "compensation and non-salary benefits"; **(3)** the Commission did not

"take into account all appropriate factors", such as systemic judicial corruption and citizen opposition – and made no claim that it had; **(4)** the Commission did not "take into account three of the six statutorily-listed "appropriate factors"; **(5)** the Commission's appointing authorities – defendants CUOMO, FLANAGAN, HEATIE, and former Chief Judge Lippman – constituted the Commission four months late, such that it had less than two months to execute its statutory charge; **(6)** the Commission did not utilize its significant investigative powers and available resources;

N. that the appropriation item entitled "For grants to counties for district attorney salaries", in the Division of Criminal Justice Services' budget for fiscal year 2016-2017, contained in Aid to Localities Budget Bill #S.6403-d/A.9003-d does not authorize any disbursement of state monies for that purpose for this fiscal year and is otherwise unlawful and unconstitutional in that: **(1)** it violates and overrides three specific statutory provisions: County Law §700.10 and §700.11 and Judiciary Law §183-a; **(2)** it violates and overrides "any other law to the contrary" – which is unconstitutionally vague and would include the New York State and United States Constitutions, which it cannot constitutionally supersede; **(3)** it unconstitutionally rests on "the amount received by a county for such purpose in 2013-14" – without specifying the amount each county received "for such purpose in 2013-14" or the document containing that information; **(4)** it unconstitutionally rests on "a plan prepared by the commissioner of criminal justice services and approved by the director of the budget" – seemingly not then existent. Further, that items of reappropriation in Aid to Localities Budget Bill #S.6403-d/A.9003-d pertaining to previous "grants to counties for district attorney salaries" and "recruitment and retention" incentives are not proper for reappropriation, if not unlawful.

2. **Pursuant to State Finance Law §123-e, for entry of a judgment permanently enjoining defendants:**

(a) from disbursing monies pursuant to Legislative/Judiciary Budget Bill #S.6401-a/A.9001-a, or, alternatively: (i) as to the legislative portion, enjoining disbursements pursuant to its §1 appropriations and §4 reappropriations (pp. 2-9; 25-48); and; (ii) as to the judiciary portion, disbursements of its §3 reappropriations (pp. 22-24) and, in particular, to fund "the force of law" judicial salary increase for fiscal year 2016-2017 recommended by the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation and disbursement of monies pursuant thereto;

(b) from disbursing monies pursuant to the appropriation item "For grants to counties for district attorney salaries" in the Division of Criminal Justice Services' budget contained in Aid to Localities Budget Bill #S.6403-d/A.9003-d (at pp. 72-73) or pursuant to reappropriation items therein pertaining to previous "grants to counties for district attorney salaries" and "recruitment and retention" incentives (at pp. 94, 97, 100, 124-125);

3. **Pursuant to State Finance Law §123-g, for costs and expenses, including attorneys' fees;**

4. **For such other and further relief as may be just and proper**, including restoring public trust by referring to prosecutorial authorities the evidence particularized by this verified complaint as it establishes, *prima facie*, grand larceny of the public fisc and other corrupt acts, requiring that the culpable public officers and their agents be criminally prosecuted and removed from office, without further delay.

ELENA RUTH SASSOWER

Sworn to before me this
2nd day of September 2016

CHARLES E. DIAMOND
Notary Public, State of New York
Qualified in Albany County
No. 4802106
Commission Expires Oct. 31, 20 18.

VERIFICATION

STATE OF NEW YORK)
COUNTY OF ALBANY) ss:

I am the individual plaintiff in the within action and director of the corporate plaintiff, Center for Judicial Accountability, Inc. I have written the annexed verified complaint and attest that same is true and correct of my own knowledge, information, and belief, and as to matters stated upon information and belief, I believe them to be true.

ELENA RUTH SASSOWER

Sworn to before me this
2nd day of September 2016

Notary Public

CHARLES E DIAMOND
Notary Public, State of New York
Qualified in Albany County
No 4802106
Commission Expires Oct. 31, 2018

TABLE OF EXHIBITS

Exhibit J-3: August 12, 2016 e-mail from Division of Criminal Justice Services' records access officer

Exhibit J-4: July 25, 2016 letter from Division of the Budget records access officer

Exhibit K: Plaintiffs' September 1, 2016 FOIL request: "Director of the Budget's certificate of approval of the Division of Criminal Justice Services' budget for fiscal year 2016-2017, contained in Aid to Localities Budget Bill #S.6403-d/A.9003-d – & any certification by the Division of Criminal Justice Services of its own budget"

EXHIBIT

A

SUPREME COURT OF STATE OF NEW YORK
ALBANY COUNTY

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CENTER FOR JUDICIAL ACCOUNTABILITY, INC.
and ELENA RUTH SASSOWER, individually and
as Director of the Center for Judicial Accountability, Inc.,
acting on their own behalf and on behalf of the People
of the State of New York & the Public Interest,

Plaintiffs,

-against-

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

Defendants.

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VERIFIED SECOND SUPPLEMENTAL COMPLAINT

Index #1788-2014

JURY TRIAL DEMANDED

> "...one need only examine the Constitutional, statutory, and Senate and Assembly rule provisions relating to openness – such as Article III, §10 of New York's Constitution '...The doors of each house shall be kept open...'; Public Officers Law, Article VI 'The legislature therefore declares that government is the public's business...'; Senate Rule XI, §1 'The doors of the Senate shall be kept open'; Assembly Rule II, §1 'A daily stenographic record of the proceedings of the House shall be made and copies thereof shall be available to the public' – to see that government by behind-closed-doors deal-making, such as employed by defendants CUOMO, [FLANAGAN], [HEASTIE], SENATE, and ASSEMBLY, is an utter anathema and unconstitutional – and that a citizen-taxpayer action could successfully be brought against the whole of the Executive budget."
>
> – culminating final paragraph of plaintiffs' verified complaint (¶126)
> & verified supplemental complaint (¶236)

Plaintiffs, as and for their verified second supplemental complaint, respectfully set forth and allege:

237. By this citizen-taxpayer action pursuant to State Finance Law Article 7-A [§123 *et seq.*], plaintiffs additionally seek declaratory judgment as to the unconstitutionality and unlawfulness of the Governor's Legislative/Judiciary Budget Bill #S.6401/A.9001. The expenditures of such budget bill – embodying the Legislature's proposed budget for fiscal year 2016-2017, the Judiciary's proposed budget for fiscal year 2016-2017, and millions of dollars in uncertified and nonconforming legislative and judicial reappropriations – are unconstitutional, unlawful, and fraudulent disbursements of state funds and taxpayer monies, which plaintiffs hereby seek to enjoin.

238. Plaintiffs also seek, pursuant to State Finance Law Article 7-A, a declaration voiding the "force of law" judicial salary increases recommended by the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation because they are statutorily-violative, fraudulent, and unconstitutional, with a further declaration striking the budget statute establishing the Commission – Chapter 60, Part E, of the Laws of 2015 – as unconstitutional and itself fraudulent.

239. Additionally, plaintiffs seek declarations that the so-called "one-house budget proposals", emerging from the closed-door political conferences of the Senate and Assembly majority party/coalitions, are unconstitutional, as are the proceedings based thereon of the Senate and Assembly joint budget conference committee and its subcommittees; and that the behind-closed-doors, three-men-in-a-room budget dealing-making by the Governor, Temporary Senate President, and Assembly Speaker – such as produced Chapter 60, Part E, of the Laws of 2015 – is unconstitutional and enjoining same with respect to Judiciary/Legislative Budget Bill #S.6401/A.9001 and the whole of the Executive Budget.

240. Plaintiffs repeat, reallege, and reiterate the entirety of their March 28, 2014 verified complaint pertaining to the Legislature's and Judiciary's proposed budgets and the Governor's Legislative/Judiciary Budget Bill #S.6351/A.8551 for fiscal year 2014-2015 and the entirety of their March 31, 2015 verified supplemental complaint pertaining to the Legislature's and Judiciary's proposed budgets and the Governor's Legislative/Judiciary Budget Bill #S.2001/A.3001 for fiscal year 2015-2016, incorporating both by reference, as likewise the record based thereon.

241. Virtually all the constitutional, statutory, and rule violations therein detailed are replicated in the Legislature's and Judiciary's proposed budgets for fiscal year 2016-2017 and the Governor's Legislative/Judiciary Budget Bill #S.6401/A.9001 – including as to the judicial salary increases that will automatically take effect April 1, 2016. As stated at ¶129 of the verified supplemental complaint – and even truer now – "It is, as the expression goes, "déjà vu all over again".

242. For the convenience of the Court, a Table of Contents follows:

TABLE OF CONTENTS

* * *

FACTUAL ALLEGATIONS

The Legislature's Proposed Budget for Fiscal Year 2016-2017

243. By a one-sentence letter virtually identical, but for the dates, to the one-sentence letters for fiscal years 2014-2015 and 2015-2016 (¶¶17-18, 131), defendants FLANAGAN and HEASTIE, as Temporary Senate President and Assembly Speaker, addressed a December 1, 2015 letter to defendant CUOMO stating:

> "Attached hereto is a copy of the Legislature's Budget for the 2016-2017 fiscal year pursuant to Article VII, Section I of the New York State Constitution." (Exhibit 24-d)[1]

244. Identical to those previous letters, this December 1, 2015 letter was not sworn to, but merely signed. It made no claim to be attaching "itemized estimates of the financial needs of the legislature, certified by the presiding officer of each house" – as required by Article VII, §1 of the New York State Constitution.

245. Except for minor changes in its narrative text, the transmitted legislative budget (Exhibit 24-e) was identical in its formatting to the transmitted legislative budgets for the two previous fiscal years.[2] It consisted of an untitled five-page budget narrative, with a sixth page chart entitled "All Funds Requirements for the Legislature", and a ten-page "Schedule of Appropriations". There was no certification among these 16 pages, nor even a reference to "itemized estimates" of the Legislature's "financial needs", or to Article VII, §1 of the New York State Constitution.

246. Each and every figure in the transmitted legislative budget for fiscal year 2016-2017 was identical to each and every figure of the legislative budgets for the last two fiscal years. As such,

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[1] This verified second supplemental complaint continues the sequence of exhibits that began with the verified supplemental complaint and thereafter continued with plaintiffs' affidavits in support of their September 22, 2015 cross-motion for summary judgment and other relief.

[2] The reference to "the two previous fiscal years" and similar references are shorthand for what is actually the current 2015-2016 fiscal year and the 2014-2015 fiscal year.

these figures were also identical to virtually every figure in the legislative budgets for fiscal years 2013-2014, 2012-2013, and 2011-2012.

247. Identically to the last two years, more than half of the 10-page "Schedule of Appropriations" was devoted to less than 10% of the budget. Most of the 90% balance consisted of lump-sum appropriations: (i) for defendant SENATE's member offices and committees, combined in a single lump sum; (ii) for defendant ASSEMBLY's member offices and committees, combined in a single lump sum; (iii) for defendant SENATE's "senate operations", which was its own lump-sum; and (iv) for defendant ASSEMBLY's "administrative and program support operations", another lump sum.

248. Identically to the last two years, the transmitted 16-page legislative budget contained no "General State Charges", which were not even mentioned.

249. Identically to the last two years, the transmitted 16-page legislative budget contained no reappropriations, which were not even mentioned.

250. Identically to the last two years, neither defendant SENATE nor defendant ASSEMBLY then or thereafter posted the December 1, 2015 transmittal letter and 16-page legislative budget on their websites.[3]

The Judiciary's Proposed Budget for Fiscal Year 2016-2017

251. By two memoranda, dated December 1, 2015, Chief Administrative Judge Lawrence Marks furnished a two-part presentation of the Judiciary's proposed budget to defendants CUOMO, FLANAGAN, and HEASTIE, the Minority Leaders of the Senate and Assembly, the Chairs and Ranking Members of the Senate Finance Committee and Assembly Ways and Means Committee,

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[3] Identically to the last two years, only defendant ASSEMBLY furnished the transmittal letter and 16-page budget in response to plaintiffs' FOIL request (Exhibits 24-a, 24-b, 24-c).

and the Chairs of the Senate and Assembly Judiciary Committees. In language identical to that used in the two memoranda of the past two years, the Chief Administrative Judge represented these as: "itemized estimates of the annual financial needs of the Judiciary..." for its operating expenses (Exhibit 25-a) and

> "itemized estimates of funding for General State Charges necessary to pay the fringe benefits of judges, justices and nonjudicial employees separately from itemized estimates of the annual operating needs of the Judiciary." (Exhibit 26-a).

The latter memorandum explained that the two-part presentation:

> "follows the long-standing practice of the Executive and Legislative Branches of separately presenting requests for funding of fringe benefit costs and requests for operating funds. The Judiciary will submit a single budget bill, which includes requests for funding of operating expenses and fringe benefit costs for the 2016-2017 Fiscal Year." (Exhibit 26-a, underlining added)

252. The two parts of the Judiciary's proposed budget contained, for each part, a certification by the Chief Judge and approval by the Court of Appeals (Exhibits 25-b, 26-b) identical to those furnished in the last two years. However, identically to the last two years, because of the future tense "will" pertaining to the "single budget bill" and the bill's placement in the "Executive Summary" section, NO certification appeared to encompass the "single-budget bill" (Exhibits 26-a, 25-c, 25-d).

253. Identically to the last two years, the Judiciary's two-part budget, including its single "Executive Summary" and statistical tables (Exhibit 25-c), did not provide a cumulative dollar total for the budget request. Likewise, the Judiciary's "single budget bill" (Exhibit 25-d) did not provide a cumulative tally.

254. Identically to the last two years, the Judiciary's failure to provide a cumulative dollar total for its two-part budget and to tally the figures in its "single budget bill" enabled it to conceal a

discrepancy of tens of millions of dollars between them. This discrepancy was the result of $73,460,000 in reappropriations in the "single budget bill" (Exhibit 25-d, pp. 11-13) that were not in the Judiciary's two-part budget presentation (Exhibit 25-e).

255. Identically to the last two years, the Judiciary's "single budget bill" (Exhibit 25-d) consisted of two sections: the first, denominated §2, containing appropriations, including "General State Charges" (pp. 1-10), and the second, denominated §3, containing reappropriations (pp. 11-13).

256. Identically to the last two years, §2 of the "single budget bill" began with a paragraph reading:

> "The several amounts named in this section, or so much thereof as shall be sufficient to accomplish the purposes designated by the appropriations, are hereby appropriated and authorized to be paid as hereinafter provided, to the respective public officers and for the several purposes specified, which amounts shall be available for the fiscal year beginning April 1, 2016." (Exhibit 25-d, p. 1).

Under the heading "SCHEDULE", a further paragraph stated:

> "Notwithstanding any provision of law, the amount appropriated for any program within a major purpose within this schedule may be increased or decreased in any amount by interchange with any other program in any other major purpose, or any appropriation in section three of this act, with the approval of the chief administrator of the courts." (Exhibit 25-d, p. 1).

257. Identically to the last two years, §3 of the "single budget bill" began with a paragraph reading:

> "The several amounts named in this section, or so much thereof as shall be sufficient to accomplish the purposes designated being the unexpended balances of a prior year's appropriation, are hereby reappropriated from the same funds and made available for the same purposes as the prior year's appropriation, unless amended herein, for the state fiscal year beginning April 1, 2016." (Exhibit 25-d, p. 11).

258. The descriptions of the reappropriations in the "single-budget bill's" §3 were pretty barren. Most referred to chapter 51, section 2 of the laws of 2015, 2014, 2013, 2012, 2010 and also

chapter 51, section 3 of the laws of 2015 – which are the enacted budget bills for the Judiciary for those years, its appropriations and reappropriations, respectively. Yet they were completely devoid of specificity as to their purpose other than a generic "services and expenses, including travel outside the state and the payment of liabilities incurred prior to April 1..."; or "Contractual Services" (Exhibit 25-d, pp. 11-13).

259. The single Executive Summary, contained in the Judiciary's budget of operating needs identified that over the past six years the Judiciary had "absorbed hundreds of millions of dollars in higher costs" (Exhibit 25-c, p. i). It annotating footnote #1 specified these to have included "judicial salary adjustments implemented pursuant to the recommendations of the 2011 Special Commission on Executive Compensation." A further footnote, #4, stated:

> "There is also the currently unknown cost of a salary adjustment for judges that will be recommended by the Commission on Legislative, Judicial and Executive Compensation, to take effect on April 1, 2016. The recommendations of the Commission with respect to judicial compensation are due by December 31, 2015, and therefore the cost of the recommended adjustment is not now known and is not included in this request. If necessary, the Judiciary will submit a supplemental budget request to cover the cost of the April 2016 salary adjustment." (Exhibit 25-c, p. v).

The Governor's Legislative/Judiciary Budget Bill #S.6401/A.9001

260. Identically to the last two years, defendant CUOMO combined the Legislature's proposed budget and the Judiciary's proposed budget into a combined budget bill – #S.6401/A.9001, introduced on January 13, 2016 (Exhibit 27-b). The legislative portions of the bill, §1 and §4 (pp. 1-9, 25-48), were non-consecutive. The judiciary portions of the bill, §2 and §3 (pp. 10-21, 22-24), were consecutive and were, *verbatim*, the same §2 and §3 that were the entirety of the Judiciary's "single budget bill" (Exhibit 25-d).

261. Identically to the last two years, §1 of the bill pertaining to the Legislature (Exhibit 27-b, pp. 1-9), replicated the 10-page schedule of legislative appropriations for fiscal year 2016-2017

that Temporary Senate President FLANAGAN and Assembly Speaker HEASTIE had furnished to defendant CUOMO (Exhibit 24-e). However, it added the following prefatory paragraph to §1:

> "The several amounts named in this section or so much thereof as shall be sufficient to accomplish the purposes designated by the appropriations, are hereby appropriated and authorized to be paid as hereinafter provided, to the respective public officers and for the fiscal year beginning April 1, 2016." (Exhibit 27-b, p. 1, underlining added).

262. Identically to the last two years, this prefatory paragraph for legislative appropriations in §1 mirrored the prefatory paragraph for judiciary appropriations in §2, whose wording differed only by the following underlined words:

> "...to the respective public officers and for the several purposes specified, which amounts shall be available for the fiscal year beginning April 1, 2016." (Exhibit 27-b, p. 10, underlining added).

263. Identically to the last two years, the bill's §3 for the Judiciary bore the title "Reappropriations" (Exhibit 27-b, p. 22). By contrast, §4 – which were reappropriations for the Legislature – did not bear such identifying title (Exhibit 27-b, p. 25).

264. Identically to the last two years, the §4 legislative reappropriations (Exhibit 27-b, pp. 25-48) were not part of the legislative budget that defendants FLANAGAN and HEASTIE had transmitted by their December 1, 2015 coverletter (Exhibit 24-d). The reappropriations, spanning 24 pages and untallied, amounted to tens of millions of dollars, and, by description, were not suitable for certification as reappropriations.

265. Identically to the last two years, these legislative reappropriations at §4 were prefaced by the following two-paragraph text:

> "The several amounts named herein, or so much thereof as shall be sufficient to accomplish the purpose designated, being the unexpended balances of prior year's appropriations, are hereby reappropriated from the same funds and made available for the same purposes as the prior year's appropriations, unless amended herein, for the state fiscal year beginning April 1, 2016.

For the purpose of complying with the state finance law, the chapter, section, and year of the last act reappropriating a former original appropriation or any part thereof was, unless otherwise indicated, chapter 51, section 4, of the laws of 2015. Where the full text of law being continued is not shown, leader dots ... are used. However, unless a change is clearly indicated by the use of brackets [ ] for deletions and italics for additions, the purposes, amounts, funding source and all other aspects pertinent to each item of appropriation shall be as last appropriated." (Exhibit 27-b, p. 25, underlining added).

266. Upon information and belief, the unidentified "state finance law' referred to is State Finance Law §25, entitled "Reappropriation bills", which reads:

"Every appropriation reappropriating moneys shall set forth clearly the year, chapter and part or section of the act by which such appropriation was originally made, a brief summary of the purposes of such original appropriation, and the year, chapter and part or section of the last act, if any, reappropriating such original appropriation or any part thereof, and the amount of such reappropriation.

If it is proposed to change in any detail the purpose for which the original appropriation was made, the bill as submitted by the governor shall show clearly any such change."

267. Identically to the last two fiscal years, defendant CUOMO's Legislative/Judiciary Budget Bill #S.6401/A.9001 showed no "brackets [ ]" or "italics" for the reappropriations indicating any changes in "the purposes, amounts, funding sources and all other aspects pertinent to each item...as last appropriated".

268. Identically to the last two years, defendant CUOMO's legislative portion of his Budget Bill #S.6401/A.9001, while adding these tens of millions of dollars in untallied legislative reappropriations that had not been part of the December 1, 2015 transmitted legislative budget (Exhibit 24-e), did not add "General State Charges" for the Legislature, although these also had not been presented by its December 1, 2015 budget.

269. Identically to the last two years, the §3 judiciary reappropriations were not from the Judiciary's certified two-part budget presentation (Exhibits 25, 26). Rather, they were §3 of the Judiciary's seemingly uncertified "single budget bill" and only partially tallied (Exhibit 25-d, pp. 1,

11-13). The total tally of the judiciary reappropriations in defendant CUOMO's Budget Bill #S.6401/A.9001 is $73,460,000.

270. Identically to the last two years, defendant CUOMO's Budget Bill #S.6401/A.9001 (Exhibit 27-b) gives no cumulative dollar total for his bill as a whole (pp. 1-48), nor for its §1 and §4 legislative portion (pp. 1-9, 25-48), nor for its §2 and §3 judiciary portion (pp. 10-21, 22-24), thereby concealing the hundreds of millions of dollars in legislative and judiciary reappropriations.

271. Identically to the last two years, defendant CUOMO did not accompany his Budget Bill #S.6401/A.9001 with any fiscal notes, fiscal impact statements, or introducer's memoranda, notwithstanding required by Senate Rule VIII, §7, Senate Rule VII, §1, and Assembly Rule III, §1(f) and §2(a) – made applicable by Senate Rule VII, §6 and Assembly Rule III, §2(g) which identically state:

> "When a bill is submitted or proposed by the Governor, by authority of Article VII of the Constitution, it shall become, for all legislative purposes, a legislative bill".

The Governor's Commentary

272. Although Article VII, §1 of the New York State Constitution empowers the Governor to make "such recommendations as he may deem proper" with respect to the budgets for the Legislature and Judiciary, this year, identically to the last two years, defendant CUOMO gave "Commentary" only as to the Judiciary budget (Exhibit 27-a).

273. Identically to the last two years, defendant CUOMO's "Commentary" furnished no cumulative dollar amount of the Judiciary's proposed budget and urged its reduction to meet a 2% cap on increases – including by its conclusion:

> "Furthermore, acknowledging the need to evaluate judicial salaries, the recommendations of the New York State Commission on Legislative, Judicial, and Executive Compensation to provide for judicial salary increases on par with federal judges does not abrogate the Judiciary's responsibility to partner with us to maintain

overall spending at 2 percent. I applaud the Judiciary for absorbing the first year of recommended Commission on Judicial Compensation salary increases in 2012-13, and I expect that they will again absorb the first year of recommended judicial salary increases within an overall spending level of 2 percent in the 2016-17 budget. Indeed, for the past 3 years, Executive agencies have absorbed the cost of salary increases through productivity improvements and efficiency measures. I strongly urge the Legislature and Judiciary to work together to reduce the Judiciary's budget commensurate with the State's spending growth level of 2 percent." (Exhibit 27-a).

274. Upon information and belief, defendant CUOMO's acquiescence in the judicial salary increase recommendations of the Commission on Legislative, Judicial and Executive Compensation by his January 13, 2016 "Commentary" was with knowledge that they were even more statutorily-violative, fraudulent and unconstitutional than those of the Commission on Judicial Compensation and additionally, that plaintiffs had furnished his Chief Judge nominee, Westchester County District Attorney Janet DiFiore, with the relevant evidentiary proof by a December 31, 2015 letter entitled: "So, You Want to be New York's Chief Judge? – Here's Your Test: Will You Safeguard the People of the State of New York – & the Public Fisc?" (Exhibit 37) and that plaintiff SASSOWER had requested to testify at the Senate Judiciary Committee's January 20, 2016 hearing on her confirmation (Exhibit 38).

275. Plaintiffs' December 31, 2015 letter to Chief Judge Nominee DiFiore (Exhibit 37) is true and correct in all material respects.

276. Likewise, true and correct in all material respects are the enclosures to plaintiffs' December 31, 2015 letter, consisting of the following, all of which plaintiffs had furnished to the Commission on Legislative, Judicial and Executive Compensation:[4]

(a) a full copy of plaintiffs' October 27, 2011 Opposition Report to the August 29, 2011 Report of the Commission on Judicial Compensation;[5]

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[4] See accompanying free-standing folder.

[5] Plaintiffs' full October 27, 2011 Opposition Report is already in the possession of the Court, having been furnished by plaintiffs in support of their September 22, 2015 cross-motion for summary judgment and other relief.

(b) plaintiffs' November 30, 2015 written testimony, with attachments;

(c) plaintiffs' December 2, 2015 supplemental submission;

(d) plaintiffs' December 21, 2015 further submission; and

(e) plaintiffs' June 27, 2013 conflict-of-interest/ethics complaint to JCOPE.

The Legislature's Joint Budget Hearings Pursuant to Legislative Law §32-a

277. On January 11, 2016, Senate Finance Committee Chair Catharine Young and Assembly Ways and Means Committee Chair Herman Farrell, Jr. announced the Joint Legislative Hearing Schedule on the 2016-2017 Executive Budget. Except for the dates, their announcement was identical to that of the past two years, stating, in pertinent part:

> "These hearings, each of which focuses on a programmatic area, are intended to provide the appropriate legislative committee with public input on the executive budget proposal...
>
> ...The respective state agency or department heads will begin testimony each day, followed by witnesses who have signed up to testify on that area of the budget...
>
> Time constraints limit the number of witnesses that can be accommodated at any given hearing. As a result, people interested in testifying must contact the appropriate person listed on the schedule no later than the close of business, two business days before the respective hearing...
>
> The agency and the departmental portion of the hearings are provided for in Article 7, Section 3 of the Constitution and Article 2, Section 31 of the Legislative Law. The state Legislature is also soliciting public comment on the proposed budget pursuant to Article 2, Section 32-a of the Legislature Law." (Exhibit 28-a).

278. Plaintiff SASSOWER did not wait until "two business days prior" to request to testify. Rather, on January 12, 2016, the very next day after the announcement, and then the following day, January 13, 2016, she telephoned Chair Young's office, requesting two slots: one for testimony in opposition to the Judiciary budget and one for testimony in opposition to the Legislature's budget at the Legislature's February 4, 2016 budget hearing on "public protection". Indeed, before telephoning the second time, plaintiff SASSOWER confirmed with Chair Farrell's

office that the Legislature's budget would be in the "public protection" budget hearing, together with the Judiciary budget – and not, as might be otherwise assumed, in the "general government" budget hearing.

279. The call back plaintiff SASSOWER received, on February 13, 2016, was from Chair Young's chief of staff, who stated that there were many people requesting to testify and that plaintiff SASSOWER would not be getting confirmation that she would be testifying until a day before the hearing.

280. Plaintiff SASSOWER responded that the Judiciary and Legislature are not agencies, but government branches – and, therefore, should have their own budget hearings, especially as Legislative Law §32-a requires the Legislature to make "every effort to hear all those who wish to present statements at such public hearings" – and this plainly could not be done when the Legislature combines, in a single set of hearings, the public's hearings, pursuant to Legislative Law §32-a, with the very different budget hearings of Article VII, §3 of the New York State Constitution and Legislative Law §31 for agency heads, to whom the Legislature gives precedence – putting members of the public at the end, if there is room.

281. Plaintiff SASSOWER may have additionally advised that she had a pending citizen-taxpayer action against the Legislature addressed to these issues. In any event, she had identified this and its significance in requesting to testify, last year, in opposition to the Judiciary and Legislature's budgets by a February 23, 2015 letter to the chairs and ranking members of the Senate Finance Committee and Assembly Ways and Means Committee.[6]

282. Despite plaintiff SASSOWER's subsequent phone messages for Chair Young's chief of staff, reiterating her requests for two slots: one for testimony in opposition to the Judiciary budget,

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[6] The letter is Exhibit 8 to plaintiffs' verified supplemental complaint.

and the other for testimony in opposition to the Legislature's budget, Chair Young's chief of staff did not return her calls. Even the day before the hearing, in response to plaintiff SASSOWER's phone call, there was no return call informing her that she had not been included on the witness list – nor inviting her to submit written testimony for posting on the Legislature's webpage(s) for the hearing, accessible to the public, to legislators, and made part of the record. Nor did Chair Young's chief of staff call plaintiff SASSOWER, following the hearing, in response a further phone message from plaintiff SASSOWER.

283. The foregoing (¶¶278-283) is recounted in plaintiff SASSOWER's February 18, 2016 letter to Senate Finance Committee Chair Young and Ranking Member Liz Krueger and to Assembly Ways and Means Committee Chair Farrell and Ranking Member Bob Oaks (Exhibit 46). Entitled "Your Violation of Legislative Law §32-a with Respect to the Judiciary and Legislative Budgets for Fiscal Year 2016-2017 – and Budget Bill #S.6401/A.9001", it requested that they "advise as to what [their] criteria was for deciding which members of the public would be permitted to testify at the February 4, 2016 budget hearing on 'public protection'", further stating:

> "Suffice to say that quite apart from your direct knowledge – from past years – of the serious and substantial nature of what I would be saying, you had a succession of correspondence from me, spanning from my January 15, 2016 letter to Temporary Senate President Flanagan and Assembly Speaker Heastie to my February 3, 2016 'Questions for Temporary Senate President Flanagan and Assembly Speaker Heastie'. From these you could easily discern that my intended testimony at the February 4, 2016 budget hearing:
>
> > (1) in opposition to the 'force of law' judicial salary increases recommended by the Commission on Legislative, Judicial and Executive Compensation;
> >
> > (2) in opposition to the Judiciary budget; and
> >
> > (3) in opposition to the Legislative budget
>
> was dispositive of unlawfulness, unconstitutionality and fraud." (Exhibit 46, p. 3).

284. Plaintiff SASSOWER's February 18, 2016 letter asked whether they had forwarded to ALL members of the fiscal committees and of the other relevant committees – the Judiciary Committees, the Senate Committee on Investigations and Government Operations, and the Assembly Committee on Governmental Operations – her various e-mailed correspondence, as had been requested.

285. Noting that the first witness at the February 4, 2016 "public protection" budget hearing was Chief Administrative Judge Marks, testifying in support of the Judiciary's budget and for an added $27 million – or, at least $16.7 million – to fund the first phase of the judicial salary increases recommended by the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation – the letter pointed out that none of the legislators at the hearing asked Chief Administrative Judge Marks a single question reflective of any of that correspondence, including plaintiff SASSOWER's February 2, 2016 e-mail of "Questions for Chief Administrative Judge Marks".

286. In pertinent part, plaintiff SASSOWER's February 18, 2016 letter stated:

> "my 'Questions for Chief Administrative Judge Marks' were largely about number-crunching – beginning with the cumulative dollar total of the Judiciary's budget – and certification of those amounts. As stated in my preface to the 'Questions':
>
> 'Examination of the Judiciary's proposed budget
> for fiscal year 2016-2017 must begin with its total cost,
> especially as it is not contained within the budget –and the Governor's
> Commentary, his Division of the Budget website, and
> the Legislature's 'White', 'Blue', 'Yellow' and 'Green' Books
> diverge as to the relevant figures.'
>
> Tellingly, Chief Administrative Judge Marks did not identify the total cost of the Judiciary's proposed budget in his oral testimony – or in his largely identical written testimony. Yet none of the legislators commented upon this. The closest any came to inquiring about total cost was Senator Bonacic by his sham first question: 'Your budget, I think for court administration, is between 2.8 and 2.9 billion, would I be correct?' (video, at 13:50 mins.) – a

question so imprecise as to allow tens of millions of taxpayer dollars to be unaccounted for.

As for the $27 million dollars that Chief Administrative Judge Mark identified as the cost of the 'first phase-in of the judicial salary increase, beginning on April 1st of this year' (written testimony, at p. 5), not a single legislator questioned him about it – although #22 of my 'Questions for Chief Administrative Judge Marks' furnished the question, ready-made:

> 'As for the Commission on Legislative, Judicial and Executive Compensation's December 24, 2015 Report, where did it get the figure of 'approximately $26.5 million' for the first phase of its judicial salary increase? Did the Judiciary furnish that estimate and does such cost projection include all covered judges and the additional costs that result from non-salary benefits, such as pensions and social security, whose costs to the state are derived from salary?'

Of course, the most important question relating to the Commission on Legislative, Judicial and Executive Compensation was my Question #20:

> 'Is the Commission's December 24, 2015 Report in conformity with the commission statute, and is it substantiated by <u>any</u> finding, let alone evidence, as to the inadequacy of compensation and non-salary benefits? Where are your findings of fact and conclusions of law with respect to the particularized showing, made by the non-partisan, non-profit citizens' organization, Center for Judicial Accountability, Inc. (CJA), in correspondence furnished to Chief Judge DiFiore and yourself in advance of this hearing, that the December 24, 2015 report is statutorily-violative, fraudulent, and unconstitutional – and that the ONLY recommendation that the Commission could lawfully make was 'for the nullification/voiding of the [Commission on Judicial Compensation's] August 29, 2011 Report AND a 'claw-back' of the $150-million-plus dollars that the judges unlawfully received pursuant thereto'?" (Exhibit 46, p. 9, underlining and capitalization in original).

287. The letter detailed that Chief Administrative Judge Marks' testimony was replete with fraudulent concealment and "outright LYING" with respect to the judicial salary increases recommended by the Commission on Legislative, Judicial and Executive Compensation. Yet, here, too, not a single legislator raised any question, even though plaintiffs' correspondence had furnished the evidence-supported specifics with which to do so. To the contrary, there was:

"only acceptance, where not support, of the Commission and its recommended judicial salary increases, whose statutory-violations, fraudulence, and unconstitutionality was comprehensively detailed by the correspondence I had furnished [to the chairs and ranking members of the fiscal committees], beginning on January 15th – and to the Senate Judiciary Committee four days earlier in support of my request to testify at its January 20, 2016 hearing to confirm Chief Judge DiFiore as this state's highest judge...." (Exhibit 46, p. 12).

288. As for the Legislature's own budget, the February 18, 2016 letter stated:

"neither Temporary Senate President Flanagan, Assembly Speaker Heastie, nor anyone on their behalf, appeared to testify in support – and you refused to allow me to testify in opposition. This, where my 'Questions for Temporary Senate President Flanagan and Assembly Speaker Heastie' exposed constitutional and other infirmities, creating a slush fund, evident from the preface to those 'Questions', itself posing three questions:

'Examination of the Legislature's proposed budget for fiscal year 2016-2017 must begin with inquiry as to whether it is 'certified' 'itemized estimates of financial needs of the legislature', as Article VII, §1 of the New York State Constitution requires. Where are the 'General State Charges'? – and what about the tens of millions of dollars in untallied legislative reappropriations that are not part of the Legislature's proposed budget, but which the Governor's Legislative/Judiciary Budget Bill #S.6401/A.9001 includes in an out-of-sequence section at the back?'" (Exhibit 46, p. 13).

289. Based upon this recitation, the February 18, 2016 letter closed, as follows:

"There is only one conclusion that can be drawn from what transpired at the February 4, 2016 non-hearing on the Legislative budget and sham hearing on the Judiciary budget–and from your non-responsiveness and that of every legislative recipients to whom I e-mailed my correspondence from January 15th to February 3rd or to whose staff I spoke by phone, apprising them of the issues and the correspondence. That inescapable conclusion is that individually and collectively you are embarked upon yet another 'grand larceny of the public fisc' for the upcoming fiscal year with respect to the newest round of judicial salary increases and the slush-fund Judiciary and Legislative budgets, paralleling your 'grand larceny of the public fisc' in prior fiscal years with respect to the first round of judicial salary increases and the slush-fund Judiciary and Legislative budgets.

If this conclusion is incorrect, then prove it by discharging your duty to come forward with findings of fact and conclusions of law with respect to those matters about which you reasonably knew I would have testified at the February 4, 2016 'public protection' budget hearing – had I been permitted to testify:

(1) the showing made by my January 15, 2016 letter to Temporary Senate President Flanagan and Assembly Speaker Heastie, including by its most important three enclosures: my 'Statement of Particulars in Further Support of Legislative Override of the 'Force of Law' Judicial Salary Increase Recommendations, Repeal of the Commission Statute, Etc.', my December 31, 2015 letter to Chief Judge Nominee DiFiore, and the sponsors' memo to Assembly Bill #7997, 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;

(2) the showing made by my January 28, 2016 letter to you and the January 26, 2016 letter to Chief Judge DiFiore it enclosed;

(3) my 'Questions for Chief Administrative Judge Lawrence Marks';

(4) my 'Questions for Temporary Senate President John Flanagan and Assembly Speaker Carl Heastie'". (Exhibit 46, pp. 13-14).

290. The letter requested that such findings of fact and conclusions of law be furnished by February 25, 2016 – noting that this was "also...more than enough time" for the letter to be added to the Senate and Assembly webpages of written statements/testimonies for the February 4, 2016 "public protection" budget hearing so that it would be "accessible to members of the public and other legislators and be part of the record." (Exhibit 46, p. 14).

291. The factual recitation set forth in plaintiff SASSOWER's February 18, 2016 letter, including its enclosed "Summary/Analysis of the Governor's Commentary, of his Division of the Budget webpages of the Legislative and Judiciary Budgets, & of the Legislature's 'Color Books'" (Exhibit 47), is true and correct in all material respects.

292. Likewise, true and correct in all material respects is the referred-to correspondence, upon which the letter requested "findings of fact and conclusion of law:

- Plaintiffs' January 15, 2015 letter to Temporary Senate President Flanagan and Assembly Speaker Heastie (Exhibit 39) – which is true and correct in all material respects, including:

  Its enclosed December 31, 2015 letter to Chief Judge Nominee DiFiore (Exhibit) – which is true and correct in all material respects;

  Its enclosed January 11, 2016 e-mail to Senate Judiciary Committee counsel (Exhibit 38) – which is true and correct in all material respects;

  Its enclosed introducers' memo to Assembly Bill #7997 (Exhibit 34) – which is true and correct in all material respects;

  Its enclosed "Statement of Particulars in Further Support of Legislative Override of the 'Force of Law' Judicial Salary Increase Recommendations, Repeal of the Commission Statute, Etc." (Exhibit 40) – which is true and correct in all material respects;

- Plaintiffs' January 28, 2016 letter to the chairs and ranking members of the Senate and Assembly fiscal and judiciary committees (Exhibit 42) – which is true and correct in all material respects;

  Its enclosed January 26, 2016 letter to Chief Judge DiFiore (Exhibit 41) – which is true and correct in all material respects;

- Plaintiffs' "Questions for Chief Administrative Judge Lawrence Marks" (Exhibit 44) – which is true and correct in all material respects;

- Plaintiffs' "Questions for Temporary Senate President John Flanagan and Assembly Speaker Carl Heastie" (Exhibit 45) – which is true and correct in all material respects.

293. The following day, by a February 19, 2016 coverletter entitled "Preventing Yet Another 'Grand Larceny of the Public Fisc", Plaintiff SASSOWER sent her February 18, 2016 letter to the chairs and ranking members of the Senate and Assembly Judiciary Committees and to the chairs and ranking members of the Senate Committee on Investigations and Government Operations and the Assembly Committee on Governmental Operations (Exhibit 48). Identifying that their committees were:

> "the 'appropriate' ones with respect to the Judiciary and Legislative budgets – and with respect to the "force of law" judicial salary increases recommended by the Commission on Legislative, Judicial and Executive Compensation's December 24, 2015 Report",

the letter stated that the questions asked of the chairs and ranking members of the fiscal committees were also properly asked of them, *to wit*,

> "Did you furnish my e-mails pertaining to the February 4, 2016 'public protection' budget hearing to ALL members of your committees, as those e-mails requested, and as I further requested in follow-up phone calls to your staff. And if not, why not?"

Additionally, it asked:

> "what are your findings of fact and conclusions of law with respect to those e-mails and the other correspondence I sent you from January 15th onward, all demonstrating that the latest round of judicial salary increases and this year's Judiciary and Legislative budgets, combined in the Governor's materially discrepant Budget Bill #S.6401/A.9001, are statutorily-violative, unconstitutional, and fraudulent",

294. Plaintiff SASSOWER also requested responses by February 25, 2016.

295. Upon information and belief, defendants did not respond, as plaintiffs received no responses.

296. Plaintiffs also received no response to their January 28, 2016 letter to defendants FLANAGAN, HEASTIE, Senate Minority Leader Stewart-Cousins, and Assembly Minority Leader Kolb entitled "To Which Committee(s) Have You Assigned Oversight of the December 24, 2015 Report of the Commission on Legislative, Judicial & Executive Compensation – and the Legislature's Duty to Not only Override its Judicial Salary Increase Recommendations, but to Repeal the Commission Statute, etc." (Exhibit 43). Upon information and belief, defendants did not respond.

297. Instead, on March 14, 2016, amidst declarations by legislative leaders about restoring public trust, describing the fiscal committees' budget review as an "extraordinarily transparent

process" with "95 hours of budget hearings", defendants SENATE and ASSEMBLY each passed resolutions, essentially on party lines, embodying proposals of their respective political majority party/coalition conferences, determined behind-closed-doors (Exhibit 31).

298. Identically to the past two years, defendant SENATE's resolution omitted any reference to Legislative/Judiciary Budget Bill #S.6401, as well as the debt service bill (#S.6402), in reciting the numbers of eight other budget bills as comprising the "Executive Budget submission" (Exhibit 31-a). Purporting that the Senate Finance Committee had "conducted an extensive study and review", the resolution buried within its incorporated "Report on the Amended Executive Budget", a single reference to Budget Bill #S.6401:

> "JUDICIARY
> Legislature and Judiciary (S.6401)
> * the Senate modifies the Office of Court Administration to fund necessary increases for judicial salaries." (p. 29).

299. Identically to the past two years, defendant ASSEMBLY's resolution included Legislative/Judiciary Budget Bill #A.9001 among the ten bills it enumerated as comprising the "Executive Budget submission" (Exhibit 31-c). However, like the Senate majority party/coalition proposal, the Assembly majority party proposal pertained only to the Judiciary, notwithstanding it was featured in a section entitled "Legislature and Judiciary". Among its recommendations:

> "In keeping with the findings of the New York State Commission on Legislative, Judicial, and Executive Compensation, the Assembly proposal includes $27.2 million to fully support the first phase of a multi-year adjustment in salary for members of the New York State judiciary." (Exhibit 31-d at 70-1).

300. In fact, the Commission's finding was that the first phase of the judicial salary increase would be "approximately $26.5 million for the next fiscal year" (December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation, at p. 6), which, at the

February 4, 2016 "public protection" budget hearing, morphed into a request by Chief Administrative Judge Marks for $27 million.

CAUSES OF ACTION

AS AND FOR A NINTH CAUSE OF ACTION

The Legislature's Proposed Budget for Fiscal Year 2016-2017, Embodied in Budget Bill #S.6401/A.9001, is Unconstitutional & Unlawful

301. Plaintiffs repeat, reiterate, and reallege ¶¶1-300 with the same force and effect as if more fully set forth herein – and, specifically, their "Questions for Temporary Senate President Flanagan and Assembly Speaker Heastie", transmitted by a February 3, 2016 e-mail (Exhibit 45).

302. The Legislature's proposed budget for fiscal year 2016-2017 is identical to the Legislature's proposed budget for fiscal years 2015-2016 and 2014-2015, embodied in the Governor's Legislative/Judiciary budget bills for those years. As such, it suffers from the same unconstitutionality, unlawfulness, and fraudulence as set forth by the first cause of action of plaintiffs' verified complaint (¶¶76-98), reiterated and reinforced by the fifth cause of action of their verified supplemental complaint (¶¶169-178).

303. Once again, the Legislature's proposed budget is unconstitutional, *on its face*. Neither the December 1, 2015 coverletter nor its transmitted content (Exhibits 24-d, 24-e) make any claim that it is "itemized estimates of the financial needs of the legislature", as Article VII, §1 expressly requires. Nor do they purport to be "certified by the presiding officer of each house", as Article VII, §1 expressly requires.

304. As previously stated (¶82), "It is to prevent fraud and larceny of taxpayer monies that Article VII, §1 requires that the Legislature's 'itemized estimates' of 'financial needs' be 'certified by the presiding officer of each house' – just as it requires the Judiciary's 'itemized estimates' of its

'financial needs' be 'approved by the court of appeals and certified by the chief judge of the court of appeals'.

305. That Article VII, §1 does not lay out any procedure by which the Legislature and Judiciary are to ascertain their 'itemized estimates', which it does for the Executive branch, reinforces the importance of certification.

306. Further establishing that the Legislature's proposed budget, *on its face*, is not "itemized estimates of the financial needs of the legislature" is that: (a) it is missing "General State Charges"; and (b) its budget figures are identical to those of the Legislature's budgets for the past six past fiscal years – reflecting that they are the product of manipulation.

307. Identically to the past two years, defendants SENATE and ASSEMBLY have no records reflecting the process/procedure by which the Legislature's budget for fiscal year 2016-2017 was compiled (Exhibit 53).

308. Identically to the past two years, there was no cognizable process by which the Legislative budget was compiled.

309. Article VII, §1 does not vest the Temporary Senate President and Assembly Speaker with power to themselves determine the "itemized estimates of the financial needs of the legislature", but only to certify same. Implicitly, that power is vested in "the appropriate committees of the legislature". As pointed out by plaintiffs more than two years ago (¶88):

> "...it should be obvious that the reason Article VII, §1 requires that the Judiciary's 'certified' 'itemized estimates' of its 'financial needs' be transmitted to 'the appropriate committees of the legislature', in addition to the Governor, but does not require that the Legislature's 'certified' 'itemized estimates' of its 'financial needs' be transmitted to 'the appropriate committees of the legislature', is because 'the appropriate committees of the legislature are presumed to have formulated the 'itemized estimates' that the 'presiding officer of each house' have 'certified'."

310. No provision of the Constitution and no statute or rules of the Senate or Assembly vest the Temporary Senate President and Assembly Speaker with the power that defendants FLANAGAN and HEASTIE have seemingly arrogated to themselves.

311. Nor would "appropriate committees of the legislature" craft such a budget as defendants FLANAGAN and HEASTIE transmitted to defendant CUOMO – one whose lump-sum, "slush-fund" appropriations give them a free hand in financially rewarding members and legislative committees who follow their dictates and punishing those who do not.

312. In addition to being unconstitutional *on its face, as written*, the Legislature's budget for fiscal year 2016-2017 is unconstitutional *as applied*, as demonstrated by their implementation of past legislative budgets, especially the many years of identical budgets.

313. Upon information and belief, defendants FLANAGAN and HEASTIE have followed in their predecessors' footsteps: using the lump sum appropriations of the Legislature's budget as their most powerful tool to dominate members and committees and deprive them of their "financial needs" for discharging their constitutional duties, and for discharging them with independence.

314. Plaintiffs' first-hand interaction with defendants SENATE and ASSEMBLY pertaining to the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation and to the Judiciary and Legislative budget for fiscal year 2014-2015 – much of it evidenced by written correspondence (Exhibits 38, 37, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 51, 52, 53, 54) – establishes that these defendants, by their "appropriate committees" and by their members, are not functioning in any manner remotely consistent with their constitutional duties.

315. As previously stated (¶94):

> "In every respect, defendants SENATE and ASSEMBLY have fallen beneath a constitutionally acceptable threshold of functioning – and it appears the reason is not limited to Senate and Assembly rules that vest in the Temporary Senate President and Speaker strangulating powers, the subject of the Brennan Center's 2004, 2006, and

2008 reports on the Legislature. Rather, it is because – without warrant of the Constitution, statute, or Senate and Assembly rules, as here demonstrated, the Temporary Senate President and Speaker have seized control of the Legislature's own budget, throwing asunder the constitutional command: 'itemized estimate of the financial needs of the legislature, certified by the presiding officer of each house'".

316. Once again, defendant CUOMO has abetted this constitutional defiance – including by not even furnishing a recommendation on the Legislature's budget that he sends back to it "without revision".

AS AND FOR A TENTH CAUSE OF ACTION

The Judiciary's Proposed Budget for 2016-2017, Embodied in Budget Bill #S.6401/A.9001, is Unconstitutional & Unlawful

317. Plaintiffs repeat, reiterate, and reallege ¶¶1-316 with the same force and effect as if more fully set forth herein – and, specifically, their "Questions for Chief Administrative Judge Marks", transmitted by their February 2, 2016 e-mail (Exhibit 44).

318. The Judiciary's proposed budget for fiscal year 2016-2017, embodied by Budget Bill #S.6401/A.9001, is materially identical to the Judiciary's proposed budget for fiscal years 2014-2015 and 2015-2016, embodied by the Governor's Legislative/Judiciary budget bills for those years. As such, it suffers from the same unconstitutionality, unlawfulness, and fraudulence as set forth by the second cause of action of plaintiffs' verified complaint (¶¶99-108), reiterated and reinforced by the sixth cause of action of plaintiffs' supplemental verified complaint (¶¶179-193).

319. Identical to the Judiciary's proposed budget for the past two fiscal years, defendant CUOMO, his Division of the Budget, and defendants SENATE and ASSEMBLY are unable to comprehend the Judiciary's proposed budget for fiscal year 2016-2017 on its most basic level: its cumulative dollar amount and its percentage increase over the Judiciary's budget for the current

fiscal year. As stated at the outset of plaintiffs' "Questions for Chief Administrative Judge Marks" (Exhibit 44), they diverge as to relevant figures and percentages:

A. Defendant CUOMO's "Commentary of the Governor on the Judiciary" (Exhibit 79-a):

> "The Judiciary has requested appropriations of $2.13 billion for court operations, exclusive of the cost of employee benefits. As submitted, disbursements for court operations from the General Fund are projected to grow by $44.4 million or 2.4 percent."

B. Defendant CUOMO's Division of the Budget website, which defers to text furnished by Judiciary (Exhibit 29-a):

> "The Judiciary's General Fund Operating Budget requests $1.9 billion, excluding fringe benefits, for Fiscal Year 2016-2017. This represents a cash increase of $44.4 million, or 2.4%. The appropriation request is $1.9 billion, which represents a $43.4 million, or 2.3%, increase.
>
> ...
>
> The Judiciary's All Funds budget request for Fiscal Year 2016-2017, excluding fringe benefits, totals $2.13 billion, an appropriation increase of $48.3 million or 2.3% over the 2014-2015 All Funds budget..."

C. Senate Majority's "White Book", under Senate Finance Committee Chair Young's auspices (Exhibit 29-b):

> "The FY 2017 Executive Budget proposes All Funds spending of $2.9 billion, an increase of $112.2 million, or 4.1 percent." (p. 91). This is further particularized by a chart representing this as "Proposed Disbursements – All Funds": $2,865,600,000 – representing a change of $112,224.000 and a percentage of 4.08% (p. 93).
>
> "the Judiciary's proposed budget would increase general fund cash spending by $44.4 million, or 2.4 percent".

D. Senate Minority's "Blue Book", under Senate Finance Committee Ranking Member Krueger's auspices (Exhibit 29-c):

> "The Judiciary proposed Budget is $2.13 billion, an increase of $48.2 million or 2.3% from the SFY 2015-2016 Enacted Budget..." (p. 179).

This is further particularized by a chart as the "Executive Recommendation 2016-17": $2,132,526,345, the "$ change" as $48,254,307, and the "% Change" as 2.3% (p. 179).

E. Assembly Majority's "Yellow Book", under Assembly Ways and Means Committee Chair Farrell's auspices (Exhibit 29-d):

> "The Judiciary's proposed budget request recommends appropriations of $2.9 billion, which is an increase of $81.94 million or 2.9 percent from the State Fiscal Year (SFY) 2015-16 level." (p. 145).
>
> A table of "Appropriations" shows the "Exec Request", in millions, at "2,877.49" millions of dollars, representing a change of "81.94" millions of dollars with a percent change of "2.93'. A table of "Disbursements" shows an "Exec Request", in millions, at "2,865.60" millions of dollars, representing a change of "112.23" millions of dollars, for a percent change of "4.08". (p. 145).

F. Assembly Minority's "Green Book", under Assembly Ways and Means Committee Ranking Member Oaks' auspices (Exhibit 29-e):

> "$2.1 billion for the Judiciary, $48.3 million more than last year. This represents a 2.3% increase in spending."
>
> "General State Charges: (Non-Salary) Benefits: $730 million for General State charges. $34 million more than last year. This pays for fringe benefits of employees of the court system, including all statutorily-required and collectively bargained benefits."

320. Plaintiffs now additionally challenge the constitutionality and lawfulness of the interchange provision appearing at §2 of the Judiciary's "single budget bill" (Exhibit 25-d) – and replicated, *verbatim*, in §2 of defendant CUOMO's Legislative/Judiciary Budget Bill #S.6401/A.9001[7] (Exhibit 27-b, p. 10). Such challenge is both *as written and as applied.*

321. Plaintiffs' challenge to the constitutionality of the interchange provisions, *as written*, begins with *Hidley v. Rockefeller*, 28 N.Y.2d 439, 447-449 (1971), wherein then Chief Judge Stanley Fuld, writing in dissent from the Court's decision addressed only to the issue of standing, stated:

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[7] The same interchange provision identically appears at §2 of the Judiciary's "single budget bill" for the past two fiscal years, incorporated *verbatim* in defendant CUOMO's Legislative/Judiciary budget bills for those years.

"...the provisions which permit the free interchange and transfer of funds are unconstitutional on their face...To sanction a complete freedom of interchange renders any itemization, no matter how detailed, completely meaningless and transforms a schedule of items or of programs into a lump sum appropriation in direct violation of Article VII of the Constitution. (underlining added).

322. *As written*, the interchange provision here at issue states:

"Notwithstanding any provision of law, the amount appropriated for any program within a major purpose within this schedule may be increased or decreased in any amount by interchange with any other program in any other major purpose, or any appropriation in section three of this act, with the approval of the chief administrator of the courts." (Exhibit 27-b, p. 10).

323. *As written*, the "notwithstanding any provision of law" language is vague and overbroad. The "law" includes the New York State Constitution – and such is unconstitutional, *on its face*, as no statute can override the Constitution.

324. At bar, the "notwithstanding any provision of law" language authorizes the Judiciary to violate New York State Constitution, Article VII, §1, §4, §6, and §7, which speak of "itemized estimates", "items of appropriations"; "stated separately and distinctly...and refer each to a single object or purpose"; made for "a single object or purpose", that are "particular" and "limited"; that "distinctly specify the sum appropriated, and the object or purpose to which it is to be applied" as well as Article IV, §7 pertaining to the Governor's line-item veto of "items of appropriations".[8]

325. Moreover, the "law" includes the very statute governing judiciary interchanges, Judiciary Law §215 – and there is no basis for *sub silentio* repudiating its careful statutory

[8] So, too, do the statutes pertaining to appropriations and reappropriations require specificity. See, also, State Finance Law §43, entitled "Specific appropriations limited as to use; certain appropriations to be specific": "Money appropriated for a specific purpose shall not be used for any other purpose, and the comptroller shall not draw a warrant for the payment of any sum appropriated, unless it clearly appears from the detailed statement presented to him by the person demanding the same as required by this chapter, that the purposes for which such money is demanded are those for which it was appropriated..."

restrictions and safeguards, other than to accomplish what both the statute and Constitution proscribe.

326. Judiciary Law §215(1), entitled "Special provisions applicable to appropriations made to the judiciary in the legislature and judiciary budget", states:

> "1. The amount appropriated for any program within a major purpose within the schedule of appropriations made to the judiciary in any fiscal year in the legislature and judiciary budget for such year may be increased or decreased by interchange with any other program within that major purpose with the approval of the chief administrator of the courts who shall file such approval with the department of audit and control and copies thereof with the senate finance committee and the assembly ways and means committee except that the total amount appropriated for any major purpose may not be increased or decreased by more than the aggregate of five percent of the first five million dollars, four percent of the second five million dollars and three percent of amounts in excess of ten million dollars of an appropriation for the major purpose. The allocation of maintenance undistributed appropriations made for later distribution to major purposes contained within a schedule shall not be deemed to be part of such total increase or decrease.

327. Judiciary Law §215(1) restricts interchanges and their amounts to programs within the same "major purpose" – as to which the Chief Administrator's approval must be filed with "the department of audit and control and copies thereof with the state finance committee and the assembly ways and means committee". Such accords with statutory requirements, conditions, and procedures set forth in State Finance Law §51 entitled "Interchange of appropriations or items therein" and the statutory sections to which State Finance Law §51 refers in stating:

> "No appropriation shall be increased or decreased by transfer or otherwise except as provided for in this section or section fifty-three, sixty-six-f, seventy-two or ninety-three of this chapter, or article eight of the education law"[9]

328. In other words, *as written*, the interchange provision of §2 gives the Chief Administrator complete discretion to do whatever he wants, unbounded by any standard and by any

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[9] State Finance Law §53, entitled "Special emergency appropriations"; State Finance Law §66-f, entitled "Certain interagency transfers authorized"; State Finance Law §72, entitled "General fund"; State Finance Law

reporting/notice requirement to the other two government branches. Such is unconstitutional and unlawful.

329. *As applied*, the interchange provision is unconstitutional and unlawful in that it creates a slush-fund and permits concealment of true costs. It has enabled the Judiciary to surreptitiously fund, in fiscal year 2013-2014, the second phase of the judicial salary increase recommended by the Commission on Judicial Compensation's August 29, 2011 Report, without identifying the dollar amount of such increase, and, in fiscal year 2014-2015, to even more surreptitiously fund the third phase of the judicial salary increase recommended by the Commission's August 29, 2011 Report, without even identifying the third phase.

330. The Judiciary's responses to legitimate FOIL requests about its use of the interchange provision in fiscal year 2015-2016 – and about the dollar costs of the Commission on Judicial Compensation's three-phase judicial salary increases, funded from reappropriations (Exhibits 50, 49) – only further reinforce the unconstitutionality of the interchange provision, *as applied.*

331. Should defendant CUOMO adhere to his Commentary, "...I expect that [the Judiciary] will again absorb the first year of recommended judicial salary increases within an overall spending level of 2 percent in the 2016-17 budget" (Exhibit 27-a), the Judiciary will presumably fund the first phase of the judicial salary increase recommended by the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation from the §3 reappropriations, *via* the §2 interchange provision.

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§93, entitled "Capital projects fund"; and Education Law §355(4)(c), "Powers and duties of trustees-

AS AND FOR AN ELEVENTH CAUSE OF ACTION

Budget Bill #S.6401/A.9001 is Unconstitutional & Unlawful Over & Beyond the Legislative & Judiciary Budgets it Embodies "Without Revision"

332. Plaintiffs repeat, reiterate, and reallege ¶¶1-331, with the same force and effect as if more fully set forth herein.

333. Defendant CUOMO's Budget Bill #S.6401/A.9001 (Exhibit 27-b) includes tens of millions of dollars of reappropriations for the Legislature that were never part of the proposed budget for fiscal year 2016-2017 transmitted by the December 1, 2015 letter of defendants FLANAGAN and HEASTIE to defendant CUOMO (Exhibits 24-d, 24-e). This replicates, identically, what defendant CUOMO did by his Legislative/Judiciary budget bills for fiscal years 2014-2015 and 2015-2016, where he also included tens of millions of dollars in legislative reappropriations that were never part of the proposed legislative budgets for those fiscal years. As such, Legislative/Judiciary Budget Bill #S.6401/A.9001 suffers from the same unconstitutionality and unlawfulness, as set forth by the third cause of action of plaintiffs' verified complaint (¶¶109-112), reiterated and reinforced by the seventh cause of action of plaintiffs' supplemental verified complaint (¶¶179-193).

334. Plaintiffs' third and seventh causes of action (¶¶111-112, 201) asserted that absent defendants' response to "basic questions", the legislative reappropriations in those budget bills were unconstitutional and unlawful. The "basic questions" particularized were:

> "where these reappropriations came from, who in the Legislature, if anyone, certified that the monies proposed for reappropriations were suitable for that purpose; their cumulative total; and the cumulative total [of] the monetary allocations for the Legislature in Budget Bill #...".

335. This eleventh cause of action identically asserts that the 24 pages of legislative reappropriations in Legislative/Judiciary Budget Bill #S.6401/A.9001 (Exhibit 27-b) are

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administrative and fiscal functions. See, also: State Finance Law §50, "Transfers of appropriations".

unconstitutional and unlawful absent defendants' response to the same "basic questions", now pertaining to Legislative/Judiciary Budget Bill #S.6401/A.9001. It also expands these questions by the following from plaintiffs' "Questions for Temporary Senate President Flanagan and Assembly Speaker Heastie" (Exhibit 45) pertaining to the alterations in legislative reappropriations in the amended Legislative/Judiciary budget bills for the past two fiscal years:

> "(23) In March 2015, an amended Legislative/Judiciary Budget Bill for fiscal year 2015-2016 (#S.2001-a/A.3001-a) altered approximately 80 legislative reappropriations – most of which were reduced, sometimes dramatically. Is that correct? What was the dollar difference in the cumulative totals of the legislative reappropriations, before amended and after?
>
> (24) In March 2014, an amended Legislative/Judiciary Budget Bill for fiscal year 2014-2015 (#S.6351-a/A.8551-a) altered approximately 70 reappropriations – increasing them, decreasing them, and in at least two instances, adding on. Is that correct? What was the dollar difference in the cumulative totals of the legislative reappropriations, before amended and after?
>
> (25) Why were the legislative reappropriations changed for these two fiscal years – and by what process were they determined? Were these changed reappropriations certified? And by whom?
>
> (26) Why is it that the changed legislative reappropriations in Budget Bills #S.2001-a/A.3001-a and #S.6351-a/A.8551-a were not flagged by the safeguarding device identified on the first page of each bill by its pre-printed 'EXPLANATION – Matter in italics (underscored) is new; matter in brackets [ ] is old to be omitted'? And were such changes flagged in any amended introducer's memo, as required by Senate Rule VII, §4(b) and Assembly Rule III, §1(f) and §6?
>
> (27) Do you expect that the legislative reappropriations in Legislative/Judiciary Budget Bill #S.6401/A.9001 for fiscal year 2016-2017 will be changed? What will be the basis? By what process? Will these changed reappropriations be certified? By whom?"

AS AND FOR A TWELFTH CAUSE OF ACTION

Nothing Lawful or Constitutional Can Emerge From a Legislative Process that Violates its Own Statutory & Rule Safeguards – and the Constitution

336. Plaintiffs repeat, reiterate, and reallege ¶¶1-335, with the same force and effect as if more fully set forth herein.

337. To date, defendant SENATE and ASSEMBLY's violations of statutory and rule safeguards with respect to Legislative/Judiciary Budget Bill #S.6401/A.9001 are identical to their violations two years ago with respect to the Legislative/Judiciary budget bill for fiscal year 2014-2015 – the subject of the fourth cause of action of plaintiffs' verified complaint (¶¶113-126) – and identical to their violations last year with respect to the Legislative/Judiciary budget bill for fiscal year 2015-2016 – the subject of the eighth cause of action of their verified supplemental complaint (¶¶203-236). The only difference between those causes of action and this is that this cause of action stops short of the full panoply of Senate and Assembly violations because it has been drafted at a point where those anticipated violations have not yet all occurred.

338. This twelfth cause of action, therefore, replicates – to the extent applicable – the fourth and eighth causes of action so as to apply them to Legislative/Judiciary Budget Bill #S.6401/A.9001.

339. Identically to the last two years, the Legislature has willfully and deliberately violated Senate Rule VIII, §7, Senate Rule VII, §1, and Assembly Rule III, §1(f) and §2(a), pertaining to fiscal notes, fiscal impact statements, and introducer's memoranda for Legislative/Judiciary Budget Bill #S.6401/A.9001 – made applicable by Senate Rule VII, §6 and Assembly Rule III, §2(g). If properly drawn, these would have provided:

(a) the cumulative dollar amount of the bill in its entirety;

(b) the cumulative dollar amount of the legislative portion, inclusive of General State Charges and reappropriations;

(c) the cumulative dollar amount of the judiciary portion, inclusive of General State Charges and reappropriations;

(d) the percentage increase of each cumulative dollar amount over the dollar amounts in last year's corresponding Legislative/Judiciary Budget Bill.

340. Identically to the last two years, defendants' violations of these Senate and Assembly rules are compounded by the fact that Legislative/Judiciary Budget Bill #S.6401/A.9001 contains NO cumulative dollar amount for the bill. Nor does it contain cumulative dollar amounts for its separate legislative and judiciary portions (Exhibit 27-b).

341. Identically to the last two years, defendant fiscal committee chairs and ranking members have not themselves furnished such information, notwithstanding it would have been publicly available had they complied with the mandate of Senate Rule VIII, §7, Senate Rule VII, §1, and Assembly Rule III, §1(f) and §2(a) for fiscal notes, fiscal impact statements, and introducer's memoranda, which was their duty to do (Exhibits 51, 52).

342. Equally true today, as it was last year and the year before with respect to the identical violations of these Senate and Assembly rules:

> "...defendant SENATE and ASSEMBLY have demonstrated their utter unconcern in imposing upon taxpayers the expense of two budgets – the Judiciary and Legislative budgets – whose dollar amount they do not know or will not reveal. Such is utterly unconstitutional." (¶118 of plaintiffs' fourth cause of action; ¶216 of plaintiffs' eighth cause of action).

343. The unconstitutionality of withholding from the public the dollar amounts of the Judiciary and Legislative budgets is reflected by the ENTIRE constitutional scheme for the budget, set forth in Article VII, §§1-7 and Article IV, §7, and reinforced by the multitude of statutes

pertaining thereto and by Senate and Assembly rules – ALL geared toward itemization and specifics as to cost.

344. Identically to the past two years, the Legislature has willfully and deliberately violated Legislative Law §32-a requiring the Senate Finance Committee and Assembly Ways and Means Committee to "provide individuals and organizations throughout the state with an opportunity to comment on the budget" – and to make "every effort" to do so. Once again, the chairs and ranking members of those committees made no "effort" to allow plaintiff SASSOWER to testify in opposition to the Legislature's proposed budget, to the Judiciary's proposed budget, and to defendant CUOMO's Legislative/Judiciary budget bill – #S.6401/A.9001.

345. Identical, too, is their reason: their knowledge that plaintiff SASSOWER's opposition testimony is dispositive as to the unconstitutionality, unlawfulness, and fraudulence of the budgets of the Legislature and Judiciary and of defendant CUOMO's materially deviant Legislative/Judiciary Budget Bill #S.6401/A.9001, concealing relevant dollar costs, both cumulative and by itemizations and lump-sums which they themselves cannot comprehend. This is the same reason why, identically to the past two years, they have not included plaintiffs' February 18, 2016 letter in their webpage record of their "public protection" budget hearing, as that letter expressly requested (Exhibit 46, p. 14).

346. Identically to the past two years, the fiscal committees have again effectively subverted Legislative Law §32-a by combining the public's hearings on the budget required by Legislative Law §32-a with the very different budget hearings of Article VII, §3 of the New York State Constitution and Legislative Law §31 for the testimony of the Governor, Executive branch

agency heads, and the like.[10] Their combined budget hearings – which they organize by "programmatic areas" – are filled with testimony from officials and recipients of budgetary appropriations. The public's testimony is shoved to the end – or, if dispositive of the unlawfulness and unconstitutionality of the budget, as at bar, shut out entirely on the pretext that the hearing is full or, as this year, just shut out.

347. Exacerbating this subversion of Legislative Law §32-a is that, identically to the past two years, the fiscal committees: (a) did not schedule any of the public's budget hearings 'regionally', as the statute contemplates; (b) assigned the Judiciary's budget to the 'programmatic area' of 'public protection', as if the Judiciary were an executive agency, rather than, as it is, a separate branch of government; (c) failed to actually assign the Legislature's budget to "public protection" or any other "programmatic area".

348. Identically to the past two fiscal years, the fiscal committee chairs and ranking members never intended to examine the Legislature's budget for fiscal year 2016-2017 at the "public protection" budget hearing, did not examine it at that budget hearing and, in violation of Legislative Law §32-a, held no hearing at which plaintiff SASSOWER or any other member of the public could be heard with respect to the Legislature's budget for fiscal year 2016-2017.

349. Underlying this recurring violation of Legislative Law §32-a with respect to the Legislature's own budget and the Legislative/Judiciary budget bill encompassing it is the legislative leaders' direct self-interest in perpetuating the constitutional, statutory, and rule violations that make the legislative budget a "slush fund" from which they can monopolize power at the expense of rank-and-file members and functioning committees.

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[10] Further reinforcing that the public's hearings are to be separate from the hearings for department heads and divisions is Legislative Law §53 and §54-a which separately list them in the "schedule for the specific budget-related actions of each house". *See* ¶360, *infra*.

350. Self-interest is also the reason why, in violation of Senate Rule VIII, §4(c) and Assembly Rule IV, §1(d) requiring committee oversight, the Legislature, from its leadership, to its committee heads, to its rank and file members refuse to effect oversight over the Commission on Legislative, Judicial and Executive Compensation, its "force of law" judicial salary increase recommendations, and the Commission statute. Doing so would undermine their easy path to their own salary increases *via* the Commission.

351. The non-function and dysfunction of defendants SENATE and ASSEMBLY committees – and of defendants SENATE and ASSEMBLY as a whole – described and documented by plaintiffs' verified complaint and verified supplemental complaint – is manifested, now again, in this budget cycle, proven by the complete absence of ANY response from the Legislature's leadership, from its committee chairs and ranking members, and from rank-and-file members to plaintiffs' correspondence pertaining to the statutory violations, fraud, and unconstitutionality of the judicial salary increases that will take effect automatically on April 1, 2016 and pertaining to the unconstitutional and fraudulent Judiciary and Legislative budgets and materially-discrepant Legislative/Judiciary Budget Bill #S.6401/A.9001 (Exhibits 38, 37, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 51, 52).

352. In the six and a half weeks since the fiscal committees' February 4, 2016 "public protection" budget hearing, there has been no committee action on Legislative/Judiciary Budget Bill #S.6401/A.9001, pursuant to Senate Rule VIII, §§3, 4, 5 and Assembly Rule IV, §§2, 4, 6, which mandate public meetings, recorded votes, committee reports, with amendments following procedures set forth, *inter alia*, by Senate Rule VII, §4(b); and Assembly Rule III, §§1(f) and 6.

353. Identically to the last two years, defendants SENATE and ASSEMBLY have dispensed with any committee deliberation and any committee vote on Legislative/Judiciary Budget

Bill #S.6401/A.9001 by any of the Legislature's "appropriate committees", *to wit*, in the Senate: (i) the Senate Finance Committee; (ii) the Senate Judiciary Committee; (iii) the Senate Committee on Investigations and Government Operations; in the Assembly: (i) the Assembly Ways and Means Committee; (ii) the Assembly Judiciary Committee; (iii) the Assembly Committee on Government Operations; (iv) the Assembly Committee on Oversight, Analysis, and Investigation.

354. Upon information and belief, defendants SENATE and ASSEMBLY have also dispensed with any committee deliberations and any committee votes on any of defendant CUOMO's executive budget. These are his four other appropriation budget bills:

(1) State Operations (#S.6400/A.9000);
(2) Debt Service (#S.6402/A.9002);
(3) Aid to Localities (#S.6403/A.9003);
(4) Capital Projects (#S.6404/A.9004);

and his five proposed "Article VII bills":

(1) Public Protection and General Government (S.6405/A.9005);
(2) Education, Labor and Family Assistance (S.6406/A.9006);
(3) Health and Mental Hygiene (S.6407/A.9007);
(4) Transportation, Economic Development and Environmental Conservation (S.6408/A.9008);
(5) Revenue (S.6409/A.9009).[11]

355. Upon information and belief, defendants SENATE and ASSEMBLY have also dispensed with any deliberations and any votes on the Senate and Assembly floor with respect to any of these ten budget bills, including the Legislative/Judiciary Budget Bill #S6401/A.9001.

356. With the exception of Legislative/Judiciary Budget Bill #S6401/A.9001 and the Debt Service Budget Bill #S.6402/A.9002, the other eight budget bills have each been amended, twice (Exhibits 30-a, 30-b).[12]

[11] Defendant CUOMO has also submitted two "freestanding Article VII bills": (1)Pension Forfeiture Concurrent Resolution (S.6410/A.9010) and (2) Good Government and Ethics Reform (S.6411/A.9011).

357. The first set of amendments was apparently defendant CUOMO's 30-day amendments when all eight budget bills were amended on the same day, February 16, 2016 – and in a fashion producing no differences in the Senate and Assembly versions of the same budget bills.

358. The second set of amendments also took place in unison. On March 11, 2016, the eight Assembly budget bills were amended. The next day, March 12, 2016, the corresponding eight Senate budget bills were amended. Yet by whom these amendments were introduced, where, why, and by what vote they were approved is a mystery – especially as neither the Senate nor Assembly were in session on those two days, which were a Friday and a Saturday (Exhibit 30-c). According to Assembly webpages for each of the eight Senate bills and each of the eight Assembly bills: "There are no votes for this bill in this legislative session" and "memo not available". As such, these amendments appear to be non-amendments, as they are utterly fraudulent.

359. Identically to the past two years, in lieu of committee and floor discussion, debate, amending, and voting on defendant CUOMO's budget bills, defendants FLANAGAN and HEASTIE promulgated a Joint Legislative Budget Schedule that deferred "Senate and Assembly Budget Actions" to March 14, 2016 (Exhibit 28-b).

360. Identically to the last two years, their Joint Legislative Budget Schedule does not reveal that it is mandated by statute, Legislative Law §53 and §54-a, and by a legislative rule based thereon, Senate and Assembly Permanent Joint Rule III – thereby concealing its violations thereof:

- In violation of Legislative Law §53 and §54-a, the Joint Legislative Budget Schedule did not include dates for the Legislature's two different sets of hearings on the budget – which, as these two statutes reflect, are to be separate: the public is to have its own hearings pursuant to Legislative Law §32-a and the department and division heads to have hearings of their own pursuant to Article VII, §3 of the New York State Constitution and Legislative Law §31.

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12 The Pension Forfeiture Concurrent Resolution (S.6410/A.9010) and Good Government and Ethics Reform bill (S.6411/A.9011) – neither of which the Senate and Assembly have included in the recitation of budget bills in their resolutions – have also not been amended.

- In violation of Legislative Law §54-a and Senate and Assembly Permanent Joint Rule III, the Joint Legislative Budget Schedule did not provide for the convening of a Joint Budget Conference Committee within ten days "after submission of the budget by the governor pursuant to article seven of the constitution" – as those provisions mandate. Rather, it did not schedule the Joint Budget Conference Committee until March 15 – this being the identified date the "Joint Senate & Assembly Budget Conference Committees Commence".

361. The requirement of Legislative Law §54-a[13] and Permanent Joint Rule III that the Joint Budget Conference Committee and subcommittees be established "within ten days following the submission of the budget by the Governor pursuant to article VII of the constitution" – which, this year, would have been by January 23, 2016 – is so that they can promptly become operational and do what conference committees are supposed to do – and what both the statute and rule identify as their function: to reconcile different versions of budget bills and resolutions passed by the two legislative houses.

362. The failure of defendants FLANAGAN and HEASTIE to timely establish the Joint Budget Conference Committee and subcommittees is a statutory and rule violation of constitutional magnitude – since Article VII, §4 unequivocally states:

> "...an appropriation bill shall when passed by both houses be a law immediately without further action by the governor, except that appropriations for the legislature and judiciary and separate items added to the governor's bills by the legislature shall be subject to approval of the governor as provided in section 7 of article IV." (underlining added).

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[13] Legislative Law §54-a., entitled "Scheduling of legislative consideration of budget bills" – the source of Permanent Joint Rule III – begins, as follows:

> "The legislature shall by concurrent resolution of the senate and assembly prescribe by joint rule or rules a procedure for:
>
> 1. establishing a joint budget conference committee or joint budget conference committees within ten days following the submission of the budget by the governor pursuant to article seven of the constitution, to consider and reconcile such budget resolution or budget bills as may be passed by each house..."

363. In other words, achieving an "on time" state budget is largely in the control of defendants SENATE and ASSEMBLY. Pursuant to Article VII, §4, once their two houses agree as to the items of appropriations to be stricken or reduced in defendant CUOMO's four appropriation bills other than the Legislative/Judiciary budget bill– which is what the conference committees should be brokering, based on amended bills – these bills each become "law immediately, without further action by the governor".

364. This year, identically to the past two years, defendants FLANAGAN and HEASTIE have foisted materially false and misleading resolutions on defendants SENATE and ASSEMBLY on the pretense that such are necessary to commence the conference committee process. The true purpose of these resolutions is to have their respective houses adopt policy positions and agendas that are the product of the closed-door majority political conferences of each house: in the Senate, of the Republican Conference in coalition with the Independent Democratic Conference; and in the Assembly, of the Democratic Conference.

365. As these majority political conferences – as well as the minority political conferences – are closed to the public because defendants SENATE and ASSEMBLY exempted them from the requirements of the Open Meetings Law [Public Officers Law, Article VII, §108.2], they violate Article III, §10 of the New York State Constitution: "Each house of the legislature shall keep a journal of its proceedings, and publish the same.... The doors of each house shall be kept open..." as well as the Legislature's own rules pursuant thereto: Senate Rule XI, §1 "The doors of the Senate shall be kept open" and Assembly Rule II, §1 "A daily stenographic record of the proceedings of the House shall be made and copies thereof shall be available to the public". They are unconstitutional,

as are their budget proposals by reason thereof. "*Albany's Dysfunction Denies Due Process*", 30 Pace L. Rev. 965 (2010), Eric Lane, Laura Seago.[14]

366. The budget proposals of these political conferences are unconstitutional for a further reason. They violate Article VII.

367. The Senate's resolution, adopted March 14, 2016, itself concedes this Article VII violation, stating:

> "WHEREAS, Article VII of the New York State Constitution provides the framework under which the New York State Budget is submitted, amended and enacted. The New York State Courts have limited the Legislature in how it may change the appropriations bills submitted by the Governor. The Legislature can delete or reduce items of appropriation contained in the several appropriation bills submitted by the Governor in conjunction with the Executive Budget, and it can add additional items of appropriation to those bills provided that such additions are stated separately and distinctly from the original items of the bill and refer each to a single object or purpose; and
>
> WHEREAS, An extensive study and review of the Governor's 2016-2017 Executive Budget submission has revealed that the construction of the budget bills submitted to the Legislature by the Governor constrains the Legislature in its ability to fully effectuate its intent in amending the Governor's budget submission; and
>
> ...
>
> WHEREAS, The Legislature has amended the Governor's 2016-2017 Executive Budget submission to the fullest extent possible within the authority provided to it pursuant to Section 4 of Article VII of the New York State Constitution; and

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[14] *See, in particular*, pp. 992: "the court should declare unconstitutional the provision of the Open Meetings law that allows for the discussion of public business in the privacy of legislative political conferences"; and pp. 997-998:

> "the fundamental problem with New York's legislative process is the domination by majority leadership.[fn] Such domination requires both committees and chamber consideration to be moribund, but leaders need some forum for communicating with members. This is the purpose of the closed, unrecorded, political conferences, most importantly those held by the majority party, which are typically led by the chamber leader. It is in these conferences—and only in these conferences—that bills are presented, discussed in earnest, and voted on. Without a majority vote of the majority party, no bill goes to the floor for final consideration. Conversely, virtually every bill that goes to the floor is passed.[fn] The conferences' privacy is to cover the fact that the discussions concern the politics of bills and not their substance...."

WHEREAS, The Senate, in addition to the Governor's 2016-2017 Executive Budget submission bills as amended by the Senate in the above referenced legislative bills, does hereby provide its recommendations as to provisions in the Governor's 2016-2017 Executive Budget submission which reflect those items the Senate is constrained from effectuating as amendments to the 2016-2017 Executive Budget appended hereto" (Exhibit 31-a).

368. This Senate resolution is virtually identical to its resolutions of the past two years. Except for the difference in the fiscal year and budget bill numbers, the only material difference is a single sentence in the specifying paragraph:

> "WHEREAS, The 2016-2017 Executive Budget includes funds for new programs throughout various agencies which are direct aid and grant programs, have been drafted as lump sum appropriations and are proposed to be distributed at the sole discretion of the Executive. In addition, some of these proposed initiatives related to capital plans have no corresponding plan details, which is imperative for proper consideration of these proposals. New capital spending, distributed through regional economic development councils, is also included in the Executive proposals" (underlining added),

which, in the past two fiscal years had read: "In addition, some of these proposed initiatives would be funded by eliminating existing programs."[15]

369. Upon information and belief, this year's Senate budget proposal, as likewise those of the two past fiscal years, repetitively violates not only Article VII, §4, but §§5, 6. These three constitutional provisions read, in full:

> §4. The legislature may not alter an appropriation bill submitted by the governor except to strike out or reduce items therein, but it may add thereto items of appropriation provided that such additions are stated separately and distinctly from the original items of the bill and refer each to a single object or purpose. None of the restrictions of this section, however, shall apply to appropriations for the legislature or judiciary.
>
> Such an appropriation bill shall when passed by both houses be a law immediately without further action by the governor, except that appropriations for the legislature and judiciary and separate items added

[15] The Senate resolution for fiscal year 2015-2016 was #950, for fiscal year 2014-2015, it was #4036.

to the governor's bills by the legislature shall be subject to approval of the governor as provided in section 7 of article IV.

§5. Neither house of the legislature shall consider any other bill making an appropriation until all the appropriation bills submitted by the governor shall have been finally acted on by both houses, except on message from the governor certifying to the necessity of the immediate passage of such a bill.

§6. Except for appropriations contained in the bills submitted by the governor and in a supplemental appropriation bill for the support of government, no appropriations shall be made except by separate bills each for a single object or purpose. All such bills and such supplemental appropriation bill shall be subject to the governor's approval as provided in section 7 of article IV.

No provision shall be embraced in any appropriation bill submitted by the governor or in such supplemental appropriation bill unless it relates specifically to some particular appropriation in the bill, and any such provision shall be limited in its operation to such appropriation."

370. With respect to Legislative/Judiciary Budget Bill #S.6401, the Senate budget proposal makes no proposal concerning the legislative portion, addressing itself only to the judiciary portion, as follows:

"JUDICIARY
Legislature and Judiciary (S.6401)
The Senate modifies the Office of Court Administration to fund necessary increases for judicial salaries." (Exhibit 31-b).

371. However, as Article VII, §4 gives the Legislature a free hand in amending the budgets for the Legislature and the Judiciary, there was no bar to the Senate Finance Committee or any other "appropriate" Senate committee, such as the Senate Judiciary Committee, amending #S.6401

372. Upon information and belief, the Assembly's current budget proposal, as likewise its proposals for the past two years, also repetitively violates Article VII, §§4, 5, 6.

373. With respect to Legislative/Judiciary Budget Bill #S.9001, the Assembly budget proposal also makes no proposal for the legislative portion, confining itself to the judiciary's portion, as follows:

"**Assembly Budget Proposal SFY 2016-17**
Judiciary

The Assembly provides an All FUNDS appropriation of $2.91 billion, an increase of $28.2 million.

State Operations

- In keeping with the findings of the New York State Commission on Legislative, Judicial, and Executive Compensation, the Assembly proposal includes $27.2 million to fully support the first phase of a multi-year adjustment in salary for members of the New York State Judiciary.

- The Assembly provides $1 million to establish a new court part at Rikers Island Correctional Facility.

Aid to Localities

- The Assembly accepts the Judiciary's proposal and recommends no changes.

Capital Projects

- The Assembly accepts the Judiciary's proposal and recommends no changes." (Exhibit 31-d).

374. Here, too, because Article VII, §4 gives the Legislature a free hand in amending the budgets for the Legislature and the Judiciary, there was no bar to the Assembly Ways and Means Committee – or such other "appropriate" Assembly committee as its Judiciary Committee – amending the unamended Legislative/Judiciary Budget Bill #A.9001 (Exhibit 30-a).

375. As for the Assembly's additional proposal under the heading "Article VII":

> "The Assembly proposes new legislation to extend for two years the ability of a referee and judicial hearing office (sic) to hear certain applications for Orders of Protection and Temporary Orders of Protection." (Exhibit 31-d),

it has no tie to any "particular appropriation" and, therefore, violates Article VII, §6.

376. Upon information and belief, defendants SENATE and ASSEMBLY have employed the "budget proposal" format as a vehicle for putting forward "new legislation", including on policy

and ethics issues, that they could not constitutionally include as budget legislation because it does not relate to any "particular appropriation" in appropriation bills or because it increases appropriations, in violation of Article VII, §§4-6.

377. To the extent defendants SENATE and ASSEMBLY viewed defendant CUOMO's appropriation-budget bills and his non-appropriation Article VII bills as containing appropriations and matter that the interpretations of "the New York Courts" constrained them from amending, they had a remedy in Article VII, §3, whose final third paragraph reads:

> '...The governor and the heads of departments shall have the right, and it shall be the duty of the heads of departments when requested by either house of the legislature or an appropriate committee thereof, to appear and be heard in respect to the budget during the consideration thereof, and to answer inquiries relevant thereto. The procedure for such appearances and inquiries shall be provided by law."

378. The law relating to such "appearances and inquiries" is Legislative Law §31. Entitled "Appearances and inquiries in respect to the budget; procedure regulated", it states:

> "The governor and the heads of departments, divisions and offices each shall have the right to appear voluntarily and be heard in respect to the budget before the committees of the houses of the legislature to which such budget may be referred under the rules of such houses, as herein provided. Such voluntary appearance by the head of a department, division or office may be made either in person or by an accredited representative of the department, division or office. If the governor or the head of any department, division or office shall request a hearing before the committee, in respect to the budget, the committee shall notify him or them of the time or times when the committee is prepared to hear him or them on such voluntary appearance. At any time before the bills accompanying the budget shall have been reported, the committee to which they were referred may request the head of any department, division or office, other than the governor, to appear before it, at a time stated or forthwith, and answer relevant inquiries in respect to the budget. If, pursuant to section three of article seven of the constitution, a house of the legislature directly requests the head of a department, division or office to appear before it or a committee thereof, to answer inquiries in respect to the budget, at a time stated or forthwith, the secretary or clerk of such house, as the case may be, shall notify him of such request and of the time when his appearance is desired, immediately upon the adoption of the resolution therefor. If the

head of a department, division or office whose appearance is requested by such house or committee be a board or commission, the request may be directed to one or more of its members, naming him or them." (underlining added).

379. Upon information and belief, neither defendants SENATE and ASSEMBLY nor any of their "appropriate committee[s]" requested defendant CUOMO or his "heads of departments" to appear before them to "answer inquires relevant" as to appropriations and legislation they were "constrained" from reducing or eliminating because of the interpretations of "The New York Courts" – and, if they did, it was not in conjunction with, or followed by, any request that defendant CUOMO "amend or supplement the budget and submit amendments to any bills submitted by him or her or submit supplemental bills", consistent with the constitutional scheme laid out in the first two paragraphs of Article VII, §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."

380. The statements made by members of the Joint Budget Conference Committee on March 15, 2016, at its first meeting, and by members of its subcommittees, including "public protection", the following day, at their first meeting (Exhibit 32)[16] pertaining to policy positions of their respective Senate and Assembly "one house" budget proposals, manifest a complete disregard of the limits of their powers under Article VII, §4 – identical to what they demonstrated in the past two years.

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16 The Assembly webpage posting the videos of these meetings is: http://assembly.state.ny.us/2016budget/?sec=jointvideo

381. Identically to the past two years, the Joint Budget Conference Committee and "public protections" subcommittee also demonstrated their violation of the requirement that their "deliberations...shall be open to the public in accord with the Open Meetings Law" (¶4 of the Joint Certificate). Their brief meetings were essentially announcements of their behind-closed-doors budget negotiations, conducted largely by staff, which last year and the year before produced no reports, in violation of Legislative Law §54-a and Permanent Joint Rules III, §1 and II, §1.

382. Identically to the past two years, the "real action" this year has been taking place out of public view, largely by the so-called professional staff, and will culminate in the behind-closed-doors, "three-men-in-a-room" budget deal-making by defendants CUOMO, FLANAGAN, and HEASTIE – expanded to a fourth man by inclusion of defendant KLEIN. Upon its conclusion, neither the public nor legislators will be informed of all changes made to the budget bills comprising the executive budget.

383. Based on past years, what will happen after the "three-men-in-a-room" huddle is predictable: Legislative/Judiciary Budget Bill #S.6401/A.9001 (Exhibit 27-b), as yet unamended, will, without discussion or vote by any committee or on the floor of the Senate and Assembly, turn into an amended bill, with significant alterations to legislative reappropriations, in particular. In violation of Legislative Law §54.2(b),[17] there will be NO report on it, and, in violation of Legislative Law §54.1,[18] there will be (i) NO "introductory memoranda or fiscal committee memoranda"

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[17] Legislative Law §54.2(b) states: "Before voting upon AN appropriation bill submitted by the governor and related legislation, as amended, in accordance with article seven of the constitution, each house shall place on the desks of its members a report relating to EACH such bill" (underlining, capitalization, and italics added),

[18] Legislative Law §54.1 states: "Upon passage of appropriation bills by both the senate and the assembly, the senate and the assembly shall issue either jointly or separately a summary of changes to the budget submitted by the governor in accordance with article seven of the constitution. The summary shall be in such a form as to indicate whether the budget as amended provides that, for the general fund, any changes in anticipated disbursements are balanced by changes in anticipated receipts. The summary shall be

furnishing "summary of changes" or "description of changes" for it *prior* to its passage; (ii) NO "summary of changes" or "description of changes" to it "upon passage...by both the senate and assembly" – and, if there is (unlike the past two years when there was none), it will be insufficient and materially incomplete, in whatever form furnished, including as "part of the report required by section twenty-two-b of the state finance law". Further, in violation of State Finance Law §22-b, entitled "Report of the legislature on the enacted budget",[19] there will either be NO reports on the enacted budget pursuant to State Finance Law §22-b, as happened in each of the past two years (Exhibit 54-h), or, as in years before that, NO reports that, in fact, comply with State Finance Law §22-b with respect to the Legislative/Judiciary budget bill, *inter alia*, because they will lack any mention of the legislative reappropriations and of their alteration in the amended bill.

384. The net result of defendants SENATE and ASSEMBLY's multitudinous violations of essentially ALL constitutional, statutory, and rule provisions designed to ensure responsible governance and accountability is that – identically to the past two years – the 2016 annual reports of the Senate and Assembly Judiciary Committees, required by Senate VIII, §4(d) and Assembly Rule IV, §9, will be unable to meaningfully and accurately furnish information about the Judiciary

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accompanied by descriptions of changes to both receipts and disbursements in sufficient detail as is necessary to describe legislative action on the governor's budget submission. The summary shall be in such format as determined by the senate and the assembly, either jointly or separately, and may be issued separately, as part of the report required by section twenty-two-b of the state finance law or may be included within the introductory memoranda or fiscal committee memoranda relating to such legislation or in such other manner as may be determined by the senate and the assembly, either separately or jointly" (underlining added).

[19] State Finance Law §22-b states: "Within thirty days of passage of the budget the senate and the assembly shall issue, either jointly or separately, a legislative report on the budget. Such report shall contain a description of appropriation changes between the budget submitted by the governor and the enacted budget and the effect of such changes on employment levels. Commencing with fiscal year nineteen hundred ninety-four-nineteen hundred ninety-five, such report shall also summarize changes in appropriations by function in a form suitable for comparison with the schedule required to be submitted with the governor's proposed budget. Commencing with fiscal year two thousand seven-two thousand eight, such report shall also include an estimate of the impact of the enacted budget on local governments, the state workforce, and general fund projections for the ensuing fiscal year, consistent with the requirements of subdivision one-c of section

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?

[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.

427. The Commissioners' willful disregard of these four threshold issues suffice to render the judicial salary increase recommendations of their December 24, 2015 Report void *ab initio* – and Chapter 60, Part E, of the Law of 2015 unconstitutional, *as applied.*

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**

428. Plaintiff SASSOWER raised the threshold issue of the disqualification of three of the Commission's seven members – Barry Cozier, Esq., James J. Lack, Esq., and Chair Sheila Birnbaum, Esq. – directly to them at the conclusion of the Commission's first organizational meeting on November 3, 2015. The context was her furnishing to each Commissioner a copy of plaintiffs' October 27, 2011 Opposition Report to the Commission on Judicial Compensation's August 29, 2011 Report, pivotally demonstrating that systemic judicial corruption, involving supervisory and appellate levels and embracing the Commission on Judicial Conduct is a constitutional bar to raising judicial salaries.

429. Later that day, plaintiff SASSOWER reiterated the disqualification issue by a November 3, 2015 e-mail,[27] stating:

> "...should any of the Commissioners feel themselves unable to discharge their duties with respect to the systemic, three-branch corruption issues presented by CJA's citizen opposition – and that other citizens will be presenting, as well – they should step down from the Commission forthwith. Two Commissioners, Cozier and Lack, are absolutely disqualified by reason of their active role in that corruption – and Chairwoman Birnbaum perhaps as well. I so-stated this to them, this morning – and will particularize the details, with substantiating evidence, in advance of the November 30, 2015 public hearing, should they fail to step down from the Commission – or publicly disclose and address their conflicts of interest."

[27] Exhibit 6 to plaintiffs' November 30, 2015 written testimony, contained in accompanying free-standing folder, at pp. 3-4.

430. In testifying at the Commission's November 30, 2015 hearing, plaintiff SASSOWER repeated that:

> "This Commission's threshold duty is, of course, to address issues of the disqualification of its members for actual bias and interest" (testimony, p. 4)

and that, with respect to Commissioners Cozier and Lack and Chair Birnbaum,

> "all three [had] demonstrated their utter disregard for casefile evidence of judicial corruption, particularly as relates to the Commission on Judicial Conduct and the court-controlled attorney disciplinary system, whose corruption they have perpetuated." (testimony, p. 4).

431. Plaintiff SASSOWER's December 2, 2012 supplemental submission furnished the particulars as to why these three Commissioners could not examine the evidence of systemic judicial corruption, raised by plaintiffs and other citizens in opposition to judicial salary increases, without exposing their pivotal roles in covering up that evidence and perpetuating the corruption (free-standing folder).

432. The failure and refusal of Commissioners Cozier, Lack, and Chair Birnbaum to rule upon the disqualification issue raised, the failure and refusal of their fellow Commissioners to rule upon it, and the concealment of the disqualification issue from the Commission's December 24, 2015 Report – simultaneously with concealing that systemic judicial corruption was ever raised in opposition to the judicial salary increases and that it is an "appropriate factor" – concede the disqualifications, *as a matter of law* – and renders the Report a nullity.

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

433. In testifying before the Commission on November 30, 2015 at its one and only hearing on judicial compensation, plaintiff SASSOWER identified, both by her oral and written presentation, that:

> "The appellate, administrative, disciplinary, and removal provisions of Article VI [of the New York State Constitution] are safeguards whose integrity – or lack thereof – are not just 'appropriate factors' [for the Commission's consideration], but constitutional ones. Absent findings that these integrity safeguards are functioning and not corrupted, the Commission cannot constitutionally recommend raising judicial pay."

434. In so-stating, she was quoting from plaintiffs' October 27, 2011 Opposition Report which presented a constitutional analysis of the Court of Appeals February 23, 2010 decision in *Maron v. Silver,* 14 N.Y.3d 230, and Article VI of the New York State Constitution – and her written testimony appended the analysis, in full (Exhibit 3 thereto).

435. The Commissioners' failure to deny or dispute the accuracy of that analysis in any respect – and their concealment, by their December 24, 2015 Report, of the very issue that systemic judicial corruption, involving supervisory and appellate levels and the Commission on Judicial Conduct is an "appropriate factor" of constitutional magnitude – concedes it, *as a matter of law*.

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**

436. From the very first of plaintiff SASSOWER's e-mails to the Commission – on November 2, 201528 – she advised that the Commission on Judicial Compensation's August 29, 2011 Report was the product of fraud "covered up by all the executive and legislative public officers who believe themselves entitled to pay raises". Her e-mail stated that this was:

> "chronicled in CJA's October 27, 2011 Opposition Report, in a mountain of correspondence, criminal and ethics complaints relating thereto, and by the public interest litigations we have undertaken over the past four years, all accessible from the prominent links on CJA's homepage, www.judgewatch.org. ...
>
> Please forward this e-mail to all seven members of the Commission on Legislative, Judicial and Executive Compensation so that they can be

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28 Exhibit 6 to plaintiff SASSOWER's November 30, 2015 testimony, at pp. 5-6.

apprised of the systemic fraud, corruption, and dysfunction that is before them, threshold, not only with respect to judicial compensation, but with respect to legislative and executive compensation." (underlining in the original).

437. The following morning, November 3, 2015, before the Commission's first organizational meeting, plaintiff SASSOWER sent a second e-mail stating:

> "...inasmuch as CJA's October 27, 2011 Opposition Report to the Commission on Judicial Compensation's August 29, 2011 Report is the STARTING POINT for your determination of the compensation issues as relate to ALL THREE BRANCHES, I take this opportunity to furnish you that link, directly. Here it is: http://www.judgewatch.org/web-pages/judicial-compensation/opposition-report.htm. The four-page executive summary is attached.
>
> I am available to answer questions, including publicly and under oath." (red and capitalization in the original).

438. Following the November 3, 2015 first organizational meeting, plaintiff SASSOWER sent a second November 3, 2015 e-mail,[29] stating:

> "I hereby request to testify at the Commission's November 30, 2015 public hearing in New York City.
>
> Such hearing date, nearly 4 full weeks from now, gives each Commissioner ample time to individually determine whether, as particularized by CJA's October 27, 2011 Opposition Report, the 3-phase judicial pay raises recommended by the August 29, 2011 Report of the Commission on Judicial Compensation and received by this state's judges beginning April 1, 2012, are statutory-violative, fraudulent, and unconstitutional – thereby requiring that this Commission's recommendations – having 'the force of law' – be for the nullification/voiding of the August 29, 2011 Report AND a 'claw-back' of the $150-million-plus dollars that the judges unlawfully received pursuant thereto.
>
> Because of the importance of CJA's October 27, 2011 Opposition Report, not only to your statutorily-required December 31, 2015 report of 'adequate levels of compensation and non-salary benefits' for this state's judges, but to your statutorily-required November 15, 2016 report of 'adequate levels of compensation and non-salary benefits' for our legislative and executive constitutional officers, I furnished a hard copy of the full October 27, 2011 Opposition Report to Chairwoman Birnbaum at the conclusion of this morning's organizational meeting. It consisted of: (1)

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29 Exhibit 6 to plaintiff SASSOWER's November 30, 2015 testimony, at pp. 3-4.

CJA's 38-page Opposition Report; (2) CJA's substantiating two-volume Compendium of Exhibits; and (3) the final two motions in CJA's lawsuit against the Commission on Judicial Conduct that went up to the Court of Appeals in 2002 – identified by the Opposition Report as having been handed up by me to the Commission on Judicial Compensation at its one and only July 20, 2011 public hearing, in support of my testimony.

To the other three Commissioners physically present at this morning's meeting – Commissioners Johnson, Cozier, and Lack – I furnished to each, *in hand*, a copy of the 38-page Opposition Report and its 4-page Executive Summary.

As for the three Commissioners not physically present – Commissioners Hedges, Reiter, and Hormozi – I had brought to the meeting copies of the 38-page Opposition Report and 4-page Executive Summary for them, as well. Unless they request same, I will assume they will be reading and/or downloading the Opposition Report from CJA's webpage: http://www.judgewatch.org/web-pages/judicial-compensation/opposition-report.htm. The Executive Summary is attached. ..." (underlining, capitalization, and italics in the original).

439. Two weeks later, by a November 18, 2015 e-mail,[30] plaintiff SASSOWER stated that by now the Commissioners

> "should have each read and considered [the October 27, 2011 Opposition Report] so dispositive as to mandate a Commission request, if not demand, to the Judiciary and other judicial pay raise advocates for their comment, including their findings of fact and conclusions of law with respect thereto." (underlining in the original).

Based thereon, she stated:

> "please deem this e-mail as CJA's request that the Commission...give notice to the Judiciary and judicial pay raise advocates for their findings of fact and conclusions of law with respect to CJA's October 27, 2011 Opposition Report. As seen from the annexed October 28, 2011 e-mail from CJA to the Judiciary and judicial pay raise advocates, they have had a FULL FOUR YEARS to have made findings of fact and conclusions of law.
>
> Needless to say, the Commission's notice to the Judiciary and judicial pay raise advocates – particularly those who have already contacted the Commission about testifying at the November 30th Manhattan hearing – should request their response to CJA's assertion that the October 27, 2011 Opposition Report requires "that this Commission's recommendations – having 'the force of law' – be for the nullification/voiding of the August 29, 2011 Report AND a 'claw-back' of the $150 million-plus dollars that the

30 Exhibit 6 to plaintiff SASSOWER's November 30, 2015 testimony, at pp. 2-3.

judges unlawfully received pursuant thereto." (underlining added, capitalization in the original).

440. Yet, eleven days later, at the Commission's November 30, 2015 public hearing, the Commissioners allowed the Judiciary and judicial pay raise advocates to urge them to rely on the Commission on Judicial Compensation's August 29, 2011 Report – without the slightest inquiry as to their findings of fact and conclusions of law with respect to plaintiffs' October 27, 2011 Opposition Report.

441. Plaintiff SASSOWER's own testimony at the hearing reiterated that plaintiffs' October 27, 2011 Opposition Report "proved" the "fraudulence, statutory violations, and unconstitutionality of the Commission on Judicial Compensation's August 29, 2011 Report and its recommended judicial salary increases – and that the record of plaintiffs' three litigations based thereon established that:

> "But for the evisceration of any cognizable judicial process in ALL three of these litigations...current judicial salaries would rightfully be what they were in 2011 and the 2010 statute that created the Commission on Judicial Compensation which, in 2015, became the template for the statute creating this Commission, would have been declared unconstitutional, long, long ago." (testimony, p. 2).

She stated:

> "The Judiciary and judicial pay raise advocates testifying here today, and by their written submissions, tout the excellence and high-quality of the Judiciary – implicitly recognizing that judicial salary increases are predicated on judges fulfilling their constitutional function of rendering justice. Plainly, they need a reality check if they are actually unaware of the lawlessness and non-accountability that reigns in New York's judicial branch, notwithstanding our notice to them, again, and again, and again. Let them confront, with findings of fact and conclusions of law, our October 27, 2011 Opposition Report and our three litigations arising therefrom. This includes our constitutional analysis, drawn from the Court of Appeals' February 23, 2010 decision in the judges' judicial compensation lawsuits and from Article VI of the New York State Constitution..." (testimony, p. 2, underlining added).

She further stated that each of the Commissioners, by then, had had ample time to verify the accuracy of the October 27, 2011 Opposition Report and that "current judicial salary levels are...'ill-gotten gains', stolen from the taxpayers" (at p. 4).

442. On December 2, 2015, plaintiffs furnished the Commission with a supplemental submission stating:

> "The Commission's charge is to 'examine, evaluate and make recommendations with respect to adequate levels of compensation and non-salary benefits' (§2.1) and 'the prevailing adequacy of pay levels and other non-salary benefits' (§2.2a(2)). None of the judges and other pay raise advocates testifying before you identified this. Instead, they misled you with rhetoric that the levels you should be setting are the ones they view as 'fair', 'equitable', and commensurate with their self-serving notions of the dignity and respect to be accorded the judiciary, furnishing NO EVIDENCE as to the inadequacy of current judicial salary levels – bumped up $40,000 by the Commission on Judicial Compensation's August 29, 2011 Report. They did not even assert that current salary levels are inadequate, let alone after the addition of non-salary benefits. In fact, and repeating their fraud at the Commission on Judicial Compensation's July 20, 2011 hearing, they made no mention of non-salary benefits – or their monetary value – a concealment also characterized by their written submissions before you.
>
> ...CJA's October 27, 2011 Opposition Report...highlighted (at pp. 1, 17-18, 22, 31) that among the key respects in which the Commission on Judicial Compensation's August 29, 2011 Report was statutorily-violative and fraudulent is that its salary increase recommendations were 'unsupported by any finding that current 'pay levels and non-salary benefits' [were] inadequate' – reflective of the fact that the judges and judicial pay raise advocates had not furnished probative evidence from which such finding could be made. Such finding, moreover, would require an articulated standard for determining adequacy..." (pp. 1-2, capitalization in the original).

The December 2, 2015 supplemental submission then went on to show (pp. 2-3) that the ONLY evidence that the Commission had before it was as to the adequacy of existing salary and non-compensation benefits.

443. On December 21, 2015, plaintiff SASSOWER furnished the Commission with a further submission. Entitled "Assisting the Commission in discharging its statutory duty of 'tak[ing]

into account all appropriate factors' as to 'adequate levels of compensation and non-salary benefits", it presented:

> "further evidence of 'the lawlessness and non-accountability that reigns in New York's judicial branch, to which [she] testified at the November 30, 2015 hearing as not only an 'appropriate factor' for the Commission's consideration, disentitling the judiciary to any salary increases, but a 'factor' of constitutional magnitude." (underlining in the original).

The letter reiterated that the judges and judicial pay raise advocates could easily corroborate this – prefatory to furnishing the Commission "with findings of fact and conclusions of law with respect to...CJA's October 27, 2011 Opposition Report and the record of the three litigations based thereon.

444. The Commission's December 24, 2015 Report ignored ALL the foregoing. It made no mention of any opposition to the judicial salary increases, made no mention of plaintiffs' October 27, 2011 Opposition Report, made no findings of fact and conclusions of law with respect to it – or with respect to the record of the three lawsuits based thereon – or as to the adequacy of existing levels of judicial compensation and non-salary benefits. Its judicial salary increase recommendations rested on the Commission on Judicial Compensation's August 29, 2011 Report – and on no finding that existing levels of judicial compensation and non-salary benefits were inadequate. In other words, the December 24, 2015 Report is based on the very fraud and absence of evidence that plaintiffs had presented in opposition.

D. ***As Applied*, a Commission that Suppresses and Disregards the Input of Taxpaying Citizens, Particularly in Opposition to Salary Increases, is Unconstitutional**

445. By an November 18, 2015 e-mail,[31] plaintiff SASSOWER objected to the Commission's decision, at its November 3, 2015 first organizational meeting, to hold only a single hearing on judicial compensation, in Manhattan – "without the slightest discussion of whether that

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31 Exhibit 6 to plaintiff SASSOWER's November 30, 2015 testimony, at p. 2.

would be fair to New Yorkers in the state's vast western, northern, and central regions, where, additionally, salaries and costs of living are so markedly lower." She requested that the Commission "schedule at least one upstate public hearing on judicial compensation".

446. Later that day, plaintiff SASSOWER sent another e-mail,[32] this one entitled: "Informing the Public about the Commission's Nov. 30 Public Hearing on Judicial Compensation & its Opportunity to be Heard". Noting that in the two weeks since the Commission had scheduled its November 30 2015 public hearing in Manhattan, it had "yet to send out a press release about it and the opportunity the public has to testify and/or make written submissions about salaries and benefits for judges, whose costs it pays for", she requested that the Commission immediately put out a press release about the November 30th hearing – "and the opportunity the public has to testify and/or to furnish written comment". She further stated:

> "the only reason for the Commission's proceeding 'quietly' – as it has – is its knowledge that the taxpaying public would never tolerate pay raises for corrupt and incompetent judges – such as we have and cannot rid ourselves of. Likewise pay raises for our collusive and corrupt Legislators and Governor, Attorney General, and Comptroller..."

447. Plaintiff SASSOWER received no response to either of these two requests because the Commissioners did not send her any response.

448. At the November 30, 2015 public hearing, plaintiff SASSOWER preceded her testimony by the observation that:

> "There was no press announcement from this Committee, press release sent out notifying the public of this hearing today and, consequently, there are not many people present, nor who requested to testify because they didn't know about this hearing. Nor did they ever know or do they know that they have an opportunity to make written submissions." [transcript, p. 70].

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32 Exhibit 6 to plaintiff SASSOWER's November 30, 2015 testimony, at p. 1.

449. None of the Commissioners disputed that there had been no press announcement or release sent out to inform the public. Nevertheless, a week later, Chair Birnbaum opened the Commission's December 7, 2015 meeting – its first after the hearing – by stating:

> "there was a statement made about that we did not get notice of the hearings out to the public. I just would like to tell you that there was an in-media advisory that is on our website and that was sent out to over 100 media outlets throughout the state and that was also distributed to wire services who have nationwide distribution. So we feel strongly that there was more than sufficient publicity about the hearings. And the hearings were very well attended..." [transcript, p. 2].

450. Upon information and belief, Chair Birnbaum's assertion that a media advisory posted on the Commission's website had been sent out to over 100 media outlets throughout the state and ...distributed to wire services who have nationwide distribution" is false.[33] No substantiation was furnished in response to plaintiff SASSOWER's FOIL request.[34]

451. The Commission's December 24, 2015 Report concealed the paucity of its outreach. Stating that it had "invited written commentary and established post office and e-mail addresses" (at p. 4), the Report did not reveal how this had been publicized or the opportunity to testify at the hearing, which, in three separate places (Chair Birnbaum's coverltr, pp. 1, 4), it misrepresented as being "day-long", when, in fact, it was only 2-1/2 hours. It concealed entirely that there was any opposition to judicial salary increases, whether from "interested individuals" or "organizations", let alone its basis, and made no finding as to its legitimacy or sufficiency in rebutting support for the judicial salary increases.

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[33] The Commission made no claim to having sent out any press release for its March 10, 2016 hearing on legislative and executive compensation, held in the same location as its November 30, 2015 hearing. The result was that it had only two witnesses testifying – the executive directors of Common Cause-NY and Citizens Union.

[34] Plaintiffs' FOIL requests to the Commission are in the accompanying free-standing folder containing their submissions to the Commission.

452. The Commission's failure to meaningfully elicit citizen input – and to address the citizen opposition to judicial salary increases and its basis that it had before it – renders its December 24, 2015 Report unconstitutional, *as a matter of law*.[35]

AS AND FOR A FIFTEENTH CAUSE OF ACTION

The Commission's Violation of Express Statutory Requirements of Chapter 60, Part E, of the Laws of 2015 Renders their Judicial Salary Increase Recommendations Null & Void

453. Plaintiffs repeat, reiterate, and reallege ¶¶1-452, with the same force and effect as if more fully set forth herein.

454. The Commission on Legislative, Judicial and Executive Compensation violated Chapter 60, Part E, of the Laws of 2015 in multiple respects:

(i) in violation of §2, ¶¶1, 2(a), the Commission examined only judicial salary, not "compensation" apart from salary, and not "non-salary benefits";

(ii) in violation of §2, ¶¶1, 2(a), the Commission made no finding and furnished no evidence that current "compensation and non-salary benefits' or "pay levels and non-salary benefits" of New York State judges are inadequate;

(iii) in violation of §2, ¶3, the Commission did not "take into account all appropriate factors", such as systemic judicial corruption and citizen opposition – and made no claim that it had;

(iv) in violation of §2, ¶3, the Commission did not "take into account three of the six enumerated "appropriate factors".

455. Each of these statutory violations is particularized by plaintiffs' 12-page "Statement of Particulars in Further Support of Legislative Override of the 'Force of Law' Judicial Salary Increase Recommendations, Repeal of the Commission Statute, Etc." (Exhibit 40), which plaintiffs January 15, 2015 letter to defendants FLANAGAN and HEASTIE furnished those defendants and

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[35] "It is basic that an 'act of the legislature is the voice of the People speaking through their representatives. The authority of the representatives in the legislature is a delegated authority and it is wholly derived from and dependent upon the Constitution' (*Matter of Sherrill v O'Brien*, 188 NY 185, 199).", *New York State Bankers Association, Inc. v. Wetzler*, 91 N.Y.2d 98, 102 (1993) (underlining added).

the chairs and ranking members of the Legislature's "appropriate committees" (Exhibit 39). Individually and collectively, these statutory violations are sufficient to void the judicial salary increase recommendations of its December 24, 2015 Report, *as a matter of law.*

456. The Commission's foregoing statutory violations do not exhaust all its statutory violations which additionally include:

> (i) in violation of §2, ¶1, the Commission was not "established" "commencing June 1, 2015". Instead, the Commission's four appointing authorities delayed their appointments, with defendant Cuomo's appointments not until almost four months later, October 30, 2015. The result was that the Commission did not have the statutorily-contemplated six months to discharge its duties with respect to "judges and justices of the state-paid courts of the unified court system". Instead, it had but two months, further reduced by the holiday season;
>
> (ii) in violation of §3, ¶2 , requiring that the Commission be "governed by articles 6, 6-A and 7 of the public officers law", it failed to furnish records it was duty-bound to disclose under Public Officers Law, Article VI [Freedom of Information Law [FOIL] (see accompanying folder);
>
> (iii) in violation of §3, ¶¶2, 5, and 6, the Commission did not utilize the significant investigative powers and resources available to it to discharge its statutory-mandate.

457. Underlying all these statutory violations was the Commissioners' bias and interest in securing the predetermined result of increasing judicial salary levels, additionally rendering its Report and recommendations unconstitutional, *as applied.*

AS AND FOR A SIXTEENTH CAUSE OF ACTION

Three-Men-in-a-Room, Budget Dealing-Making is Unconstitutional, *As Unwritten* and *As Applied*

458. Plaintiffs repeat, reiterate, and reallege ¶¶1-457, with the same force and effect as if more fully set forth herein.

A. Three-Men-in-a-Room Budget Deal-Making is Unconstitutional, *As Unwritten*

459. The procedure governing the submission and enactment of the state budget is laid out in Article VII, §§1-7 of the New York State Constitution. Upon the Governor's submission of the budget to the Legislature pursuant to §2, the procedure, is spelled out in §§3, 4.[36]

460. Pursuant thereto, once the Governor submits the budget, it is within the legislative branch. He has thirty days, as of right, within which to submit any amendments or supplements to his bills, following which it is by "consent of the legislature". He also has the right "to appear and be heard during the consideration thereof, and to answer inquiries relevant thereto." Further, the Legislature may request the Governor to appear before it – and may command the appearance of his department heads to "answer inquiries" with regard to the executive budget. Based thereon, and in such public fashion, it may "consent" to the Governor's further amending and supplementing his budget.

461. Neither the Constitution, nor statute, nor Senate and Assembly rules authorize the Governor, Temporary Senate President, and Assembly Speaker to huddle together for budget negotiations and the amending of budget bills – and it is an flagrant violation of Article VII, §§3, 4 and Article IV, §7, transgressing the separation of powers, for them to do so.

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[36] Article VII, §3 is quoted at ¶¶377, 379, *supra*. Article VII, §4 is quoted at ¶369.

462. Consistent with the Court of Appeals decision in *King v. Cuomo*, 81 N.Y.2d 247 (1993) – and for the multitude of reasons that decision gives with respect to the bicameral recall practice – such three-men-in-a-room, budget deal-making must be declared unconstitutional.

463. The parallels between the bicameral recall practice declared unconstitutional in *King v. Cuomo* and the challenge, at bar, to three-men-in-a-room budget deal-making are obvious. Only minor alterations in the text of the decision in *King v. Cuomo* are needed to support the declaration here sought, as by the below bold-faced & bracketed insertions to pp. 251-255:

> "The challenged [] practice significantly unbalances the law-making options of the Legislature and the Executive beyond those set forth in the Constitution. By modifying the nondelegable obligations and options reposed in the Executive **[and Legislature]**, the practice compromises the central law-making rubrics by adding an expedient and uncharted bypass. The Legislature **[and Executive]** must be guided and governed in this particular function by the Constitution, not by a self-generated additive (see, *People ex rel. Bolton v Albertson*, 55 NY 50, 55).
>
> Article IV, §7 and **[Article VII, §§1-4]** of the State Constitution prescribes how a **[budget]** bill becomes a law and explicitly allocates the distribution of authority and powers between the Executive and Legislative Branches...
>
> The description of the process is a model of civic simplicity...
>
> The putative authority **[for behind-closed-doors, three-men-in-a-room budget deal-making]** 'is not found in the constitution' (*People v Devlin*, 33 NY 269, 277). We conclude, therefore, that the practice is not allowed under the Constitution....
>
> When language of a constitutional provision is plain and unambiguous, full effect should be given to 'the intention of the framers ... as indicated by the language employed' and approved by the People (*Settle v Van Evrea*, 49 NY 280, 281 [1872]; *see also, People v Rathbone*, 145 NY 434, 438). In a related governance contest, this Court found 'no justification ... for departing from the literal language of the constitutional provision' (*Anderson v Regan*, 53 NY2d 356, 362 [emphasis added]). As we stated in *Settle v Van Evrea*:
>
> > '[I]t would be dangerous in the extreme to extend the operation and effect of a written Constitution by construction beyond the fair scope of its terms, merely because a restricted and more literal interpretation might be inconvenient or impolitic, or because a case may be supposed to be, to some extent, within the reasons which led to the introduction of some particular provision plain and precise in its terms.
> >
> > 'That would be *pro tanto* to establish a new Constitution and do for the people what they have not done for themselves' (49 NY 280, 281, *supra*).

Thus, the State's argument that the **[three-men-in-a-room budget deal-making]** method, in practical effect and accommodation, merely fosters the underlying purpose of article IV, §7 **[and article VII, §§1-4]** is unavailing (see, *New York State Bankers Assn. v Wetzler*, 81 NY2d 98, 104, *supra*).

If the guiding principle of statutory interpretation is to give effect to the plain language (*Ball v Allstate Ins. Co.*, 81 NY2d 22, 25; *Debevoise & Plimpton v New York State Dept. of Taxation & Fin.*, 80 NY2d 657, 661; McKinney's Cons Laws of NY, Book 1, Statutes §94), '[e]specially should this be so in the interpretation of a written Constitution, an instrument framed deliberately and with care, and adopted by the people as the organic law of the State' (*Settle v Van Evrea*, 49 NY, at 281, *supra*). These guiding principles do not allow for interstitial and interpretative gloss by the courts or by the other Branches themselves that substantially alters the specified law-making regimen. Courts do not have the leeway to construe their way around a self-evident constitutional provision by validating an inconsistent 'practice and usage of those charged with implementing the laws' (*Anderson v Regan*, 53 NY2d 356, 362, supra; *see also, People ex rel. Burby v Howland*, 155 NY 270, 282; *People ex rel. Crowell v Lawrence*, 36 Barb 177, *affd* 41 NY 137; *People ex rel. Bolton v Albertson*, 55 NY 50, 55, *supra*).

The New York Legislature's long-standing **[three-men-in-a-room budget deal-making]** practice has little more than time and expediency to sustain it. However, the end cannot justify the means, and the Legislature, even with the Executive's acquiescence, cannot place itself outside the express mandate of the Constitution. We do not believe that supplementation of the Constitution in this fashion is a manifestation of the will of the People. Rather, it may be seen as a substitution of the People's will expressed directly in the Constitution.

The Governor has been referred to as the 'controlling element' of the legislative system (4 Lincoln, The Constitutional History of New York, at 494 [1906]). The **[three-men-in-a-room budget deal-making]** practice unbalances the constitutional law-making equation... By the ultra vires [] method, the Legislature **[and Executive]** significantly suspends and interrupts the mandated regimen and modifies the distribution of authority and the complementing roles of the two law-making Branches. It thus undermines the constitutionally proclaimed, deliberative process upon which all people are on notice and may rely. Realistically and practically, it varies the roles set forth with such careful and plain precision in the constitutional charter...

Though some practical and theoretical support may be mustered for this expedient custom (*see, e.g.*, 4 Lincoln, *op. cit.*, at 501), we cannot endorse it. Courteous and cooperative actions and relations between the two law-making Branches are surely desirable and helpful, but those policy and governance arguments do not address the issue to be decided. Moreover, we cannot take that aspirational route to justify this unauthorized methodology.

The inappropriateness of this enterprise, an 'extraconstitutional method for resolving differences between the legislature and the governor,' also outweighs the claimed convenience (Zimmerman, The Government and Politics of New York State, at 152). For example, '[t]his procedure 'creates a negotiating situation in which,

under the threat of a full veto, the legislature **[through its Temporary Senate President and Assembly Speaker negotiate with]** the governor, thus allowing him to exercise *de facto* amendatory power'' (Fisher and Devins, *How Successfully Can the States' Item Veto be Transferred to the President?*, 75 Geo LJ 159, 182, quoting Benjamin, *The Diffusion of the Governor's Veto Power*, 55 State Govt 99, 104 [1982]).

Additionally, the **[three-men-in-a-room]** practice 'affords interest groups another opportunity to amend or kill certain bills' (Zimmerman, *op. cit.*, at 152), shielded from the public scrutiny which accompanies the initial consideration and passage of a bill. This 'does not promote public confidence in the legislature as an institution' because 'it is difficult for citizens to determine the location in the legislative process of a bill that may be of great importance to them' (*id.*, at 145, 152). Since only 'insiders' are likely to know or be able to discover the private arrangements between the Legislature and Executive when the **[three-men-in-a-room]** method is employed, open government would suffer a significant setback if the courts were to countenance this long-standing practice.

In sum, the practice undermines the integrity of the law-making process as well as the underlying rationale for the demarcation of authority and power in this process. Requiring that the Legislature adhere to this constitutional mandate is not some hypertechnical insistence of form over substance, but rather ensures that the central law-making function remains reliable, consistent and exposed to civic scrutiny and involvement.

...It is no justification for an extraconstitutional practice that it is well intended and efficient, for the day may come when it is not so altruistically exercised.

Appellants are entitled, therefore, to a judicial declaration that the **[three-men-in-a-room]** practice is not constitutionally authorized."

464. At bar, the unconstitutionality is *a fortiori* to that in *King* because, unlike with bicameral recall, no Senate and Assembly rules "reflect and even purport to create the [three-men-in-a-room] practice" (at p. 250) AND such budget deal-making by them, conducted behind-closed-doors, is UNIFORMLY derided as deleterious to good-government.

465. Further underscoring the unconstitutionality of three-men-in-a-room budget dealmaking is the Court of Appeals decision in *Campaign for Fiscal Equity, Inc. v. Marino*, 87 N.Y.2d 235 (1995), where the Court held that the Legislature's withholding of a passed-bill from the Governor violates Article IV, §7. In addition to resting on *King v. Cuomo*, the Court reiterated:

"The practice of withholding passed bills while simultaneously conducting discussions and negotiations between the executive and legislative branches is just

another method of thwarting open, regular governmental process, not unlike the unconstitutional 'recall' policy, which, similarly, violated article IV, §7.", *id*, at 239.

466. Additionally, the "three-men-in-a-room" shrinks the two-branch 213-member legislature to just two members, flagrantly violating the constitutional design, which recognized in size a safeguard against corruption. *Cf.*, *The Anti-Corruption Principle*" by Zephyr Teachout, Cornell Law Review, Vol 94: 341-413.[37]

B. Three-Men-in-a-Room Deal-Making is Unconstitutional, *As Applied*

467. Three-men-in-a-room budget deal-making, *unwritten* in the Constitution, in statute, and in Senate and Assembly rules, is entirely unregulated.

468. That it takes place behind-closed-doors, out of public view, is a further constitutional violation – violating Article III, §10: "The doors of each house shall be kept open", as well as Senate and Assembly rules consistent therewith: Senate Rule XI, §1 "The doors of the Senate shall be kept

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[37] The framers were "obsessed with corruption" and "one of the most extensive and recurring discussions among the delegates [to the Constitutional Convention] about corruption concerned the size of the various bodies." It was the reason they made the House of Representatives larger than to the Senate because, in their view, "[t]he larger the number, the less the danger of their being corrupted."

> "Several delegates reiterated a relationship between size and corruption, suggesting that it was, or at least was becoming, conventional wisdom. Magistrates, small senates, and small assemblies were easier to buy off with promises of money, and it was easier for small groups to find similar motives and band together to empower themselves at the expense of the citizenry. Larger groups, it was argued, simply couldn't coordinate well enough to effectively corrupt themselves.
>
> ...
>
> Notably, George Washington's only contribution to the Constitutional Convention arose in the context of a debate about the size of the House of Representatives.[fn.] First, it would take too much time for representatives in a large legislative body to create factions. Second, differences between legislators would lead to factional jealousies and personality conflicts if the same corrupting official tried to buy, or create dependency, across a large body. Because secrets are hard to keep in large groups, and dependencies are therefore difficult to create, the sheer size and diversity of the House would present a formidable obstacle to someone attempting to buy its members.
>
> Madison claimed that they had designed the Constitution believing that 'the House would present greater obstacles to corruption than the Senate with its paucity of members.'[fn.] ..." (at p. 356).

open"; Assembly Rule II, §1 "A daily stenographic record of the proceedings of the House shall be made and copies thereof shall be available to the public" and Public Officers Law, Article VI "The legislature therefore declares that government is the public's business...".

469. Compounding the unconstitutional exclusion of the public from the three-men-in-a-room budget negotiations is that the three-men do not, thereafter, disclose the extent of their discussions and changes to budget bills. As illustrative, neither last year nor the year before was there any memo, itemized sheet, or report setting forth their agreed-to changes to the Legislative/Judiciary budget bills – each unamended bills prior to the three-men-in-a-room huddle, but, after the huddle, introduced as amended bills and referred to the fiscal committees. Nor were the changes identified by italics, underscoring, or bracketing in the amended bills' formatting – at least with respect to the Judiciary/Legislative budget bills.

470. That what they have done to alter massive budget bills, in secret and without full disclosure to legislators and the public, they then speed through the Legislature on a "message of necessity", dispensing with the requirement that each bill be "upon the desks of the members, in its final form, at least three calendar legislative days prior to its final passage", pursuant to Article III, §14, further compounds the constitutional violations.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully pray:

1. **For a declaratory judgment pursuant to State Finance Law §123 *et seq.* – Article 7-A, "Citizen-Taxpayer Actions":**

A. that the Legislature's proposed budget for fiscal year 2016-2017, embodied in Legislative/Judiciary Budget Bill #S.6401/A.9001, is a wrongful expenditure, misappropriation, illegal, unconstitutional – and fraudulent – because: (1) it is not based on "itemized estimates of the financial needs of the legislature, certified by the presiding officer of each house", as Article VII, §1 of the State Constitution expressly mandates; (2) it is missing "General State Charges"; and (3) its budget figures are contrived by the Temporary Senate President and Assembly Speaker to fortify their power and deprive members and committees of the monies they need to discharge their constitutional duties;

B. that the Judiciary's proposed budget for fiscal year 2016-2017, embodied in Legislative/Judiciary Budget Bill #S.6401/A.9001, is a wrongful expenditure, misappropriation, illegal and unconstitutional – and fraudulent – because: **(1)** the Judiciary budget is so incomprehensible that the Governor, the Senate majority and Senate minority, Assembly majority and Assembly minority cannot agree on its cumulative cost and percentage increase; **(2)** its §3 reappropriations were not certified, including as to their suitability for that purpose, and violate Article VII, §7 and Article III, §16 of the New York State Constitution and State Finance Law §25; and **(3)** the transfer/interchange provision in its §2 appropriations, embracing its §3 reappropriations, undermines the constitutionally-required itemization and violates Judiciary Law §215(1), creating a "slush fund" and

concealing relevant costs; **(4)** it has *sub silentio* enabled and will enable the funding of judicial salary increases that are statutorily-violative, fraudulent, and unconstitutional;

C. that Legislative/Judiciary Budget Bill #6401/A.9001 is a wrongful expenditure, misappropriation, illegal, unconstitutional – and fraudulent – by its inclusion of reappropriations for the Legislature that were not part of its proposed budget and not certified by the Legislature as funds properly designated for reappropriation;

D. that Legislative/Judiciary Budget Bill #6401/A.9001 is a wrongful expenditure, misappropriation, illegal, unconstitutional – and fraudulent – because nothing lawful or constitutional can emerge from a legislative process that violates Article VII, §§1-7 and Article IV, §7 of the New York State Constitution pertaining to the budget, and from statutes based thereon, including Legislative Law §32-a (*hearings for the public*); Legislative Law §53 and §54-a (*joint budget schedule; joint budget conference*), Legislative Law §54 (*summary of/description of changes*); State Finance Law §22-b (*report on enacted budget*), and from Senate and Assembly rules, *inter alia*: **(1)** Senate Rule VIII, §7, Senate Rule VII, §1, and Assembly Rule III, §1(f) and §2(a) (*fiscal notes, fiscal impact statements, and introducer's memoranda*), applicable to defendant Governor by Senate Rule VII, §6 and Assembly Rule III, §2(g); **(2)** Senate Rule VII, §4 and Assembly Rule III, §§1, 2, 8 (*bills*); **(3)** Senate Rule VIII, §§3, 4, 5 and Assembly Rule IV, §§2, 4, 6, (*public meetings, recorded votes, committee reports*); **(4)** Senate Rule VII, §4(b); and Assembly Rule III, §§1(f) and 6 (*amendments)*; **(5)** Senate Rule VIII, §4(c) and Assembly Rule IV, §1(d) (*committee oversight*); **(6)** Senate and Assembly Permanent Joint Rule III (*budget*); **(7)** Senate and Assembly Joint Rule II, §1 (*conference committee*).

Also, nothing lawful or constitutional can emerge from a legislative process that violates Article III, §10 "Each house of the legislature shall keep a journal of its proceedings, and publish the same.... The doors of each house shall be kept open..."; Public Officers Law, Article VI; Senate Rule XI, §1, and Assembly Rule II, §1.

E. that Chapter 60, Part E, of the Laws of 2015, establishing the Commission on Legislative, Judicial and Executive Compensation – is unconstitutional, *as written* – and the Commission's "force of law" judicial salary increase recommendations are null and void by reason thereof because: **(1)** the statute unconstitutionally delegates legislative power by giving the Commission's judicial salary recommendations "the force of law"; **(2)** the statute unconstitutionally delegates legislative power without safeguarding provisions; **(3)** the statute violates Article XIII, §7; (4) the statute – a budget statute – violates Article VII, §6 (*anti-rider*) and, additionally, §§3 and 4 (*timeliness, content*); **(5)** the statute was fraudulently procured and without legislative due process;

F. that Chapter 60, Part E, of the Laws of 2015, establishing the Commission on Legislative, Judicial and Executive Compensation is unconstitutional, *as applied* – and the Commission's "force of law" judicial salary increase recommendations are null and void by reason thereof because: **(1)** the legislative defendants willfully and deliberately failed and refused to discharge their oversight duties with respect to the statute's constitutionality and operation; **(2)** the Commission concealed and did not determine the disqualification/disclosure issues before it pertaining to its members' actual bias and interest; **(3)** the Commission concealed and did not determine whether systemic judicial corruption is an "appropriate factor" barring judicial salary increases; **(4)** the Commission concealed and did not determine issues of fraud, including the complete absence of evidence to justify a

salary increase; **(5)** the Commission suppressed and disregarded the "appropriate factor" of citizen input and opposition;

G. that the Commission on Legislative, Judicial and Executive Compensation violated the express statutory requirements of Chapter 60, Part E, of the Laws of 2015 – and that its "force of law" judicial salary increase recommendations are null and void by reason thereof because, in violation of the statute: **(1)** the Commission made no finding and furnished no evidence that current "compensation and non-salary benefits' or "pay levels and non-salary benefits" of New York State judges are inadequate; **(2)** the Commission examined only judicial salary, not "compensation and non-salary benefits"; **(3)** the Commission did not "take into account all appropriate factors", such as systemic judicial corruption and citizen opposition – and made no claim that it had; **(4)** the Commission did not "take into account three of the six statutorily-listed "appropriate factors"; **(5)** the Commission's appointing authorities – defendants CUOMO, FLANAGAN, HEATIE, and former Chief Judge Lippman – constituted the Commission four months late, such that it had less than two months to execute its statutory charge; **(6)** the Commission did not utilize its significant investigative powers and available resources;

H. that the behind-closed-doors Senate and Assembly majority and minority political conferences, which serve as the venue for discussing, debating, and voting on bills that are not being discussed, debated, voted on, and amended in committee are unconstitutional, as is Public Officers Law, §108.2 exempting them from the Open Meetings Law and FOIL;

I. that three-men-in-a-room, budget dealing-making is unconstitutional, *as unwritten and as applied.* Neither the Constitution, nor statute, nor Senate and Assembly

rules authorize the Governor, Temporary Senate President, and Assembly Speaker to huddle together for budget negotiations and the amending of budget bills – and it violates Article VII, §§3, 4 and Article IV, §7, transgressing the separation of powers, for them to do so. That it takes place behind-closed-doors, out of public view, is a further constitutional violation.

2. **Pursuant to State Finance Law §123-e, for entry of a judgment permanently enjoining defendants from taking any action to enact Legislative/Judiciary Budget Bill #S.6401/A.9001 and to disburse monies pursuant thereto**, or, alternatively: (i) as to the legislative portion, enjoining enactment of its §1 appropriations and §4 reappropriations (pp. 1-9; 25-48) and disbursement of monies therefrom; and; (ii) as to the judiciary portion, enjoining enactment of its §3 reappropriations (pp. 22-24) and funding for "the force of law" judicial salary increase for fiscal year 2016-2017 recommended by the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation and disbursement of monies pursuant thereto;

3. **Pursuant to State Finance Law §123-g, for costs and expenses, including attorneys' fees;**

4. **For such other and further relief as may be just and proper**, including restoring public trust by referring to prosecutorial authorities the evidence furnished by this verified second supplemental complaint as it establishes, *prima facie*, grand larceny of the public fisc and other corrupt acts, requiring that the culpable public officers and their agents be criminally prosecuted and removed from office, without further delay.

ELENA RUTH SASSOWER

Sworn to before me this
23rd 21st day of March 2016

Susan A. Janiszak
Notary Public-State of New York
04JA6209391
Qualified in Albany County
Commission expires 07/27/20 17

VERIFICATION

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss:

I am the individual plaintiff in the within action and director of the corporate plaintiff, Center for Judicial Accountability, Inc. I have written the annexed verified second supplemental complaint and attest that same is true and correct of my own knowledge, information, and belief, and as to matters stated upon information and belief, I believe them to be true.

ELENA RUTH SASSOWER

Sworn to before me this
23rd ~~21st~~ day of March 2016

Notary Public

Susan A. Janiszak
Notary Public-State of New York
04JA6209391
Qualified in Albany County
Commission expires 07/27/20 17

EXHIBIT B

SUPREME COURT OF STATE OF NEW YORK
ALBANY COUNTY

CENTER FOR JUDICIAL ACCOUNTABILITY, INC.
and ELENA RUTH SASSOWER, individually and
as Director of the Center for Judicial Accountability, Inc.,
acting on their own behalf and on behalf of the People
of the State of New York & the Public Interest,

Plaintiffs,

-against-

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

Defendants.

VERIFIED COMPLAINT
Index #1788-2014

JURY TRIAL DEMANDED

> "It is the purpose of the legislature to recognize that each individual citizen and taxpayer of the state has an interest in the proper disposition of all state funds and properties. Whenever this interest is or may be threatened by an illegal or unconstitutional act of a state officer or employee, the need for relief is so urgent that any citizen-taxpayer should have and hereafter does have a right to seek the remedies provided for herein."
>
> State Finance Law, §123: "Legislative purpose"

> "A budget is a statement of the financial position of the government, for a definite period of time, based upon an estimate of proposed expenditures and anticipated revenues...The method by which public budgets are prepared is governed by the State Constitution and the applicable State statutes. The requirements contained in those documents are not particularly burdensome and permit the executive and the legislative officials considerable freedom of action in implementing governmental operations and programs and providing for the revenues to fund them. The legal requirements they contain, however, are grounded in the general principles of fiscal responsibility and the accountability that underpins the regulation of all public conduct and they must be followed."
>
> *Korn v. Gulotta*, 72 N.Y.2d 363, 372-373 (1988), underlining added

Plaintiffs, as and for their Verified Complaint, respectfully set forth and allege:

1. This is an citizen-taxpayer action, pursuant to State Finance Law §123, *et seq.* [Article 7-A], for a declaratory judgment as to the unconstitutionality and unlawfulness of the Governor's Budget Bill #S.6351/A.8551, embodying the Legislature's proposed budget for fiscal year 2014-2015, the Judiciary's proposed budget for fiscal year 2014-2015, and millions of dollars in unaccounted-for reappropriations. The expenditures of such Budget Bill are unconstitutional and unlawful disbursements of state funds and taxpayer monies, which plaintiffs seek to enjoin.

2. For the convenience of the Court, a Table of Contents follows:

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* * *

VENUE

3. Pursuant to State Finance Law §123(c)(1), this action is properly venued in the Albany County Supreme Court, as Albany County is where the unconstitutional and unlawful disbursements sought to be enjoined will be occurring and where defendant state officers have their principal offices.

THE PARTIES & BACKGROUND FACTUAL ALLEGATIONS

4. Plaintiff CENTER FOR JUDICIAL ACCOUNTABILITY, INC. (CJA) [hereinafter "CJA"] is a national, non-partisan, non-profit citizens' organization, headquartered in White Plains, New York and incorporated in 1994 under the laws of the State of New York. In addition to the taxes it pays to the State of New York, its New York members pay taxes to the State of New York.

5. Plaintiff CJA's patriotic purpose is to safeguard the judicial process by ensuring the integrity of its judges. In so doing, it interfaces with all three branches of government and has interacted with all defendants herein through its Director, plaintiff ELENA RUTH SASSOWER, including, specifically, regarding the New York State budget.

(a) Plaintiffs' focus on the New York State budget had its genesis in the 2011 Special Commission on Judicial Compensation, established pursuant to Chapter 567 of the Laws of 2010. As the Commission's August 29, 2011 Final Report recommending judicial salary increases of 27% over a three-year period were to have the force of law, absent gubernatorial or legislative action, plaintiffs presented defendants CUOMO, SKELOS, and SILVER with an October 27, 2011 Opposition Report, whose first requested relief was for override of the recommended judicial salary increases. The basis for the override was plaintiffs' showing that the Commission had violated express conditions precedent for the

judicial salary recommendations, set forth in Chapter 567 of the Laws of 2010, in addition to being fraudulent and unconstitutional.

(b) Neither defendants CUOMO, SKELOS, SILVER ever denied or disputed the accuracy of plaintiffs' October 27, 2011 Opposition Report. Nor did defendants SCHNEIDERMAN and DiNAPOLI, to whom plaintiffs filed corruption complaints based thereon. Nor did Chief Administrative Judge Lippman, to whom plaintiffs also furnished the October 27, 2011 Opposition Report. Yet, none took any steps to protect the public purse from judicial salary increases shown to be statutorily violative, fraudulent, and unconstitutional.

(c) As a result, plaintiffs were burdened with bringing a declaratory judgment action to secure a determination as to the unconstitutionality of Chapter 567 of the Laws of 2010, *as written and as applied.* The lawsuit, entitled:

> *CENTER FOR JUDICIAL ACCOUNTABILITY, INC. and ELENA RUTH SASSOWER, individually and as Director of the Center for Judicial Accountability, Inc., acting on their own behalf and on behalf of the People of the State of New York & the Public Interest,*
>
> Plaintiffs,
>
> -against-
>
> ANDREW M. CUOMO, in his official capacity as Governor of the State of New York, ERIC T. SCHNEIDERMAN, in his official capacity as Attorney General of the State of New York, THOMAS DiNAPOLI, in his official capacity as Comptroller of the State of New York, DEAN SKELOS, in his official capacity as Temporary President of the New York State Senate, THE NEW YORK STATE SENATE, SHELDON SILVER, in his official capacity as Speaker of the New York State Assembly, THE NEW YORK STATE ASSEMBLY, JONATHAN LIPPMAN, in his official capacity as Chief Judge of the State of New York, the UNIFIED COURT SYSTEM, and THE STATE OF NEW YORK,
>
> Defendants,

was commenced in Bronx County Supreme Court on March 30, 2012 (#302951-2012), accompanied by an order to show cause, with TRO, to prevent disbursement of the monies for the first phase of the judicial salary increase that was to take effect on April 1, 2012.

(d) Defendant SCHNEIDERMAN, a named defendant therein, defended all defendants and, in the absence of any legitimate merits defense, engaged in fraudulent advocacy. At his urging, the TRO was denied and the lawsuit [hereinafter "*CJA v. Cuomo I*"] was transferred to Supreme Court/New York County, with no ruling on the preliminary injunction. In the process, plaintiffs' original verified complaint, ALL substantiating exhibits, and the order to show cause for a preliminary injunction, with TRO, went missing.

(e) Since the transfer, in September 2012, *CJA v. Cuomo I* has been in limbo, sitting on a shelf in the New York County Clerk's Office because the New York County Clerk – whose salary is tied to judicial salaries – has ignored plaintiffs' complaints for investigation of the record tampering, ignored their requests that he discharge his mandatory duty under Judiciary Law §255 to certify the missing documents, and ignored their requests that he take action against his Chief Deputy Clerk who has barred plaintiff SASSOWER from reviewing the case file under threat that he will have court officers remove her from the courthouse, which he has already done.

(f) With the case stalled, plaintiffs sought to secure override of the second phase of the judicial salary increase that was scheduled to take effect on April 1, 2013 by directly participating in the Legislature's consideration of the Judiciary's proposed budget for fiscal year 2013-2014. In so doing, plaintiffs demonstrated that the Judiciary's proposed budget for fiscal year 2013-2014 was unconstitutional because it lacked itemization sufficient to permit intelligent and meaningful review and because it violated Article VII, §7 of the State

Constitution. They also documented that the Legislature's proposed budget for fiscal year 2014-2015 was unconstitutional, being uncertified and missing "General State Charges".

(g) The Legislature's response – as likewise defendant CUOMO's – to plaintiffs' presentation of proof was to ignore it and violate all statutory and rule provisions that ensure the integrity of the budget process. Defendant CUOMO's signing of the state budget for fiscal year 2013-2014, which he did several times, ceremonially, at various locations throughout the state, was in face of plaintiffs' March 29, 2013 letter entitled:

> "The Governor's Duty to Disapprove S.2601-a/A.3001-a (Judiciary/Legislative Appropriations Bill), Pursuant to Article VII, §4, and Article IV, §7 of the New York State Constitution, Because the Legislature Violated Express Constitutional and Statutory Safeguards, as well as its Own Rules, in Passing It" (Exhibit A)[1].

(h) Consequently, beginning in April 2013 and spanning through September 2013, plaintiffs filed a series of corruption complaints with criminal and ethics authorities against defendants and such other collusive public officers as defendant CUOMO's Director of the Budget, Robert Megna, for "grand larceny of the public fisc and other corrupt acts" in connection with the Judiciary and Legislative budgets for fiscal year 2013-2014 and defendant CUOMO's Budget Bill #S.2601/A.3001 (2013) embodying them. Among these authorities: the U.S. Attorneys for the Southern, Eastern, and Northern Districts of New York and the Albany County District Attorney – all, additionally, requested to intervene in *CJA v. Cuomo I.*

(i) All plaintiffs' corruption complaints and intervention requests are – like *CJA v. Cuomo I* – in limbo because the criminal and ethics authorities with whom they were filed are disabled by conflicts of interest and have been sitting on them. The only exception is the

conflict-ridden Commission to Investigate Public Corruption of defendants CUOMO and SCHNEIDERMAN, which, by a February 7, 2014 letter to plaintiffs, purported "your matter falls outside of our mandate." (Exhibit I). This disposition followed upon plaintiffs' filing a January 7, 2014 supplemental complaint with the Commission (Exhibit E-2) as to the fraudulence and unconstitutionality of the Judiciary's and Legislature's proposed budgets for fiscal year 2014-2015, established by their December 11, 2013 and December 30, 2013 letter to defendants CUOMO, SKELOS, SILVER and Legislative Leaders (Exhibits C, D). Plaintiffs' supplemental complaint described these two letters as each presenting "an open-and-shut, *prima facie* case of public corruption, verifiable in a matter of minutes, involving huge sums of taxpayer monies." – with investigation by the Commission consistent with its pledge to "follow the money" and the declaration of its December 2, 2013 interim report:

> "Government watchdogs, the media, and most of all, members of the public have a right to understand how their tax dollars are spent and by whom, as well as the process used to appropriate state funds" (at p. 25).

(j) The record of all of the foregoing is posted on plaintiff CJA's website, www.judgewatch.org, accessible from links on the homepage and, additionally, by the top panel "Latest News".

6. Plaintiff ELENA RUTH SASSOWER [hereinafter "SASSOWER"] is a New York-born resident, citizen, and taxpayer of the State of New York.

7. Defendant ANDREW M. CUOMO [hereinafter "CUOMO"] is Governor of the State of New York.

(a) On July 2, 2013, defendant CUOMO issued Executive Order #106, identifying that "the New York State Division of the Budget is charged with carrying out the

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[1] The exhibits to this Verified Complaint, all incorporated herein by reference, are appended in

Executive's constitutional obligations with respect to the State's multi-billion dollar budget" and that, pursuant to Executive Law §6 and §63(8), he was appointing a Commission to Investigate Public Corruption, whose mandate, *inter alia*, was to:

> "Investigate weaknesses in existing laws, regulations and procedures relating to addressing public corruption, conflicts of interest, and ethics in State Government, including but not limited to criminal laws protecting against abuses of the public trust; and make recommendations to reform any weaknesses uncovered in existing State laws, regulations and procedures." (¶IIc).

(b) As stated by defendant CUOMO, at his July 2, 2013 press conference, "The jurisdiction here is broad and sweeping."

(c) In response, plaintiff SASSOWER delivered an August 21, 2013 letter to defendant CUOMO, entitled:

> "Achieving BOTH a Properly Functioning Legislature & Your Public Trust Act (Program Bill #3) – the *Sine Qua Non* for 'Government Working" & Working for the People".

It stated that "the purposes [defendant CUOMO had] conferred upon the Commission are actually duties of a properly-functioning legislature, discharging its oversight and law-making functions" (Exhibit B, p. 1, underlining in original).

(d) In support, the letter summarized the findings of the 2004, 2006, and 2008 reports of the Brennan Center for Justice, examining the components of a functioning Legislature and demonstrating that New York's Legislature was the most dysfunctional of any state legislature and Congress because of legislative rules vesting disproportionate powers in the Temporary Senate President and Assembly Speaker, emasculating members and reducing committees to shells.

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chronological order. So, too, plaintiffs' records/FOIL requests that are appended as the last set of exhibits.

(e) Plaintiffs' August 21, 2013 letter showed how that dysfunction had lent itself to behind-closed-doors deal-making between defendants SKELOS, SILVER, and CUOMO – and that the true facts behind defendant CUOMO's establishing the Commission to Investigate Public Corruption were that he, in collusion with them, had aborted the legislative process with respect to his "Public Trust Act" (Program Bill #3) and his Program Bills #4, #5, and #12 – and not, as he publicly purported, that "the Legislature has failed to act".

8. Defendant DEAN SKELOS [hereinafter "SKELOS"] is Temporary Senate President of defendant NEW YORK STATE SENATE, a position he shares, on an alternating basis, with Senator Jeffrey Klein.

9. Defendant NEW YORK STATE SENATE [hereinafter "SENATE"] is the upper house of the New York State Legislature, consisting of 63 members.

(a) According to the Legislature's budget narrative for fiscal year 2014-2015 (at p. 2): "The Senate conducts its legislative business through the operation of 34 Standing Committees".

(b) The largest Senate committee – and the only one identified in the Legislature's budget narrative (at p. 3) – is the Senate Finance Committee.

10. Defendant SHELDON SILVER [hereinafter "SILVER"] is Speaker of defendant NEW YORK STATE ASSEMBLY.

11. Defendant NEW YORK STATE ASSEMBLY [hereinafter "ASSEMBLY"] is the lower house of the New York State Legislature, consisting of 150 members.

(a) According to the Legislature's budget narrative for fiscal year 2014-2015 (at p. 2): "The Assembly conducts its legislative business through the operation of 38 standing committees".

(b) The largest Assembly committee – and the only one identified in the Legislature's budget narrative (at p. 3) – is the Assembly Ways and Means Committee.

12. Defendant ERIC T. SCHNEIDERMAN [hereinafter "SCHNEIDERMAN"] is Attorney General of the State of New York.

(a) Pursuant to Executive Law §63.8, defendant SCHNEIDERMAN was directed by defendant CUOMO's Executive Order #106 to "inquire into the matters set forth in this Order", and requested to deputize the attorney members of the Commission to Investigate Public Corruption and delegate to them "the authority to exercise the investigative powers that are provided for in an investigation pursuant to such Subdivision Eight of Section Sixty-Three." (¶IV).

(b) Defendant SCHNEIDERMAN described the Commission's mandate at the July 2, 2013 press conference: "This Commission will be uniquely empowered to take a top to bottom review of all aspects of our state government, to refer findings of specific cases of misconduct, and to recommend reforms".

(c) Defendant SCHNEIDERMAN may be presumed knowledgeable of plaintiffs' efforts to secure the Commission's investigation of what took place with respect to the budget for fiscal year 2013-2014 – and what was unfolding with respect to the budget for fiscal year 2014-2015 – not the least reason being because under Executive Law §63.8, each of the Commission members he deputized is required to:

> "make a weekly report in detail to the attorney-general, in form to be approved by the governor and the attorney-general, which report shall be in duplicate, one copy of which shall be forthwith, upon its receipt by the attorney-general, transmitted by him to the governor." (underlining added).

13. Defendant THOMAS DiNAPOLI [hereinafter "DiNAPOLI"] is Comptroller of the State of New York.

FACTUAL ALLEGATIONS

14. Article VII of the New York State Constitution governs the State budget. Among its pertinent provisions: §1, whose second paragraph states:

> "Itemized estimates of the financial needs of the legislature, certified by the presiding officer of each house, and of the judiciary, approved by the court of appeals and certified by the chief judge of the court of appeals, shall be transmitted to the governor not later than the first day of December in each year for inclusion in the budget without revision but with such recommendations as the governor may deem proper. Copies of the itemized estimates of the financial needs of the judiciary also shall be transmitted to the appropriate committees of the legislature."

and §7, stating, in full:

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

15. Defendants SENATE and ASSEMBLY never furnished defendant CUOMO with "itemized estimates of the financial needs of the legislature, certified by the presiding officer of each house" for fiscal year 2014-2015.

16. This is particularized by plaintiffs' December 30, 2013 letter to defendant CUOMO, entitled:

> "SAFEGUARDING THE PUBLIC PURSE FROM LEGISLATIVE FRAUD & LARCENY: Your Duty to Exclude the Legislature's Proposed Budget from the State Budget for Fiscal Year 2014-2015 Because its Absence of Certified Itemized Estimates Violates Article VII, §1 of the NYS Constitution; Alternatively, to Recommend that the Legislature Reject it, or Alter it Based on Certification of Itemized Estimates" (Exhibit D, underlining in original).

17. The facts therein set forth established that defendants SKELOS and SILVER furnished defendant CUOMO with a one-sentence November 27, 2013 coverletter stating:

> "Attached is a copy of the Legislature's Budget for the 2014-2015 fiscal year pursuant to Article VII, Section 1 of the New York State Constitution."

18. Such did not claim to be transmitting "itemized estimates of the financial needs of the legislature" – or that same had been "certified by the presiding officer of each house". The transmitted legislative budget consisted of an untitled five-page budget narrative, with a sixth page chart entitled "All Funds Requirements for the Legislature", and a ten-page "Schedule of Appropriations". There was no certification among these 16 pages, nor even a reference to "itemized estimates" of the Legislature's "financial needs" or to Article VII, §1 (Exhibit D, p. 2).

19. Because defendants SKELOS and SILVER did not transmit to defendant CUOMO "itemized estimates of the financial needs of the legislature, certified by the presiding officer of each house", as Article VII, §1 of the State Constitution expressly requires, plaintiffs asserted that defendant CUOMO could not constitutionally include the proffered legislative budget with his state budget "without revision" and suggested an alternative course consistent with the constitutional design. They also argued that if, nonetheless, he believed himself constitutionally mandated to include it, his duty was to recommend its rejection for lack of the required certification, or, alternatively, its approval following the Legislature's emendation or supplementation of his budget bill based on "itemized estimates of the financial needs of the legislature, certified by the presiding officer of each house" (Exhibit D, p. 3).

20. The letter suggested (at p. 4) that Budget Director Megna should assist defendant CUOMO with other recommendations with respect to the Legislature's proposed budget and requested that he direct Budget Director Megna to review it and furnish a report.

21. In addition to pointing out that the Legislature's proposed budget was missing "General State Charges" – these being "the 'fringe benefits' that are pension contributions, social security, health, dental, vision and life insurance, etc. for legislators and legislative branch employees" (at p. 2) – plaintiffs' letter asserted (at p. 4) that "the most minimal examination of its 16 pages reveals that is fashioned to mislead, conceal, and thwart intelligent review of its largest appropriations: these being for member offices and committees, combined in a lump sum, and separate lump sum appropriations for "senate operations" and Assembly "administrative and program support operations".

22. Plaintiffs stated:

> "...with these figures being identical to the figures for fiscal year 2011-2012, fiscal year 2012-2013, and fiscal year 2013-2014 – as likewise the balance of the budget – such are palpably not the product of any cognizable 'process' of ascertaining the Legislature's actual 'financial needs'.
>
> We submit that the Legislature's budget figures are a contrivance of the leadership designed to perpetuate its power through unitemized, grossly inadequate appropriations for the staffing of legislators' offices and the legislative committees, combined with unitemized funding for a more directly-controlled central staff.[fn3]"
>
> ...
>
> Upon information and belief, all the 72 legislative committees, excepting the Assembly Ways and Means Committee and Senate Finance Committee, operate with funding so nominal that they lack the staff necessary to discharge their constitutional duties of lawmaking and oversight. It is to conceal this that the 'Schedule of Appropriations' for the Senate and Assembly has no line-item for committee appropriations. Rather – and reflecting the reality that the committees essentially operate from the offices of their chairs, with limited additional funding for committee staff positions – the line-items for Senate and Assembly committees are each combined with members' offices, with the result that it is impossible to ascertain the individual or collective appropriations for committees – or members' offices. Upon information and belief, appropriations for members' offices are also inadequate for legislators to discharge their duties...." (Exhibit D, pp. 4-6, underlining in the original).

23. Plaintiffs summed up the triviality of the Legislature's proposed budget by noting (at p. 6) that more than half of its 10-page "Schedule of Appropriations" was devoted to less than 10%

of the proposed budget, with most of the 90% balance lacking itemization sufficient for meaningful and intelligent review – this 90% being, primarily, the appropriations for each house of member offices and committees combined in a single lump sum, and the separate lump sum appropriations for "senate operations" and Assembly "administrative and program support operations". The result:

> "a 'slush fund' from which Temporary Senate President Skelos and Assembly Speaker Silver fortify their power: rewarding the faithful and punishing the dissident. In the words of former Senator Franz Leichter, testifying on February 26, 2009 before the Temporary Senate Committee on Rules and Administration Reform about the power of the presiding officers of each house:
>
> > 'They also control the Legislative Budget, which is not itemized as are the Executive and Judicial Budgets, and its opaqueness allows the shifting of monies at the leaders' whim.'[fn6]" (Exhibit D, pp. 6-7).

24. The letter identified that it was being sent to defendants SKELOS and SILVER so that defendant CUOMO could have their response; that it was additionally being sent to "appropriate committees of the legislature" having jurisdiction with respect to the Legislature's budget so that they could "identify the process, if any, by which the Legislature determines its 'itemized estimates' of its 'financial needs' – and the role therein of rank-and-file legislators and the legislative committees"; and that it was also being sent to the Commission to Investigate Public Corruption.

25. Defendants SKELOS and SILVER never responded. Nor was there any response from defendant CUOMO. Likewise, there was no response from Budget Director Megna or from the Chairs and Ranking Members of the many "appropriate committees of the legislature", all indicated recipients.

26. Plaintiffs' December 30, 2013 letter (Exhibit D) and its single enclosure – their August 21, 2013 letter to defendant CUOMO (Exhibit B) – are true and correct in all material respects.

27. The non-response of these defendants replicated their non-response to plaintiffs' letter of three weeks earlier concerning the Judiciary's proposed budget for fiscal year 2014-2015 (Exhibit C). That letter was addressed to all the public officers to whom Chief Administrative Judge Prudenti had addressed her two November 29, 2013 memoranda transmitting the Judiciary's two-part budget: defendants CUOMO, SKELOS, and SILVER, other Legislative Leaders, and the Chairs and Ranking Members of the Senate Finance Committee and Assembly Ways and Means Committee and the Chairs of the Senate and Assembly Judiciary Committees.

28. The letter, dated December 11, 2013, was entitled:

> "SAFEGUARDING THE PUBLIC PURSE FROM JUDICIAL FRAUD & LARCENY: Your Constitutional & Statutory Duty to Reject the Entirety of the Judiciary's Proposed Budget for Fiscal Year 2014-2015, Over & Beyond its Concealed, Unitemized Third Phase of the Judicial Salary Increase that Will Otherwise Take Effect, Automatically, on April 1, 2014" (Exhibit C-1).

It stated the following:

> (a) that whereas the Judiciary's proposed budget for fiscal year 2013-2014 had identified its inclusion of funding for the second phase of the judicial salary increase, though not its dollar amount, the Judiciary's budget for fiscal year 2014-2015 concealed both its inclusion of funding for a third phase of judicial salary increase and its dollar amount (at pp. 1-2);
>
> (b) that all plaintiffs' objections to the Judiciary's proposed budget for fiscal year 2013-2014 "apply with even greater force" to its proposed budget for fiscal year 2014-2015 (at p. 5);
>
> (c) that plaintiffs' March 11, 2013 letter pertaining to the second phase of the judicial salary increase and the Judiciary's budget for fiscal year 2013-2014 "furnishes facts and law sufficient for mandating...rejection of the unitemized and concealed third phase of the judicial salary increase and the entirety of the Judiciary's proposed budget [for fiscal year 2014-2015]" (at p. 5, underlining in original).

29. The letter asserted (at p. 8) that if defendants CUOMO, SKELOS, SILVER and the other Legislative Leaders and Chairs and Ranking Members of the "appropriate committees of the legislature" to whom it was addressed disagreed that they were duty-bound to reject the whole of the

Judiciary's proposed budget for lack of sufficient and intelligible itemization and violation of Article VII, §7:

> "creating a slush fund for the Judiciary to steal monies from the public purse for the third phase of the judicial salary increase which, like the first two phases, are fraudulent, statutorily-violative, and unconstitutional, as demonstrated, resoundingly, by CJA's October 27, 2011 Opposition Report" (underlining in the original),

they should furnish the facts and law constituting the basis for their disagreement.

30. The letter also requested that meetings be scheduled with plaintiff SASSOWER so that the content of the letter could be "discussed directly" and stated that she would meanwhile schedule:

> "....meetings with rank-and-file Senators and Assembly members, beginning with CJA's own, Senator George Latimer and Assemblyman David Buchwald – and the chairs and ranking members of the Senate Committee on Investigations and Government Operations and the Assembly Committee on Oversight, Analysis and Investigation – so as to be able to report to you as to whether they are able to meaningfully comprehend and scrutinize the Judiciary's purported 'itemized estimates', budget bill, and the concealed, but included, third phase of the judicial salary increase." (Exhibit C-1, p. 8, underlining added).

31. The letter closed by noting that it would be furnished to the Commission to Investigate Public Corruption with a request that it investigate and render to a report to defendants CUOMO and SENATE and ASSEMBLY, and, additionally, that the letter would be furnished to Chief Administrative Judge Prudenti and Chief Judge Lippman so that they could be prepared to be interrogated about it.

32. Plaintiffs' December 11, 2013 letter is true and correct in all material respects.

33. On January 7, 2014, by a letter entitled:

> "'FOLLOWING THE MONEY':
> The Proposed Judiciary & Legislative Budgets for Fiscal Year 2014-2015" (Exhibit E-1),

plaintiffs furnished defendants CUOMO, SKELOS, SILVER, and other legislators with their letter to the Commission to Investigate Public Corruption, whose description of their December 11 and December 30, 2013 letters was that each presented "an open-and-shut, *prima facie* case of public corruption, verifiable in a matter of minutes, involving huge sums of taxpayer monies." (Exhibit E-2, p. 3, underlining in the original).

34. Plaintiffs' January 7, 2014 letters (Exhibits E-1, E-2) are true and correct in all material respects.

35. On January 10, 2014, the Senate Finance Committee and Assembly Ways and Means Committee Chairs announced the Legislature's joint budget hearings, stating that the hearings were "intended to provide the appropriate legislative committees with public input on the executive budget proposal" and citing Legislative Law §32-a.

36. Legislative Law §32-a reads:

> "Budget; public hearings. After submission and prior to enactment of the executive budget, the senate finance committee and the assembly ways and means committee jointly or separately shall conduct public hearings on the budget. Such hearings may be conducted regionally to provide individuals and organizations throughout the state with an opportunity to comment on the budget. The committees shall make every effort to hear all those who wish to present statements at such public hearings. The chairs of the committees jointly or separately shall publish a schedule of hearings."

37. By a January 14, 2014 letter entitled:

> "Vindicating the Public's Rights under Article VII, §1 of the NYS Constitution & Legislative Law §32-a:
> (1) request to testify at the Legislature's joint budget hearings in opposition to the proposed Judiciary & Legislative budgets;
> (2) request for information/records as to the process, if any, by which the Legislature's proposed budget was compiled" (Exhibit F-1),

Plaintiff SASSOWER wrote the Chairs and Ranking Members of the Senate Finance Committee and Assembly Ways and Means Committee, as well as the Chairs and Ranking Members of other

"appropriate committees of the legislature" – with copies to defendants CUOMO, SKELOS, and SILVER (Exhibit F-2) – reiterating her telephone requests to testify, made the previous day.

38. The letter also reiterated plaintiffs' prior request for information about the process by which the Legislature's budget had been compiled, combining it with an explication of Article VII, §1, as follows:

> "...I request that 'the appropriate committees of the legislature' having primary jurisdiction over the Legislature's proposed budget – the Senate Committee on Investigations and Government Operations and the Assembly Committee on Governmental Operations – identify the process by which the Legislature's proposed budget for fiscal year 2014-2015 was compiled. If the Senate Finance Committee or Assembly Ways and Means Committee – having more general jurisdiction – can answer that question, or if the question can be answered by the supervisory Assembly Committee on Oversight, Analysis, and Investigation, I request that they do so. Indeed, it should be obvious that the reason Article VII, §1 requires that the Judiciary's 'certified' 'itemized estimates' of its 'financial needs' be transmitted to 'the appropriate committees of the legislature', in addition to the Governor, but does not require that the Legislature's 'certified' 'itemized estimates' of its 'financial needs' be transmitted to 'the appropriate committees of the legislature', is because 'the appropriate committees of the legislature are presumed to have formulated the 'itemized estimates' that the 'presiding officer of each house' have 'certified'. (Exhibit F-1, pp. 2-3, underlining in original).

The letter further stated:

> "in the absence of your answers as to the process underlying the Legislature's proposed budget for fiscal year 2014-2015, Temporary Senate President Skelos and Assembly Speaker Silver must be called upon to furnish it, publicly, at the Legislature's joint budget hearings. In any event, they or their designated representatives should be expected to testify and answer questions about the Legislature's proposed budget, just as the Chief Administrative Judge will be testifying and answering questions about the Judiciary's proposed budget." (Exhibit E-2).

39. There was no response to the letter.

40. Plaintiffs' January 14, 2014 letter (Exhibit F-1) is true and correct in all material respects.

41. A week later, on January 21, 2014, defendant CUOMO announced his Executive budget, combining the Legislature's proposed budget and the Judiciary's proposed budget on the same budget bill, #S.6351/A.8551. He made no recommendation to the Legislature with respect to the legislative portion of the bill. His only recommendation pertained to the Judiciary portion, which he urged be reduced so that what he purported as its 2.7% increase over last year would be kept below the 2% "fiscally responsible goal for all of New York State government."

42. Undisclosed by defendant CUOMO was that his Budget Bill #S.6351/A.8551 included millions of dollars in reappropriations for the Legislature not part of its proposed budget. These were inserted at the back of his Budget Bill #S.6351/A.8551 in an out-of-sequence section spanning 19 pages, behind a section of Judiciary reappropriations which, though contained in the Judiciary's proposed "single budget bill", were not included in its two-part budget presentation and seemingly not encompassed by the Chief Judge's certification and the Court of Appeals' approval.

43. By a January 29, 2014 letter to the Chairs and Ranking Members of the Senate Finance Committee and Assembly Ways and Means Committee, entitled:

> "Your Mandatory Duty under Legislative Law §32-a to Hear Testimony in Opposition to the Legislature's Proposed Budget & Governor Cuomo's Budget Bill #S.6351/A.8551 at Public Budget Hearings" (Exhibit G),

plaintiff SASSOWER protested that there had been no response to her requests to testify in opposition to the Legislature's proposed budget and gave notice that defendant CUOMO's Budget Bill #S.6351/A.8551 was "even more unconstitutional and fraudulent than the Legislature's proposed budget", stating:

> "it adds on millions of dollars in reappropriations for the Legislature that are not part of the Legislature's proposed budget – a fact it tries to conceal by placing the reappropriations at the back of the bill, out of sequence (at pp. 27-46)[fn2].

Perhaps you have insight into these millions of dollars of reappropriations. Do you know their cumulative total? Why were they not part of the Legislature's proposed budget, transmitted to the Governor by its November 27, 2013 coverletter? When and in what fashion were they separately transmitted to the Governor. Who in the Legislature, if anyone, certified that the monies proposed for reappropriations were suitable for that purpose? Are they?[fn3]

By the way, since the Governor's Budget Bill #S.6351/A.8551 contains no cumulative tally for its monetary allocations for the Legislature, what is that sum? – presumably the addition of appropriations and reappropriations." (Exhibit G, p. 2, underlining in the original).

44. As to whether the monies designated for reappropriation were "suitable for that purpose", the January 29, 2014 letter furnished the following definition of "reappropriation" from the "Citizen's Guide" on the Division of the Budget's website, suggestive that they were not:

> "A reappropriation is a legislative enactment that continues all or part of the undisbursed balance of an appropriation that would otherwise lapse (see lapsed appropriation). Reappropriations are commonly used in the case of federally funded programs and capital projects, where the funding amount is intended to support activities that may span several fiscal years." (Exhibit G, p. 2).

45. The Chairs and Ranking Members of the Senate Finance Committee and Assembly Ways and Means Committee did not respond.

46. Plaintiffs' January 29, 2014 letter is true and correct in all material respects.

47. Meantime, on January 31, 2014, defendants SKELOS and SILVER announced their joint legislative budget schedule. The press release quoted defendant SKELOS:

> "This schedule will result in passage of an early state budget for the fourth consecutive year. We will work through the process of reviewing the Governor's proposal, holding public hearings, listening to our constituents, and conducting conference committee negotiations, and will adopt a fiscally responsible budget..." (underlining added).

It also quoted defendant SILVER:

> "As the Legislature continues to publicly examine the governor's proposed budget through the joint legislative budget hearings, we announce the remaining steps of the budget process that both houses will take in order to

reach an on-time budget...[that] addresses the many divergent needs of the people in our state." (underlining added).

The Assembly Ways and Means Committee Chair was also quoted:

> "This schedule provides legislators and the public with an opportunity to participate in budget-making decisions that will lead to the adoption of a sound and prudent state financial plan before the April 1 deadline". (underlining added).

Also, the Senate Finance Committee Chair:

> "The legislative budget schedule sets the dates for each step of an open and transparent process, which will be followed by the legislature to deliver a responsible and early budget again this year". (underlining added).

48. On February 3, 2014, plaintiff SASSOWER telephoned the office of the Senate Finance Committee Chair, requesting to testify "in Opposition to ANY Funding for the Commission to Investigate Public Corruption – including the proposed $270,000 appropriation", embedded in the Executive budget. Her memorializing e-mail, bearing that title, was sent to the Chairs and Ranking Members of the Senate Finance Committee and Assembly Ways and Means Committee (Exhibit H).

49. Again, no response.

50. Plaintiffs' February 3, 2014 e-mail is true and correct in all material respects.

51. On February 21, 2014, plaintiff SASSOWER sent the Chairs and Ranking Members of the Senate Finance Committee and Assembly Ways and Means Committee a letter entitled:

> "Restoring Value to Your Sham and Rigged February 5, 2014 'Public Protection' Budget Hearing on the Judiciary's Proposed Budget by Appropriate Questioning of Chief Administrative Judge Prudenti" (Exhibit K-1).

It protested their "wilful misfeasance and nonfeasance", stating:

> "To date, in a brazen display of your conflicts of interest, both institutional and individual, you have scheduled no budget hearing on the Legislature's own budget. As for your budget hearing on the Judiciary's budget – at the February 5, 2014 budget hearing on 'public protection'[fn2] – it was demonstrably sham and rigged, likewise reflective of your conflicts of interest.

Apart from excluding opposition testimony, such as mine, nothing could have been more obscene than your permitting Chief Administrative Judge Prudenti to testify in support of the Judiciary's budget without addressing our December 11, 2013 letter, whose dispositive nature is evident from the most cursory examination of the evidence it presents – and which expressly stated that it was being furnished to her so she could prepare for your 'interrogation' (at p. 8). Indeed, you did not even ask her to explain why she made no mention of the third phase of the judicial salary increase and its reported $8.4 million cost in her oral and written hearing presentations – and why the Judiciary's budget documents also conceal them.

As you know, because I furnished you with the substantiating proof at last year's February 6, 2013 'public protection' budget hearing, the third phase of the judicial salary increase must be stricken because the Commission on Judicial Compensation's August 29, 2011 Report, on which it is based, violated the safeguarding conditions of Chapter 567 of the Laws of 2010 for a salary increase. Striking this third phase would suffice to bring the Judiciary's budget within the Governor's 2% cap – if, in fact, the Judiciary's budget is only .5 beyond the cap, as Chief Administrative Judge Prudenti claimed, putting that .5 excess at about $9 million of a $44 million increase. You accepted these numbers from her, without question, notwithstanding the Governor's Commentary to the Judiciary's budget identified growth at 2.7% and the dollar increase as $53 million...

As at last year's 'public protection' hearing, you engaged in the most minimal and superficial 'number-crunching' with respect to the Judiciary's budget. Once again you allowed Chief Administrative Judge Prudenti to testify without identifying the total cost of the Judiciary's budget, even as your own 'White', 'Blue', 'Yellow', and 'White' Books wildly diverged as to the relevant figures..." (Exhibit K-1, pp. 2-3, underlining in the original).

52. Based upon an analysis of these divergences and those in defendant CUOMO's Commentary and his Division of the Budget website, as well as various deceits of Chief Administrative Judge Prudenti at the hearing, the letter enclosed "a list of pertinent questions to which this state's taxpayers are entitled to answers from Chief Administrative Judge Prudenti" (Exhibit K-2) and requested that they be forwarded to the Chief Administrative Judge for response. To assist the Chairs and Ranking Members of the Senate Finance Committee and Assembly Ways and Means Committee in evaluating the questions, the letter also enclosed an analysis of the Judiciary's two-part budget presentation, its "single-budget bill", and defendant CUOMO's Budget

Bill #S.6351/A.8551 – none containing a cumulative figure for the Judiciary's proposed budget – and of defendant CUOMO's Commentary and the pertinent webpage of his Division of the Budget, differing as to the relevant cumulative figures and percentages (Exhibit K-3).

53. Plaintiff SASSOWER's letter also stated that without the fiscal notes and introducer's memoranda required by Senate Rule VIII, §7, Senate Rule VII, §1, and Assembly Rule III, §1(f), Budget Bill #S.6351/A.8551 could not be voted out of committee – and enclosed plaintiffs' February 11, 2014 letter to the Chair and Ranking Member of the Senate Finance Committee (Exhibit J-1) and February 11, 2014 letter to the Chair and Ranking Member of the Assembly Ways and Means Committee (Exhibit J-8). These had requested the fiscal notes and introducer's memoranda, without response from them.

54. Senate Rule VIII, §7 entitled "Finance Committee" reads:

> "...The sponsor of a bill providing for an increase or decrease in state revenues or in the appropriation or expenditure of state moneys, without stating the amount thereof, must, before such bill is reported from the Finance Committee or other committee to which referred, file with the Finance Committee and such other committee a fiscal note which shall state, so far as possible, the amount in dollars whereby such state moneys, revenues or appropriations would be affected by such bill, together with a similar estimate, if the same is possible, for future fiscal years. Such an estimate must be secured by the sponsor from the Division of the Budget or the department or agency of state government charged with the fiscal duties, functions or powers provided in such bill and the name of such department or agency must be stated in such note.
>
> The Finance Committee shall keep and maintain a file containing all bills requiring fiscal notes and the notes appertaining thereto, which shall be available to Senators and officers of the Senate, accredited representatives of the press, and other responsible persons having a legitimate interest therein."

Senate Rule VII, §1 entitled "Introduction" reads:

> "Bills and resolutions shall be introduced by a Senator, or on the report of a committee, or by message from the Assembly, or by order of the Senate, or by the Governor pursuant to Article VII of the Constitution. Every bill introduced...shall be accompanied by the introducer's memorandum in

> quadruplicate. Such memorandum shall contain a statement of the purposes and intent of the bill and, if the member deems it appropriate, may set forth such other statements that the member feels necessary including, but not limited to, statements relating to economic impact, environmental impact or the impact on the judicial system of the bill. A Committee, where it deems necessary, may require that the introducer's memorandum be amended to include such appropriate statements."

55. Plaintiffs' February 11, 2014 letter to the Senate Finance Committee Chair and Ranking Member (Exhibit J-1) noted that these provisions apply to Budget Bill #S.6351/A.8551 pursuant to Senate Rule VII, §6 entitled "Budget bills", stating:

> "When a bill is submitted or proposed by the Governor by authority of Article VII of the Constitution, it shall become, for all legislative purposes, a legislative bill..."

56. The letter noted that Budget Bill #S.6531/A.8551 did not state the "increase" of its "appropriation or expenditure of state monies" and, therefore, the Senate Finance Committee could not report the bill until the Governor, as its sponsor, filed a "fiscal note" with it. The letter requested that fiscal note, specifying that

> "If properly drawn, such fiscal note would not only specify 'the amount in dollars' of the third phase of the judicial salary increase recommended by the August 29, 2011 Report of the Special Commission on Judicial Compensation, pursuant to Chapter 567 of the Laws of 2010, but 'the amount in dollars' of the increases in statutorily-tied salaries of district attorneys and county clerks and of all 'General State Charges' – together with 'estimate[s]' for 'future fiscal years'. This third-phase judicial salary increase is hidden somewhere in the Judiciary portion of the Governor's Budget Bill #S.6351/A.8551 (pp. 10-26), with no identification of its 'amount in dollars' for fiscal year 2014-2015." (Exhibit J-1, p. 2)

57. The letter additionally sought the fiscal notes that the Governor was required to have filed with the Senate Finance Committee before it "report[ed]" his prior two Budget Bills for the Legislative and Judiciary Budgets [#S.2601/A.3001 (2013); #S.6251/A.9051 (2012)] – and specifically with respect to the second and first phases of the judicial salary increases.

58. Likewise, the letter requested the Governor's "introducer's memorandum" for each of his three Article VII budget bills for the Judiciary and Legislature, including any amendments thereto.

59. Assembly Rule III, §1(f) entitled "Introducer's memorandum" states:

> "There shall be appended to every bill introduced in the Assembly, an introducer's memorandum setting forth...its fiscal impact on the state..."

60. Plaintiffs' February 11, 2014 letter to the Chair and Ranking Member of the Assembly Ways and Means Committee (Exhibit J-8) noted that this provision applied to Budget Bill #A.8551, because Assembly Rule III, §2(f) entitled "Introduction", states:

> "When a bill is submitted or proposed by the Governor by authority of Article VII of the Constitution, it shall become, for all legislative purposes, a legislative bill, and upon receipt thereof by the Assembly it shall be endorsed 'Budget Bill'".

61. The letter therefore requested the Governor's "introducer's memorandum" appended to or accompanying his Budget Bill #A.8551/S.6351, setting forth "its fiscal impact on the state", specifying that:

> "If properly drawn, such would have furnished the cumulative dollar amounts of the bill's two separate budgets for the Judiciary and Legislature. It would also have furnished: (1) the dollar amount of the third phase of the judicial salary increase recommended by the August 29, 2011 Report of the Special Commission on Judicial Compensation, pursuant to Chapter 567 of the Laws of 2010; (2) the dollar amounts of the increases in statutorily-tied salaries of district attorneys and county clerks; (3) the dollar amounts of all 'General State Charges' resulting therefrom; and (4) estimates of the dollar amounts for future fiscal years. This third-phase judicial salary increase is hidden somewhere in the Judiciary portion of the Governor's Budget Bill #A.8551/S.6351 (pp. 10-26), with no identification of its dollar cost for fiscal year 2014-2015." (Exhibit J-8, pp. 1-2).

62. The letter additionally sought the introducer's memoranda that the Governor was required to have appended to or accompanying his prior two budget bills for the Legislative and

Judiciary budgets [#A.3001/S.2601 (2013); #A.9051/S.6251 (2012)] – and specifically with respect to the second and first phases of the judicial salary increases.

63. Plaintiffs' February 21, 2014 letter (Exhibit K-1) – and its five enclosures (Exhibits K-2, K-3, J-1, J-8)[2] – are true and correct in all material respects.

64. The Chairs and Ranking Members of the Senate Finance Committee and Assembly Ways and Means Committee did not respond to plaintiffs' February 21, 2014 letter. Nor did the committees' rank-and-file members respond to the February 21, 2014 letter, sent to them as an e-mail with the subject line:

> "HEADS-UP! – What's Been Happening with the Judiciary & Legislative Budgets – & Appropriations for the Commission to Investigate Public Corruption?" (Exhibit K-4).

65. Likewise, the Chairs and Ranking Members of the Senate Finance Committee and Assembly Ways and Means Committee did not respond to plaintiffs' February 28, 2014 e-mail entitled,

> "Request that CJA's February 21, 2014 letter, with enclosures, be posted as 'Miscellaneous Testimony' on the Senate Finance Committee website" (Exhibit L),

identifying that the Senate Finance Committee had posted, on its website, as "Miscellenaous Testimonies":

> "[the] written statements of the New York County Lawyers' Association and New York State Bar Association in support of the Judiciary's budget <u>in support</u> of the Judiciary's budget – the latter also identifying (at pp. 5-6) and supporting the third phase of the judicial salary increases whose cost it identifies as '$8.5 million'."

66. Plaintiffs' February 28, 2014 e-mail (Exhibit L) is true and correct in all material respects.

67. On March 4, 2014, plaintiffs sent a letter to the Chairs and Ranking Members of the other "appropriate committees of the legislature", entitled:

> "Your Constitutional Duty:
> (1) to address the evidence of fraud and unconstitutionality in the proposed Judiciary and Legislative budgets – and in the materially-divergent Governor's Budget Bill #S.6351/A.8551, which, in violation of Senate and Assembly Rules, is unsupported by a fiscal note and introducer's memorandum;
> (2) to address the $270,000 and other appropriations, embedded in the Executive budget, for a demonstrably corrupt Commission to Investigate Public Corruption" (Exhibit M-1).

The letter stated:

> "To the extent you were deferring to the Senate Finance Committee and Assembly Ways and Means Committee to oversee and scrutinize the Judiciary and Legislative budgets – and the Governor's Budget Bill #S.6351/A.8551, purportedly based thereon, that was a mistake. Their Chairs and Ranking Members have engaged in the most wilful misfeasance and nonfeasance, holding no hearing whatever on the Legislature's proposed budget and holding a sham and rigged hearing on the Judiciary's proposed budget as part of their February 5, 2014 budget hearing on 'public protection'. This is particularized by our February 21, 2014 letter to them – a copy of which is enclosed, together with its most important enclosure – our 'Questions for Chief Administrative Judge Prudenti'. (Exhibit M-1, pp. 1-2, underlining in the original).

68. The letter requested that they forward the "Questions for Chief Administrative Judge Prudenti" for her response (Exhibit K-2). Additionally, it furnished "Questions for Temporary Senate President Skelos and Assembly Speaker Silver", to be forwarded to them for response (Exhibit M-2). Both sets of questions were enclosures to the letter.

69. Noting (at p. 3) that there had still been no response to plaintiffs' repeated question as to "the process, if any, by which the Legislature determines its 'itemized estimates' of its 'financial needs' and the role therein or rank-and-file legislators and the legislative committees", the letter recounted (at p. 4) that upon plaintiffs' filing a FOIL/records request with the Secretary of the Senate

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[2] Plaintiffs' first listed enclosure, their April 2, 2013 letter to Finance/Ways & Means Committee

and Assembly Public Information Office, the answer that came back from the Secretary of the Senate was "the records you request, if the records even exist, are not subject to disclosure pursuant to Senate Rules", with the Assembly's Records Access Officer replying: "the Assembly maintains no records describing the process by which the Legislative Budget for fiscal year 2014-15 was compiled".

70. The letter further recounted (at p. 4) that upon requesting records pertaining to the mysterious legislative reappropriations at the back of defendant CUOMO's Budget Bill #S.6351/A.8551, the Secretary of the Senate similarly stated "if the records even exist, [they] are not subject to disclosure pursuant to Senate Rules" and that the Assembly Records Access Officer also similarly stated "The Assembly maintains no record responsive to this request." No response whatever from the Chairs and Ranking Members of the Senate Finance Committee and Assembly Ways and Means Committee.

71. The letter stated (at p. 4) that they could see for themselves "the astonishing results" of plaintiffs' FOIL and records requests pertaining to the Legislature's proposed budget, the Judiciary's proposed budget, and defendant CUOMO's Budget Bill #S.6351/A.8551, as they are posted on their own webpage of our website, www.judgewatch.org" and that the link for it was posted on the webpage for this letter.

72. Finally, the letter pointed out (at pp. 4-5) that the Legislature had held no budget hearing on funding for the Commission to Investigate Public Corruption, embedded in the Executive budget, but that it should recognize the inconsistency of authorizing funding for the Commission, while suing it in a declaratory action challenging it for operating without requisite legislative authorization of funding.

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leadership, is annexed to plaintiffs' Notice to Produce pursuant to CPLR §2214(c), accompanying this Verified

73. Plaintiffs' March 4, 2014 letter – and its enclosures – are true and correct in all material respects.

74. None of the Chairs and Ranking Members of the "appropriate committees of the legislature" to whom the March 4, 2014 letter was addressed responded. Nor was there any response from the indicated recipients, including defendants SKELOS and SILVER (Exhibit M-3).

75. Upon information and belief, less than two weeks later, all of these Chairs and Ranking Members, as likewise defendants SKELOS and SILVER, went on to publicly celebrate "Sunshine Week". The Senators postured about making "legislative proceedings more open and transparent by expanding public access to session, committee meetings, and votes" (March 18, 2014 press release of Senate Majority). The Assembly Members, about a "legislative package to strengthen the State's Freedom of Information Law (FOIL), proclaimed by a March 19, 2014 press release "Assembly Passes Sunshine Week Legislation to Increase Public Access and Promote Greater Government Accountability", quoting defendant SILVER as saying:

> "A government that is truly 'of the people' must, by definition, be open and transparent...These laws give the public a necessary window into the operation of our state and foster confidence in our government."

AS AND FOR A FIRST CAUSE OF ACTION

The Legislature's Proposed Budget for Fiscal Year 2014-2015, Embodied in Budget Bill #S.6351/A.8551, is Unconstitutional & Unlawful

76. Plaintiffs repeat, reiterate, and reallege ¶¶1-75, with the same force and effect as if more fully set forth herein.

77. Plaintiffs' December 30, 2013 letter (Exhibit D) was, and is, dispositive of the unconstitutionality and fraudulence of the Legislature's proposed budget for fiscal year 2014-2015

Complaint.

and all the facts, law, and legal argument are specifically repeated, reiterated, and realleged. Such is additionally reinforced and substantiated by plaintiffs' "Questions for Temporary Senate President Skelos & Assembly Speaker Silver" (Exhibit M-2), furnished to defendants SKELOS and SILVER, as well as the leaders of defendant SENATE and ASSEMBLY (Exhibit M-3) as an enclosure to plaintiffs' March 4, 2014 letter (Exhibit M-1).

78. The Legislature's proposed budget that defendants SKELOS and SILVER transmitted to defendant CUOMO is unconstitutional, *on its face* – which is why defendants SENATE and ASSEMBLY are not posting it on their websites and have not responded to plaintiffs' inquiries on the subject (Exhibit N).

79. As chronicled by plaintiffs' December 30, 2013 letter, the transmittal that defendants SKELOS and SILVER made to defendant CUOMO does not purport to be "itemized estimates of the financial needs of the legislature", as Article VII, §1 expressly requires. Nor does it purport to be "certified by the presiding officer of each house", as Article VII, §1 expressly requires.

80. This absence of certification for the Legislature's proposed budget is not in doubt. It is established by the responses plaintiffs received and did not receive to their records/FOIL requests for the certification from defendants SENATE and ASSEMBLY (Exhibit N) and from defendant CUOMO and his Division of the Budget (Exhibit O)[3]. No certification exists.

81. Such suffices to render the Legislature's proposed budget unconstitutional, *on its face* – and to have required defendant CUOMO to have excluded it from his state budget because it violated Article VII, §1, or, if including it, to have so-identified that fact to the Legislature with a recommendation that it be rejected by the Legislature by reason thereof or approved only upon

[3] The attachment furnished by the Division of the Budget's January 9, 2014 letter was the same as had been furnished by the Assembly's Public Information Office on December 6, 2013 – which contained no certification, as set forth by plaintiffs' December 16, 2013 letter to the Assembly Public Information Office, without dispute from it (Exhibits N).

modification based on "itemized estimates of the financial needs of the legislature, certified by the presiding officer of each house."

82. As highlighted by plaintiffs' December 30, 2013 letter to defendant CUOMO:

> "It is to prevent fraud and larceny of taxpayer monies that Article VII, §1 requires that the Legislature's 'itemized estimates' of 'financial needs' be 'certified by the presiding officer of each house' – just as it requires the Judiciary's 'itemized estimates' of its 'financial needs' be 'approved by the court of appeals and certified by the chief judge of the court of appeals'[fn2]. This certification requirement takes on added significance as Article VII, §1 does not lay out any procedure by which the Legislature and Judiciary are to ascertain their 'itemized estimates', which it does for the Executive branch. That Temporary Senate President Skelos and Assembly Speaker Silver have not certified their November 27, 2013 transmittal to you, in face of the unequivocal certification language of Article VII, §1, bespeaks their knowledge that they have not transmitted the required 'itemized estimates' of the Legislature's 'financial needs' to which they can attest. (Exhibit D, p, 2, underlining in the original)

83. Thus, the State Constitution, in exchange for the independence it gives the Legislature to determine its own "financial needs", asks for nothing more than that the "itemized estimates" be "certified by the presiding officer of each house" – a most nominal requirement.

84. That defendants SKELOS and SILVER should violate so nominal a constitutional requirement – and wilfully and deliberately fail to post the purported Legislative budget on defendant SENATE and ASSEMBLY websites – reflects their knowledge that what they were transmitting to defendant CUOMO as the Legislature's budget for fiscal year 2014-2015 was NOT the constitutionally-mandated "itemized estimates of the financial needs of the legislature".

85. As pointed out by the December 30, 2013 letter (Exhibit D, pp. 2-3), the proffered budget, *on its face*, was not "itemized estimates of the financial needs of the legislature" as it contains no "General State Charges", these being "pension contributions, social security, health, dental, vision and life insurance, etc. for legislators and legislative branch employees". This is also not in doubt – nor that defendants ASSEMBLY, SENATE, and defendant CUOMO have stated that

they have no records of the Legislature's "General State Charges", nor certification thereof, with the Division of the Budget making no production of same (Exhibits N, O, R).

86. Nor could the budget that defendants SKELOS and SILVER submitted to defendant CUOMO be actual "financial needs" as they were identical to those of the Legislature's past three budgets. Indeed, demonstrated by questions 14 and 15 of the "Questions for Temporary Senate President Skelos and Assembly Speaker Silver" (Exhibit M-2) is that such identical tallies are the product of manipulation.

87. That defendants SKELOS, SILVER, SENATE, and ASSEMBLY have failed and refused to disgorge information as to the process by which the Legislature's budget for 2014-2015 was compiled reinforces that there was no cognizable process (Exhibits D (at p. 7); F-1 (at pp. 2-3); M-1 (at pp. 3-4); M-2 (at question #10-12); Q).

88. Article VII, §1 does not vest defendants SKELOS and SILVER with power to themselves determine the "itemized estimates of the financial needs of the legislature", but only to certify same. Implicitly, that power is vested in "the appropriate committees of the legislature". As pointed out by plaintiffs' January 14, 2014 letter:

> "...it should be obvious that the reason Article VII, §1 requires that the Judiciary's 'certified' 'itemized estimates' of its 'financial needs' be transmitted to 'the appropriate committees of the legislature', in addition to the Governor, but does not require that the Legislature's 'certified' 'itemized estimates' of its 'financial needs' be transmitted to 'the appropriate committees of the legislature', is because 'the appropriate committees of the legislature are presumed to have formulated the 'itemized estimates' that the 'presiding officer of each house' have 'certified'. (Exhibit F-1, pp. 2-3, underlining in original).

88. Indeed, no other provision of the Constitution and no statute or rules of the Senate or Assembly vest the Temporary Senate President and Assembly Speaker with the power that defendants SKELOS and SILVER have seemingly arrogated to themselves.

89. Nor would "appropriate committees of the legislature" craft such a budget as defendants SKELOS and SILVER transmitted to defendant CUOMO – one whose lump-sum, "slush-fund" appropriations give defendants SKELOS and SILVER a free hand in financially rewarding members and legislative committees who follow their dictates and punishing those who do not.

90. In addition to being unconstitutional, *as written*, the Legislature's budget for fiscal year 2014-2015 is unconstitutional *as applied* – and that application is demonstrated by their implementation of past legislative budgets, especially the recent identical budgets.

91. Upon information and belief, examination of how defendants SKELOS and SILVER have distributed the lump sum appropriations would establish that the budget is their most powerful tool by which they so dominate members and committees as to deprive them of their "financial needs" for discharging their constitutional duties, and for discharging them with independence.[4]

92. Plaintiffs' direct, first-hand interaction with defendant SENATE and ASSEMBLY pertaining to the Judiciary and Legislative budget for fiscal year 2014-2015 – much of it evidenced by written correspondence, including the annexed (Exhibits C-V) – establishes that these defendants, by their "appropriate committees" and by their members, are not functioning in any manner that is consistent with their constitutional duties.

93. Nor is this nonfeasance, misfeasance, and nonfeasance unique to the Legislature's response to the Judiciary and Legislative budget for fiscal year 2014-2015. Rather, it replicates their course of conduct with respect to the Judiciary budget for fiscal year 2013-2014, and with regard to EVERY issue that plaintiffs have brought before them for more than two decades.

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[4] "Mr. Silver has proved himself a master of wielding the levers of power at the Capitol. He controls where members park, the size and location of their offices and how much money they can spend on their staffs. He also can increase, or decrease, their pay, by offering them myriad leadership posts.", "*Bad Week is Merely Bump for Assembly's Master of Power*", New York Times, May 20, 2013, Danny Hakim, Thomas Kaplan

94. In every respect, defendants SENATE and ASSEMBLY have fallen beneath a constitutionally acceptable threshold of functioning – and it appears the reason is not limited to Senate and Assembly rules that vest in the Temporary Senate President and Speaker strangulating powers, the subject of the Brennan Center's 2004, 2006, and 2008 reports on the Legislature. Rather, it is because – without warrant of the Constitution, statute, or Senate and Assembly rules, as here demonstrated, the Temporary Senate President and Speaker have seized control of the Legislature's own budget, throwing asunder the constitutional command: "itemized estimate of the financial needs of the legislature, certified by the presiding officer of each house".

95. This constitutional defiance has, apparently, been going on for some time now, abetted by our Governors – defendant CUOMO following in their practice of not even furnishing a recommendation on the Legislature's budget that he sends back to it "without revision" (Exhibit P).

96. In 2009, the Temporary Senate Committee on Rules and Administration Reform whose charge was to make recommendations with respect to Senate rules, devoted significant discussion to the issue of adequate funding for committees, without apparent recognition that the solution was in Article VII, §1, *to wit*, confining the Temporary Senate President and Assembly Speaker to certifying the "itemized estimates of the financial needs of the legislature", compiled by "appropriate committees of the legislature".

97. Suffice to note that the much maligned June 8, 2009 Senate coup was largely about Senate rules – and the new Senate rules, immediately enacted, included one entitled "Committee and Leadership staff" which began as follows:

> "Pursuant to a resolution adopted by the house, committees and leadership will receive funding for necessary staff. The adopted resolution shall state the exact amount each committee or leadership position is to receive for staffing purposes." (Exhibit V-2).

98. Such does not appear in current Senate rules (Exhibit V-3) – and plaintiffs' records request to the Senate for records as to funding amounts for committee staff and member offices resulted in the response: "the records, if they even exist, are not subject to disclosure pursuant to Senate rules." (Exhibit V-4). As for the videos and transcripts of the Senate floor proceedings during the period of the Senate coup, and transcripts of the period, the Senate has purported that it has "no documents responsive to [the] request" (Exhibit U-2).

AS AND FOR A SECOND CAUSE OF ACTION

The Judiciary's Proposed Budget for 2014-2015, Embodied in Budget Bill #S.6351/A.8551, is Unconstitutional & Unlawful

99. Plaintiffs repeat, reiterate, and reallege ¶¶1-98, with the same force and effect as if more fully set forth herein.

100. Plaintiffs' December 11, 2013 letter (Exhibit C-1) was, and is, dispositive of the fraudulence and unconstitutionality of the Judiciary's proposed budget for fiscal year 2014-2015. All the facts, law, and legal argument presented therein and by its incorporated and enclosed March 11, 2013 letter pertaining to the Judiciary's proposed budget for fiscal year 2014-2015 (Exhibit C-2), are specifically repeated, reiterated, and realleged.

101. Such dispositive presentation is reinforced and amplified by plaintiffs' February 21, 2014 letter (Exhibit K-1), with its *prima facie* showing (at pp. 3-5) that defendants SENATE and ASSEMBLY, as well as defendant CUOMO and his Division of Budget, are unable to comprehend the Judiciary's proposed budget for fiscal year 2014-2015 on its most basic level: its cumulative dollar amount and its percentage increase over the Judiciary's budget for fiscal year 2013-2014 – paralleling what plaintiffs' March 11, 2013 letter had established with respect to the Judiciary's proposed budget for fiscal year 2014-2015: their utter inability to discern its cumulative dollar

amount and the total earmarked for the Judiciary by the Governor's budget bill (Exhibit C-2, pp. 10-11).

102. Such stunning inability resoundingly rebuts the judicial fiction that the Legislature's passage of budget bills such as these presumes it found their itemization sufficient for intelligent, meaningful review.

103. Plaintiffs' most important enclosures to their February 21, 2014 letter pertaining to the Judiciary's proposed budget for fiscal year 2014-2015 are its "Questions for Chief Administrative Judge Prudenti" (Exhibit K-2) and accompanying "Analysis of the Judiciary's Two-Part Proposed Budget & 'Single Budget Bill'" (Exhibit K-3). Each reflects that the reason the Judiciary did not itself identify the cumulative dollar amount of its proposed budget – which it could readily have done – was to conceal the reappropriations. As detailed, the Judiciary's reappropriations do not appear in its two-part budget presentation, but only in its "single budget bill", and there is a reasonable question as to whether the "single budget bill" is encompassed within the certification of the Chief Judge and approval by the Court of Appeals.

104. If the Chief Judge's certification and the Court of Appeals' approval do not encompass the "single budget bill", the reappropriations were unconstitutionally included by defendant CUOMO "without revision" in his Budget Bill #S.6351/A.8551, pursuant to Article VII, §1.

105. Plaintiffs' "Questions for Chief Administrative Judge Prudenti" (Exhibit K-2) present further constitutional and statutory violations relating to the reappropriations in the Judiciary's "single budget bill", such as whether the funds earmarked for reappropriation were properly designated as such, rather than returned to the public treasury.

106. Noting that the "reappropriations in the 'single budget bill'...are pretty barren", plaintiffs' question #14 asked whether they were consistent not only with Article VII, §7 (quoted at ¶14, *supra*), but, additionally, Article III, §16:

> "No act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of said act, or which shall enact that any existing law, or part thereof, shall be applicable, except by inserting it in such act."

and State Finance Law §25:

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

107. All of these are grounds for a declaration of unconstitutionality and unlawfulness with respect to the Judiciary's proposed budget.

108. With regard to the third phase of the judicial salary increase, plaintiffs "Questions" demonstrated that the only reason for the Judiciary's failure to have identified that its budget included it and to have omitted a line-item for it in its "single budget bill", was to conceal the duty of defendants SENATE, ASSEMBLY, and CUOMO to strike it for non-compliance with the statutory prerequisites of Chapter 567 of the Laws of 2010, as well as for fraud and unconstitutionality, all evidentiarily established by plaintiffs' October 27, 2011 Opposition Report and the March 30, 2012 verified complaint in *CJA v. Cuomo I* based thereon.

AS AND FOR A THIRD CAUSE OF ACTION

Budget Bill #S.6351/A.8551 is Unconstitutional & Unlawful Over & Beyond the Legislative & Judiciary Budgets it Embodies "Without Revision"

109. Plaintiffs repeat, reiterate, and reallege ¶¶1-108, with the same force and effect as if more fully set forth herein.

110. The uncertified Legislative budget for fiscal year 2014-2015, transmitted to defendant CUOMO by defendants SKELOS and SILVER contained no reappropriations. Yet, defendant CUOMO's Budget Bill #S.6351/A.8551 includes 19 pages of reappropriations for the Legislature, totaling tens of millions of dollars, hidden in an out-of-sequence section at the back of the bill (at pp. 27-46).

111. As reflected by the responses to plaintiffs' records/FOIL requests as to where these reappropriations came from, who in the Legislature, if anyone, certified that the monies proposed for reappropriations were suitable for that purpose; their cumulative total; and the cumulative total for the monetary allocations for the Legislature in Budget Bill #S.6351/A.8551 (Exhibits T), defendant CUOMO has no records, defendant ASSEMBLY has no records, defendant SENATE states that "if the records even exist" they are "not subject to disclosure pursuant to Senate rules"; and Defendant CUOMO's Division of the Budget purports that its "review process" will take as long as May 30, 2014.

112. In the absence of satisfactory response to these basic questions, the legislative reappropriations in Budget Bill #S.6351/A.8551 are unconstitutional and unlawful and must be stricken so as to prevent wrongful expenditure of state and taxpayer monies.

AS AND FOR A FOURTH CAUSE OF ACTION

Nothing Lawful or Constitutional Can Emerge From a Legislative Process that Violates its Own Statutory & Rule Safeguards

113. Plaintiffs repeat, reiterate, and reallege ¶¶1-112, with the same force and effect as if more fully set forth herein.

114. Even were defendant CUOMO's Budget Bill #S.6351/A.8551 and the proposed Legislative and Judiciary budgets not – as they are – fraudulent and fraught with constitutional violations and infirmities – the Legislature's wilful and deliberate violation of express statutory and rule provisions render them further unlawful and unconstitutional.

115. In mandatory terms, Legislative Law §32-a states:

> "The committees shall make every effort to hear all those who wish to present statements at such public hearings."

116. As hereinabove demonstrated, the ONLY "effort" made by defendants SENATE and ASSEMBLY was in ignoring, without response, plaintiff SASSOWER's repeated phone calls and written requests to testify at public hearings in opposition – which they did with full knowledge that her testimony was not only serious and substantial, but dispositive.

117. There is not the slightest excuse for what these defendants did in violating not only plaintiffs' right to be heard, but the public's right to hear the particularized facts and law that plaintiffs had, in abundance, with respect to the Judiciary and Legislative budgets – and with respect to the Commission to Investigate Public Corruption.

118. Nor is there the slightest excuse for their wilful and deliberate violation of their own rules – as, for instance, Senate Rule VIII, §7, Senate Rule VII, §1, and Assembly Rule III, §1(f) pertaining to fiscal notes and introducer's memoranda, whose purpose is to ensure that legislators – and the public – are alerted to relevant costs. Even beyond the concealed, unitemized third phase of

the judicial salary increase, defendants SENATE and ASSEMBLY have demonstrated their utter unconcern in imposing upon taxpayers the expense of two budgets – the Judiciary and Legislative budgets – whose dollar amount they do not know or will not reveal. Such is utterly unconstitutional.

119. Indeed, apart from the absence of the mandatory fiscal notes and introducer's memoranda, it would appear that such rules as Senate Rule VII, §4 "Title and body of bill" would, if complied with, have prevented Budget Bill #S.6351/A.8551 from funding the third phase of the judicial salary increase and superseding Judiciary Law Article 7-B, without identifying that fact.

120. Defendants SENATE and ASSEMBLY have thrown aside all the substantive and procedural Senate and Assembly rules designed to ensure a legitimate legislative process in tossing Budget Bill #S.6351/A.8551 into Senate and Assembly resolutions to commence the Legislature's joint budget conference "process" – even something as basic as committee votes, set forth in Senate Rule VIII, §5 as follows:

> "No committee shall vote to report a bill or other matter unless a majority of all the members thereof vote in favor of such report. Each report of a committee upon a bill shall have the vote of each Senator attached thereto and such report and vote shall be available for public inspection. A member's vote on any matter before the committee shall be entered by the member on a signed official voting sheet delivered to the Committee Chair."

121. That these Senate and Assembly resolutions are wrapped in rhetoric to make it appear that there has been some deliberative process and participation only compounds the assault on the public's rights. Thus, on March 12, 2013, on the Assembly floor, in introducing defendant SILVER's Resolution #914, the Chair of the Assembly Ways and Means Committee stated:

> "Today we will consider an assembly resolution in response to the state fiscal year 2014-15 Executive Budget. The Assembly budget is the product of deliberation among our members, with input from community groups, stakeholders, and, most importantly, the constituents we represent. Adoption of this resolution is necessary to allow us to move forward to the conference committee process...." (video, at 03:15 mins.).

122. This fiction of deliberation, participation, transparency, and process infuses the language of Resolution #914:

> "...WHEREAS, Upon submission [of the Governor's Executive budget], pursuant to Joint Rule III, the Senate finance committee and the Assembly ways and means committee undertake an analysis and public review of all the provisions of such budget; and
>
> WHEREAS, After study and deliberation, each committee makes recommendations in the form of bills and resolutions as to the contents thereof and such other items of appropriation deemed necessary and desirable for the operation of the government in the ensuing fiscal year; and
>
> WHEREAS, All such fiscal committees' recommendations, when arrived at, are then to be placed before the members of the Legislature, individually and collectively, in their respective houses for their consideration and approval; and
>
> WHEREAS, Each house thereupon considers and adopts legislation in bill format expressing its positions on the budget for the ensuing fiscal year; and
>
> WHEREAS, Upon adoption thereof, a Conference Committee on the Budget, authorized by concurrent resolution of the Senate and Assembly pursuant to Joint Rule III, and such subcommittees thereof as may be deemed necessary are appointed by the Speaker of the Assembly and the Temporary President of the Senate, respectively, will engage in negotiations designed to reach an accord on the contents of the budget for the ensuing fiscal year..." (underlining added).

123. Similarly, Senate Resolution #4036, introduced by defendant SKELOS (and Klein) on March 13, 2014:

> "WHEREAS, It is the intent of the Legislature to engage in the Budget Conference Committee process, which promotes increased participation by the members of the Legislature and the public; and
>
> WHEREAS, The Senate Finance Committee has conducted an extensive study and review of the Governor's 2014-2015 Executive Budget submission..." (underlining added).

124. The comments on the Senate floor in the wee hours of March 14, 2014 more accurately stated where matters stood:

> "...the hour is late. I wish this wasn't 12:30 at night and that we had had more time than starting at 5:30 this afternoon to review this one-house resolution. There's an amazing amount of unknown information, there's an amazing number of lines in the document that are concerns or modifications with no dollar figures or no even language explanation of what we might guess

is meant... But, I have to say the numbers don't add up on my own colleagues' charts.... And, in fact, I believe if we had budget bills, and, by the way, we don't have budget bills to back up any of these 55 pages of often one-sentence description, if we had budget bills before us, maybe we could have a healthier debate about what's being proposed, but, disturbingly, we don't have those on our desks and disturbingly, I don't even believe they've gone into the computers yet.... (Senate Finance Committee Ranking Member Liz Krueger, video, at 1:24:00 hours)

"I looked for bill S.6355-B, which is referenced here [in the resolution], but it doesn't seem to exist as of the point that we are being asked to debate this resolution...

...That is simply not what this process is supposed to be about. This process is supposed to be about bringing just a little bit of sunlight, a little bit of public knowledge and straight-forwardness about where each of the entities that have to negotiate a budget are at this point in the process...That is a fundamental problem with this resolution...." (Senator Daniel Squadron, video, 1:31:00 hours)

"Where to begin? Well, let's start with the fact that we started this debate at 12:19 am. I think that when we're talking about this budget resolution we got to talk about the fact that there is a broken process that has led to a broken product. The first thing, we started, as again I said at 12:19 am and we have only had a couple of hours to look at an incredibly complicated resolution at this point in reference to a whole bunch of bills that might or might not exist. Our good friend, Senator DeFrancisco, earlier referred to a bill that might be written, might not be written, etc. That tells you plenty about how the process has been broken. The fact that anybody on this side of the aisle was not even, didn't even have a real sense of what was going to be on it until a few hours ago, tells you how much the process is broken and the product itself is broken as well...

There is a no real details on mostly everything in this resolution and I'm sure when we get the bills, they will be detailed and then we can have an opportunity to really have a conversation, but again, no real opportunity for many of the folks in this body to even see the details, therefore be able to look at them, to discuss them. This is supposed to be a deliberative body. This process is supposed to be a better one, unfortunately, it is broken...

This process is broken, the product was broken. And I would implore our colleagues to, as we move forward in this that we look how we can actually have a discussion about how do we put a budget resolution together and a series of budget bills that actually address the concern of folks in this body and don't exclude so much of the conversations that we are supposed to be having..." (Senator Gustavo Rivera, video at 1:48:00 hours)

"We're still looking for those bills that don't exist, apparently...We don't have budget bills, we have vague language in a 55 page resolution that

we got way too recently. My colleagues say that this spending plan adds up, but it doesn't... ....There are so many things that are wrong here, or that are unknown here. There's a slew of items with no explanation, no amount of money...

At best this a shopping list with no badge of legitimacy. More realistically, it's a classic Albany scam designed to make everyone think they should be happy while not answering any of the important questions, like how am I going to pay for this... When a complex, but detail-free proposal comes out late in the day and you're told that you are going to come to the floor and vote on it late at night or 2 in the morning when the public and the press are asleep, you know you are being fed something fake and filled with poison pills.

Now the good news is just a one house gimmick, not the actual budget...

...I hope that when an actual set of budget bills come to the floor of this house in the next couple of weeks, we and the people of New York have an opportunity to review those budget bills, real bills with real numbers attached with adequate time to understand what's in them because that is not what has happened here tonight. (video, at 2:30:00 - 2:42:00 hours).

125. Nothing that comes out of such perverted charade is – or can be – constitutional, least of all the completely unscrutinized Legislative and Judiciary budgets.

126. Certainly, too, one need only examine the Constitutional, statutory, and Senate and Assembly rule provisions relating to openness – such as Article III, §10 of New York's Constitution "...The doors of each house shall be kept open..." ; Public Officers Law, Article VI "The legislature therefore declares that government is the public's business..."; Senate Rule XI, §1 "The doors of the Senate shall be kept open"; Assembly Rule II, §1 "A daily stenographic record of the proceedings of the House shall be made and copies thereof shall be available to the public" – to see that government by behind-closed-doors deal-making, such as employed by defendants CUOMO, SKELOS, SILVER, SENATE, and ASSEMBLY, is an utter anathema and unconstitutional – and that an citizen-taxpayer action could successfully be brought against the whole of the Executive budget.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully pray:

1. **For a declaratory judgment pursuant to State Finance Law §123 *et seq.* – Article 7-A, "Citizen-Taxpayer Actions":**

A. that the Legislature's proposed budget for fiscal year 2014-2015, embodied in Budget Bill #S.6351/A.8551, is a wrongful expenditure, misappropriation, illegal, and unconstitutional because it is not based on "itemized estimates of the financial needs of the legislature, certified by the presiding officer of each house", as Article VII, §1 of the State Constitution expressly mandates; is missing "General State Charges"; and because its budget figures are contrived by the Temporary Senate President and Assembly Speaker to fortify their power and deprive members and committees of the monies they need to discharge their constitutional duties;

B. that the Judiciary's proposed budget for fiscal year 2014-2015, embodied in Budget Bill #S.6351/A.8551, is a wrongful expenditure, misappropriation, illegal and unconstitutional because it conceals the third phase of the judicial salary increase, its cost, and the prerogative of the Legislature and Governor to strike it; that this prerogative is a duty based on plaintiffs' October 27, 2011 Opposition Report because the recommendation on which the salary increase is based is statutorily-violative, fraudulent, and unconstitutional; that the Judiciary budget is so incomprehensible that the Governor, Budget Director, and Legislature cannot agree on its cumulative cost and percentage increase; and that its reappropriations are not certified, including as to their suitability for that purpose, and violate State Finance Law §25, Article VII, §7; Article III, §16;

C. that Budget Bill #6351/A.8551 is a wrongful expenditure, misappropriation, illegal and unconstitutional by its inclusion of reappropriations for the Legislature that were not part of its proposed budget and not certified by the Legislature as funds properly designated for reappropriation;

D. that Budget Bill #6351/A.8551 is a wrongful expenditure, misappropriation, illegal and unconstitutional because nothing lawful or constitutional can emerge from a legislative process that violates its own statutory & rule safeguards, *inter alia*, Legislative Law §32-a (public hearings); Senate Rule VIII, §7, Senate Rule VII, §1, and Assembly Rule III, §1(f) (fiscal notes and introducer's memoranda); Senate Rule VII, §4 ("Title and body of bill"); Assembly Rule III, 1, 8) "Contents"; "Revision and engrossing"; Senate Rule VIII, §§3, 4, 5; Assembly Rule IV (committee meetings, hearings, reports, votes); Senate Rule VII, 9 (resolutions); New York Constitution, Article III, §10 "...The doors of each house shall be kept open..." ; Public Officers Law, Article VI "The legislature therefore declares that government is the public's business..."; Senate Rule XI, §1 "The doors of the Senate shall be kept open"; Assembly Rule II, §1 "A daily stenographic record of the proceedings of the House shall be made and copies thereof shall be available to the public", etc.

2. **Pursuant to State Finance Law §123-e, for entry of a judgment permanently enjoining defendants from taking any action to enact Budget Bill #S.6351/A.8551**, by voting on, signing, and disbursing monies for Budget Bill #S.6351/A.8551, or, at least, for the entirety of the Legislative portion, both its appropriations and reappropriations (pp. 1-9; 27-46); and, with respect to the Judiciary portion, the unitemized funding for the unidentified third phase of the judicial salary increase and the reappropriations (at pp. 24-26).

3. **Pursuant to State Finance Law §123-g, for costs and expenses, including attorneys' fees;**

4. **For such other and further relief as may be just and proper**, including referral to the Commission to Investigate Public Corruption of this "matter" within its "mandate", as well as to appropriate state and federal criminal authorities, such as the Albany County District Attorney and the U.S. Attorney for the Northern District of New York.

ELENA RUTH SASSOWER

Sworn to before me this
28th day of March 2014

Notary Public

Susan A. Janiszak
Notary Public-State of New York
04JA6209391
Qualified in Albany County
Commission expires 07/27/20 17

VERIFICATION

STATE OF NEW YORK)
COUNTY OF ALBANY) ss:

I am the individual plaintiff in the within action and Director of the corporate plaintiff, Center for Judicial Accountability, Inc. I have written the annexed Verified Complaint and attest that same is true and correct of my own knowledge, information, and belief, and as to matters stated upon information and belief, I believe them to be true.

ELENA RUTH SASSOWER

Sworn to before me this
28th day of March 2014

Notary Public

Susan A. Janiszak
Notary Public-State of New York
04JA6209391
Qualified in Albany County
Commission Expires 07/27/20

EXHIBIT C

SUPREME COURT OF STATE OF NEW YORK
ALBANY COUNTY

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CENTER FOR JUDICIAL ACCOUNTABILITY, INC.
and ELENA RUTH SASSOWER, individually and
as Director of the Center for Judicial Accountability, Inc.,
acting on their own behalf and on behalf of the People
of the State of New York & the Public Interest,

Plaintiffs,

-against-

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

Defendants.

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VERIFIED SUPPLEMENTAL COMPLAINT

Index #1788-2014

JURY TRIAL DEMANDED

Plaintiffs, as and for their Verified Supplemental Complaint, respectfully set forth and allege:

127. By this citizen-taxpayer action pursuant to State Finance Law §123, *et seq.* [Article 7-A], plaintiffs additionally seek declaratory judgment as to the unconstitutionality and unlawfulness of the Governor's Budget Bill #S.2001/A.3001. The expenditures of such Budget Bill – embodying the Legislature's proposed budget for fiscal year 2015-2016, the Judiciary's proposed budget for fiscal year 2015-2016, and millions of dollars in uncertified and nonconforming reappropriations – are unconstitutional and unlawful disbursements of state funds and taxpayer monies, which plaintiffs hereby seek to enjoin.

128. Plaintiffs repeat, reallege, and reiterate the entirety of their March 28, 2014 verified complaint, which they incorporate by reference.

129. Virtually all the constitutional, statutory, and rule violations detailed by the verified complaint pertaining to the Governor's Budget Bill #S.6351/A.8551 and the Legislature's and Judiciary's proposed budgets for fiscal year 2014-2015 are replicated by the Governor's Budget Bill #S.2001/A.3001 and the Legislature's and Judiciary's proposed budgets for 2015-2016. It is, as the expression goes, "déjà vu all over again".

130. For the convenience of the Court, a Table of Contents follows:

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* * *

FACTUAL ALLEGATIONS

The Legislature's Proposed Budget for Fiscal Year 2015-2016

131. By a one-sentence letter identical, but for the dates, to the one-sentence letter they had addressed to defendant CUOMO on November 27, 2013 (¶¶17-18, *supra*),[1] defendants SKELOS and SILVER addressed a December 1, 2014 letter to defendant CUOMO stating:

> "Attached is a copy of the Legislature's Budget for the 2015-2016 fiscal year pursuant to Article VII, Section I of the New York State Constitution." (Exhibit 1-b)

132. Identical to their November 27, 2013 letter, this December 1, 2014 letter was not sworn to. It was merely signed. It made no claim to be attaching "itemized estimates of the financial needs of the legislature, certified by the presiding officer of each house" – as required by Article VII, §1 of the New York State Constitution.

133. Except for minor changes in its narrative text, the transmitted legislative budget (Exhibit 1-c) was identical to the legislative budget for fiscal year 2014-2015 in its formatting. It consisted of an untitled five-page budget narrative, with a sixth page chart entitled "All Funds Requirements for the Legislature", and a ten-page "Schedule of Appropriations". There was no certification among these 16 pages, nor even a reference to "itemized estimates" of the Legislature's "financial needs" or to Article VII, §1 of the New York State Constitution.

134. Each and every figure in the transmitted legislative budget for fiscal year 2015-2016 was identical to each and every figure of the legislative budget for fiscal year 2014-2015. As such,

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[1] The November 27, 2013 letter and its enclosed 16-page legislative budget is annexed as Exhibit C to Assistant Attorney General Adrienne Kerwin's April 18, 2014 affirmation in support of defendants' dismissal motion.

these figures were also identical to virtually every figure in the legislative budgets for fiscal years 2013-2014, 2012-2013, and 2011-2012.

135. Identically to last year,[2] more than half of the 10-page "Schedule of Appropriations" was devoted to less than 10% of the budget. Most of the 90% balance consisted of lump-sum appropriations: (i) for defendant SENATE's member offices and committees, combined in a single lump sum; (ii) for defendant ASSEMBLY's member offices and committees, combined in a single lump sum; (iii) for defendant SENATE's "senate operations", which was its own lump-sum; and (iv) for defendant ASSEMBLY's "administrative and program support operations", another lump sum.

136. Identically to last year, the transmitted 16-page legislative budget contained no "General State Charges", which were not even mentioned.

137. Identically to last year, the transmitted 16-page legislative budget contained no reappropriations, which were not even mentioned.

138. Identically to last year, neither defendant SENATE nor defendant ASSEMBLY then or thereafter posted the transmittal letter and 16-page legislative budget on their websites.[3]

The Judiciary's Proposed Budget for Fiscal Year 2015-2016

139. By two memoranda, dated December 1, 2014, Chief Administrative Judge A. Gail Prudenti furnished defendants CUOMO, SKELOS, SILVER, other Legislative Leaders, the Chairs and Ranking Members of the Senate Finance Committee and Assembly Ways and Means Committee, and the Chairs of the Senate and Assembly Judiciary Committees with a two-part budget

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[2] The reference to "last year" is a shorthand for the budget documents furnished by the Legislature and Judiciary for fiscal year 2014-2015.

[3] Identically to last year, only defendant ASSEMBLY furnished these the transmittal letter and 16-page budget in response to plaintiffs' FOIL request (Exhibit 1-a). There was no response from defendant SENATE.

presentation. In language identical to that used in her two memoranda dated November 29, 2013[4], the Chief Administrative Judge represented these as: "itemized estimates of the annual financial needs of the Judiciary..." for its operating expenses (Exhibit 2-a) and

> "itemized estimates of funding for General State Charges necessary to pay the fringe benefits of judges, justices and nonjudicial employees separately from itemized estimates of the annual operating needs of the Judiciary. This presentation follows the long-standing practice of the Executive and Legislative Branches of separately presenting requests for funding of fringe benefit costs and requests for operating funds. The Judiciary will submit a single budget bill, which includes requests for funding of operating expenses and fringe benefit costs for the 2015-2015 Fiscal Year." (Exhibit 3-a, underlining added)

140. The two parts of the Judiciary's budget presentations each contained a certification by the Chief Judge and approval by the Court of Appeals (Exhibits 2-b; 3-b) identical to those furnished last year. However, identically to last year, no certification appeared to encompass the "single-budget bill" (Exhibit 4).

141. Identically to last year, the Judiciary's two-part budget, including its single "Executive Summary" and statistical tables (Exhibits 2-c; 2d), did not provide a cumulative dollar total for the requested budget. Likewise, the Judiciary's "single budget bill" (Exhibit 4) did not provide a cumulative tally.

142. Identically to last year, the Judiciary's failure to furnish a cumulative dollar total for its two-part budget and to tally the figures in its "single budget bill" enabled it to conceal a discrepancy of tens of millions of dollars between them. This discrepancy was the result of $26,935,000 in reappropriations in the "single budget bill" (Exhibit 4, pp. 12-14) that were not in the Judiciary's two-part budget presentation.

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[4] Assistant Attorney General Kerwin's April 18, 2014 affirmation in support of defendants' dismissal motion annexes only one of these November 29, 2014 memoranda – that transmitting the Judiciary's proposed budget of operating expenses for fiscal year 2014-2015. It is Exhibit D thereto.

143. Identically to last year, the descriptions of these additional $26,935,000 reappropriations in the "single budget bill" (Exhibit 4, pp. 12-14) were pretty barren. Most referred to chapter 51, section 2 of the laws of 2014, 2013, 2012, 2011, 2010 and also chapter 51, section 3 of those laws – which are the enacted budget bills pertaining to the Judiciary for those years, its appropriations and reappropriations, respectively. Yet they were completely devoid of specificity as to their purpose other than a generic "services and expenses, including travel outside the state and the payment of liabilities incurred prior to April 1..."; or "services and expenses as provided by section 94-b of the state finance law– Contractual Services"; or "Contractual Services".

144. As for the itemizations – or the lack thereof – in the Judiciary's two-part budget presentation, it was identical to that of its last year's two-part budget presentation. And much as the Judiciary's two-part budget presentation and "single budget bill" for fiscal year 2014-2015 had entirely concealed the third phase of the judicial salary increase it was seeking to fund, so the Judiciary's two-part budget presentation and "single budget bill" for fiscal year 2015-2016 identically concealed that the now fully-funded three-phase judicial salary increase was imbedded in the budget – and its dollar cost.

The Governor's Budget Bill #S.2001/A.3001

145. Identically to last year, defendant CUOMO combined the Legislature's budget request and the Judiciary's budget request into a combined budget bill – #S.2001/A.3001, introduced on January 21, 2015 (Exhibit 5-b)[5].

[5] Defendant CUOMO's last year's Budget Bill #S.6351/A.8551 – the subject of plaintiffs' Verified Complaint – is annexed as Exhibit E to Assistant Attorney General Kerwin's April 18, 2014 affirmation in support of defendants' dismissal motion. On March 28, 2014 – the same date as the Verified Complaint – Budget Bill #S.6351/A.8551 was amended with respect to the legislative reappropriations only (¶¶223-227, *infra*). Assistant Attorney General Kerwin annexed it as Exhibit F to her April 18, 2014 affirmation.

146. Identically to last year, defendant CUOMO's Budget Bill #S.2001/A.3001 gave no cumulative dollar total for the bill as a whole (pp. 1-49), or for its legislative portion (pp. 1-9; 25-46) or for its judiciary portion (pp. 10-21; pp. 22-24).

147. Identically to last year, defendant CUOMO did not accompany his Budget Bill #S.2001/A.3001 with any fiscal notes, fiscal impact statements, or introducer's memoranda, notwithstanding required by Senate Rule VIII, §7, Senate Rule VII, §1, and Assembly Rule III, §1(f) and §2(a). His only accompaniment was a "Commentary of the Governor on the Judiciary" (Exhibit 5-a), which – identically to last year – furnished no cumulative dollar amount of the Judiciary's proposed budget and, also identically to last year, urged its reduction to meet a 2% cap on increases.

148. Identically to last year, defendant CUOMO included in the judiciary portion of Budget Bill #S.2001/A.3001 (Exhibit 5-b, pp. 22-24) the reappropriations for the Judiciary that were not in its certified two-part budget presentation (Exhibits 2, 3), but only in its seemingly uncertified "single budget bill" (Exhibit 4, pp. 1, 12-14). These were, this year, $26,935,000 in judiciary reappropriations.

149. Identically to last year, defendant CUOMO added to the legislative portion of Budget Bill #S.2001/A.3001 tens of millions of dollars in reappropriations for the Legislature that were not part of the budget transmitted by Defendants SKELOS' and SILVER's December 1, 2014 letter (Exhibit 1-c) and which did not appear to be suitable for that purpose. These "out-of-the-blue" uncertified reappropriations were inserted at the back of Budget Bill #S.3001/A.2001 in an out-of-sequence section spanning 22 pages (Exhibit 5-b, pp. 25-46), behind the judiciary reappropriations (Exhibit 5-b, pp. 22-24).

150. Identically to last year, defendant CUOMO's legislative portion of Budget Bill #S.2001/A.3001, while adding 22 pages of reappropriations for the Legislature that had not been part

of its December 1, 2014 budget (Exhibit 1-c), did not add "General State Charges" for the Legislature, which also had not been part of its December 1, 2014 budget.

The Legislature's Joint Budget Hearings Pursuant to Legislative Law §32-a

151. On January 16, 2015, Senate Finance Committee Chairman John DeFrancisco and Assembly Ways and Means Committee Chairman Herman Farrell, Jr. announced the Joint Legislative Hearing Schedule on the 2015-2016 Executive Budget by an announcement which, except for the dates, was identical to their announcement for the 2014-2015 Executive Budget. In pertinent part, it stated:

> "These hearings, each of which focuses on a programmatic area, are intended to provide the appropriate legislative committee with public input on the executive budget proposal...
>
> ...The respective state agency or department heads will begin testimony each day, followed by witnesses who have signed up to testify on that area of the budget...
>
> Time constraints limit the number of witnesses that can be accommodated at any given hearing. As a result, people interested in testifying must contact the appropriate person listed on the schedule no later than the close of business, two business days before the respective hearing...
>
> The agency and the departmental portion of the hearings are provided for in Article 7, Section 3 of the Constitution and Article 2, Section 31 of the Legislative Law. The state Legislature is also soliciting public comment on the proposed budget pursuant to Article 2, Section 32-a of the Legislature Law." (Exhibit 6).

152. Pursuant to the notice, plaintiff SASSOWER requested to testify in opposition to the Legislature's and Judiciary's proposed budgets and defendant CUOMO's Budget Bill #S.2001/A.3001 embodying them. This is recounted by her February 23, 2015 letter to Senate Finance Committee Chairman DeFrancisco and Ranking Member Liz Krueger and Assembly Ways and Means Committee Chairman Farrell and Ranking Member Bob Oaks (Exhibit 8). Entitled:

> "RE: YOUR FEBRUARY 26, 2015 'PUBLIC PROTECTION' BUDGET HEARING: Reconsidering Your Denial of CJA's Request to Testify, Pursuant to Legislative Law §32-a, in Opposition to the

Proposed Judiciary and Legislative Budgets – and the Governor's Budget Bill #S.2001/A.3001",

the letter stated, in full:

"As you know, Legislative Law §32-a requires you to hold public hearings on the budget at which the public will have the opportunity to be heard. Yet by combining those budget hearings with the very different budget hearings of Article VII, §3 of the New York State Constitution and Legislative Law §31, whose purpose is to afford you the testimony of the Governor, Executive branch agency heads, and the like, you effectively subvert Legislative Law §32-a. Your combined budget hearings – which you organize by 'programmatic areas' – are filled with testimony from officials and recipients of budgetary appropriations. The public's testimony is shoved to the end – or, if dispositive of the unlawfulness and unconstitutionality of the budget, shut out entirely on the pretext that the hearing is full.

Exacerbating this subversion of Legislative Law §32-a is your failure to hold the public budget hearings 'regionally', as the statute contemplates, and your assigning the Judiciary's budget to the 'programmatic area' of 'public protection', as if the Judiciary were an Executive branch agency. Apparently you are now also assigning the Legislature's budget to that same Executive branch 'programmatic area' – at least for purposes of denying my request to testify in opposition to it.

On February 2nd, I telephoned Chairman DeFrancisco's office – and spoke with Carol Luther. She did not know whether the Legislature's budget – unlike the Judiciary budget – would be part of the 'public protection' hearing – a clear indication that you had not planned to have Temporary Senate President Skelos and former Assembly Speaker Silver testify in support of their uncertified and contrived proposed Legislative budget – or in support of the uncertified legislative re-appropriations that Governor Cuomo has once again included in an out-of-sequence section of his combined Legislative/Judiciary Budget Bill #S.2001/A.3001.

In response to my request to testify in opposition to the Judiciary's proposed budget, Ms. Luther told me that the budget hearing on 'public protection', rescheduled to February 26th, was already full and that I probably would not be able to testify. I thereupon telephoned Chairman Farrell's office to inquire whether the Legislature's own budget might be in the 'programmatic area' of 'general government'. Clinton Freeman promptly returned my call and told me it was in 'public protection'. I then called Ms. Luther, requesting two slots for

my testimony at the February 26th budget hearing on 'public protection': one slot for my testimony in opposition to the proposed Judiciary budget and one slot for my testimony in opposition to the Legislature's proposed budget – advising her that the grounds of my last year's opposition were essentially the grounds for my opposition this year.

On February 18th, I telephoned Chairman DeFrancisco's office once more. Ms. Luther now repeated, with certainty, that I would not be able to testify at the February 26th 'public protection' budget hearing because it was full. I asked to be on a waiting list – and, in response to Ms. Luther acknowledgment that she had a waiting list, I asked her for the names on it and on waiting lists for your other budget hearings.

Ms. Luther also told me that, in lieu of testifying, I could submit written testimony. This, however, does not satisfy the mandate of Legislative Law §32-a, requiring that you make 'every effort to hear all those who wish to present statements at such public hearings'. What 'effort' have you made to 'hear' statements in opposition to the proposed Legislative and Judiciary budgets – and in opposition to the Governor's Budget Bill #S.2001/A.3001 purportedly based thereon?

The proposed Legislative and Judiciary budgets – and the Governor's Budget Bill #S.2001/A.3001 – are 'slush funds'. They suffer from the same fatal constitutional, statutory and Legislative rule infirmities as I particularized last year with respect to the current Legislative and Judiciary budgets and the Governor's Budget Bill S.6351/A.8551 – as to which, in violation of Legislative Law §32-a, you refused to allow me to testify at the February 5, 2014 'public protection' budget hearing because, as you knew, what I had to say was dispositive. All of the mountain of correspondence I furnished you in connection therewith – and which you willfully and deliberately disregarded – can be recycled now. It is just as applicable and dispositive. The only material difference is that this year no further phase of judicial salary increase is being implemented. Rather, the three-phase judicial salary increase – whose fraudulence, unlawfulness, and unconstitutionality I directly made known to you two years ago in testifying, as the last witness, at your February 6, 2013 'public protection' budget hearing – is now fully submerged within the Judiciary budget as an annually recurring grand larceny of $50 million taxpayer dollars, if not more.

In the interest of economy, I reiterate the objections I particularized for you by my last year's correspondence – and by CJA's citizen-taxpayer action against you based thereon, *Center for Judicial*

Accountability, Inc., et al. v. Governor Andrew Cuomo, et al (Albany Co. #1788-14), whose March 28, 2014 verified complaint summarizes and annexes that correspondence. Such verified complaint is additionally significant as your last year's violations of Legislative Law §32-a are embraced by its fourth cause of action, with that specific violation expressly why the lawsuit is still pending in Supreme Court/Albany County. As stated by the October 9, 2014 decision therein:

> 'Plaintiffs' complaint adequately sets forth a viable cause of action alleging, *inter alia*, that defendants violated Legislative Law §32-a regarding public hearings for New York's Budget. Defendants argue that the cause of action should be dismissed because plaintiffs lack standing to challenge internal legislative rules. The Court has not been persuaded that Legislative Law §32-a constitutes an internal legislative rule. Additionally defendants' submissions did not include any documentary evidence establishing a defense to said cause of action. Accordingly, defendants' motion must be denied as to plaintiffs' fourth cause of action.
>
> ...
>
> **ORDERED** that defendants' motion to dismiss is hereby denied as to plaintiffs' fourth cause of action...' (at pp. 6-7, underlining added, capitalization and bold in the original).

The fourth cause of action is entitled 'Nothing Lawful or Constitutional Can Emerge from a Legislative Process that Violates its Own Statutory & Rules Safeguards'. For your convenience, a copy is enclosed so that you can reconsider your denial of my this year's requests to testify in opposition to the Legislative and Judiciary budgets – and the wisdom of your leading the Senate and Assembly again, like last year and the year before, to willfully disregard the panoply of safeguarding statutory, constitutional, and legislative rule provisions to which the fourth cause of action refers.

The verified complaint's equally meritorious first three causes of action – and the unfolding litigation record in Supreme Court/Albany County – can be found on CJA's website, www.judgewatch.org, accessible *via* two prominent homepage links:

> 'What's Taking You so Long, Preet?: CJA's Three Litigations whose Records are Perfect 'Paper Trails' for Indicting New York's Highest Public Officers for Corruption'; and

'CJA's Citizen-Taxpayer Action to End NYS' Corrupt Budget 'Process' and Unconstitutional 'Three Men in a Room' Governance'.

By these links you can not only access the October 9, 2014 decision preserving our verified complaint's fourth cause of action, but our November 17, 2014 notice of appeal seeking summary judgment as to the fourth cause of action and, additionally, as to our first three causes of action, all evidentiarily-established, *as a matter of law*, by the litigation record.

Presently your co-defendant counsel in the lawsuit, Attorney General Schneiderman, is thwarting discovery germane to the fourth cause of action by repetitively invoking the 'the Speech or Debate Clause of the New York State Constitution. See N.Y. Const. art. III, §11' which states:

'For any speech or debate in either house of the legislature, the members shall not be questioned in any other place.'

As a public budget hearing pursuant to Legislative Law §32-a is a forum for dialogue to prevent unlawful and larcenous budget appropriations, your refusal to allow me to be heard at such hearing may rightfully preclude you from a 'Speech or Debate Clause' defense.

Meantime, as there does not appear to be a fiscal note or introducer's memorandum for the Governor's Budget Bill #S.2001/A.3001, as required by Senate Rule VIII, §7, Senate Rule VII, §1 and Assembly Rule III, §1(f), please identify what Budget Bill #S.2001/A.3001 does not: the dollar totals of the Legislative and Judiciary portions, including their re-appropriations – and where the Legislature's 'General State Charges' may be found." (Exhibit 8, underlining, italics, capitalization and bold in the original).

153. None of the four Chairs and Ranking Members of the Senate Finance Committee and Assembly Ways and Means Committee responded to plaintiff SASSOWER's February 23, 2015 letter – and, upon plaintiff SASSOWER's calling the office of Senate Finance Committee Chairman DeFrancisco, late in the afternoon on February 25, 2015, to further ascertain whether she might be permitted to testify at the next day's hearing, leaving a message with Ms. Luther, she received no return call.

154. In fact, the Legislature's February 26, 2015 budget hearing on "public protection" did not encompass the Legislature's proposed budget and the legislative portion of defendant CUOMO's Budget Bill #S.2001/A.3001. Identical to last year, the witness list for the "public protection" hearing did not include defendants SKELOS and SILVER testifying in support of their budget request – or anyone else testifying on behalf of the Legislature's budget (Exhibit 9). Nor did it include a single witness testifying in opposition. Indeed, Senate Finance Committee Chairman DeFrancisco's opening words at the February 26, 2015 "public protection" budget hearing made plain that the Legislature's proposed legislative budget was not under consideration:

> "Today's hearing will be limited to a discussion of the Governor's proposed budget for the Office of Court Administration, Division of Homeland Security and Emergency Services, Division of criminal Justice Services, Department of Corrections and Community Supervision, Division of State Police, Commission on Judicial Conduct and the Office of Indigent Legal Services. As I said, it is limited to those topics."

155. Also identical to last year, none of the Legislature's other hearings on the budget included the Legislature's budget, as for instance, the budget hearing on "Local Government Officials/General Government", held on February 25, 2015.

156. The Legislature's budget was also concealed by two of the Legislature's three published analyses of the Governor's Executive Budget:

> (a) the Senate Majority's "White Book" under Senate Finance Committee Chairman DeFrancisco's auspices contained no reference to the Legislature's budget in either "Public Protection" or "General Government". However, in "General State Government", under the heading "General State Charges (GSC), appeared the following as part of a single sentence: "GSC appropriations do not fund fringe benefits for employees of the New York State Legislature, the Judiciary..." (Exhibit 7-b, at pp. 128-129);
>
> (b) the Assembly Majority's "Yellow Book" under Assembly Ways and Means Committee Chairman Farrell's auspices contained a single reference to the Legislature's budget in its section on "State Operations and Workforce". There, under the title "Independent Officials", as part of a single sentence, was stated:

"Spending for the Legislature...is projected to remain essentially flat through SFY 2018-19." (Exhibit 7-d, at p. 134);

(c) the Senate Minority's "Blue Book" under Senate Finance Committee Ranking Member Krueger's auspices did include a section on the Legislature, but it consisted of only a minimal chart, with a replicating three-sentence text (Exhibit 7-c, at p. 171).

157. As for the Legislature's February 26, 2015 "public protection" budget hearing, it was identical to last year's "public protection" hearing, in that:

(a) no witnesses testified in opposition to the Judiciary's budget or the judiciary portion of defendant CUOMO's Budget Bill;

(b) Chief Administrative Judge Prudenti furnished no cumulative dollar total of the Judiciary's two-part budget presentation – or of the judiciary portion of defendant CUOMO's Budget Bill, replicating its "single budget bill";

(c) Defendant SENATE and ASSEMBLY members steered-clear of "number-crunching" as to the Judiciary's two-part budget, its "single budget bill" – and of the judiciary portion of defendant CUOMO's Budget Bill.

158. Identically to last year, the failure of defendant SENATE and ASSSEMBLY members to interrogate Chief Administrative Judge Prudenti about the cumulative dollar total of the Judiciary's proposed budget was in face of the divergence as to the relevant figures and percentages in the synopses that were before them:

A. Chief Administrative Judge Prudenti's one-page December 1, 2014 memorandum transmitting the Judiciary's proposed budget of operating expenses:

"The 2015-2015 General Fund State Operations budget request totals $1.86 billion, a cash increase of $45.3 million, or 2.5 percent..." (Exhibit 2-a)[6]

[6] Similarly, the Judiciary's "Executive Summary" to its "2015-2016 Budget Request", contained in the part of its budget for operating expenses:

"This budget seeks cash funding of $1.86 billion for General Fund State Operations, to support court operations. This request represents an increase of $45.3 million, or 2.5 percent, over available current-year funds." (Exhibit 2-c, p. v).

B. Defendant CUOMO's "Commentary of the Governor on the Judiciary":

> "The Judiciary has requested appropriations of $2.1 billion for court operations, exclusive of the cost of employee benefits. As submitted, disbursements for court operations from the General Fund as projected to grow by $43.3 million or 2.5 percent." (Exhibit 5-a)

C. Defendant CUOMO's Division of the Budget - website:

> "The Judiciary's General Fund Operating Budget requests $1.85 billion, excluding fringe benefits, for Fiscal Year 2015-2016. This represents a cash increase of $36.3 million, or 2.0%. The appropriation request is $1.87 billion, which represents a $48.2 million, or 2.6%, increase.
>
> ...
>
> The Judiciary's All Funds budget request for Fiscal Year 2015-2016, excluding fringe benefits, totals $2.09 billion, an appropriation increase of $51.3 million or 2.5% over the 2014-2015 All Funds budget." (Exhibit 7-a)

D. Senate Majority's "White Book", under Senate Finance Committee Chair DeFrancisco's auspices:

> "The FY 2016 Executive Budget proposes All Funds spending authority of $2.8 billion, an increase of $75.8 million, or 2.8 percent.
>
> ...
>
> Although the Judiciary's proposed budget would increase general fund cash spending by 2.5 percent, they have agreed to work with the Executive to reduce spending growth to two percent. The areas to be redeuced have not yet been specified." (Exhibit 7-b, at p. 97, with a chart, on p. 98 showing the "All Funds" spending more precisely: $2,783,379,000 – this increase being $75,776,000, or 2.8%)"

E. Senate Minority's "Blue Book", under Senate Finance Committee Ranking Member Krueger's auspices:

> "The Judiciary's General Fund Operating Budget request is $1.87 billion. The request is an increase of $48 million, or 2.57% over SFY 2015-16 appropriation. On a cash basis, the requested increase is 2.5% ($45.30 million)." (Exhibit 7-c, at p. 170, with a chart showing a total request of $2,789,576,538 – this increase being $78,434,454, or 2.81%)

F. Assembly Majority's "Yellow Book", under Assembly Ways and Means Committee Chair Farrell's auspices:

> "The Judiciary's proposed budget request, as submitted to the Governor, recommends appropriations of $2.8 billion, which is an increase of $78,43 million or 2.9 percent from the State Fiscal Year (SFY) 2014-15 level." (Exhibit 7-d, at p. 139, with a chart showing the total request as $2,804,570,000 – this increase being $78,430,000, or 2.88%).
>
> "Judiciary spending is projected to increase by 1.7 percent in SFY 2015-16... (Exhibit 7-d, at p. 134).

159. Indeed, at the February 26, 2015 budget hearing, not a single SENATE or ASSEMLY member challenged Chief Administrative Judge Prudenti for her disingenuous representation to them in her written testimony:

> "Consistent with our long-standing commitment to work with the other branches of state government to hold the line on spending growth, we are limiting our request to a two percent increase, the same growth to which the Executive and Legislative Branches have been held to in the state budget over the past few years. We are seeking cash funding of $1.85 billion in General State Operations to support court operations, which represents an increase of 36.3 million, or two percent." (Exhibit 10)

and in her oral testimony:

> "...Therefore the Judiciary is therefore requesting a 2 percent cash increase in its budget which represents an additional $36.3 million. The 2 percent General Fund increase will allow us to..."

160. Even Senate Judiciary Committee Chairman John Bonacic who stated to Chief Administrative Judge Prudenti, at the hearing:

> "In your initial budget you came in with a 2.5% increase and you indicated that you were going to get down to the 2% cap. That would require a reduction of $9 million. Can you tell us, if you can, at this time, what you would cut to get rid of that $9 million?"

did so without any seeming awareness of the disingenuousness of the representations she had already made – and the inconsistency of the answer she then furnished him.

161. So, too, and notwithstanding that Chief Administrative Judge Prudenti's deceits at last year's "public protection" budget hearing were comprehensively detailed by plaintiff SASSOWER's February 21, 2014 letter to defendant Legislators – Exhibit K to the Verified Complaint – those same Legislators heaped upon her complements and accorded her kid-glove treatment, never challenging her comparable and identical deceits at this year's hearing, such as "We've been straightforward with each other and I think our relationship of trust is a good one"; "after five years of essentially flat budgets..."; "...we are very mindful of our role as responsible partners in government..." "We believe that we have been faithful stewards of the public trust."

162. But for the statutorily-violative, fraudulent, and unconstitutional judicial salary increase – whose three phases defendants collusively implemented in fiscal years 2012-13, 2013-2014, and 2014-2015 at a cumulative cost to taxpayers of approximately $120 million and whose further cost to taxpayers for fiscal year 2015-2015 will be approximately $50 million – the Judiciary's budget would have been and would be within the 2% cap.

The Legislature's Joint Budget Conference Committee "Process"

163. Following the Legislature's February 26, 2015 budget hearing on "public protection", no Senate or Assembly committee met to deliberate and vote on the Legislature's proposed budget, on the Judiciary's proposed budget, or on Budget Bill #S.2001/A.3001 – not the Senate Finance Committee, not the Assembly Ways and Means Committee, not the Senate Judiciary Committee, not the Assembly Judiciary Committee, not the Senate Committee on Investigations and Government Operations, not the Assembly Committee on Governmental Operations, not the Assembly Committee on Oversight, Analysis and Investigation. This identically replicated what had taken place last year, when, following the Legislature's February 5, 2014 "public protection" budget

hearing, no committee met to deliberate and vote on the Legislature's proposed budget, on the Judiciary's proposed budget, or on Budget Bill #S.6351/A.8551.

164. Indeed, there was not even an amendment introduced to bring the Judiciary's proposed budget, as embodied by Budget Bill #S.2001/A.3001, within defendant CUOMO's 2% cap.

165. Instead, defendant SKELOS and new Assembly Speaker defendant CARL HEASTIE introduced resolutions to commence the Joint Budget Conference Committee "process". These resolutions identically replicated language of the resolutions introduced last year, except for the dates. This included:

> "WHEREAS, The Senate Finance Committee has conducted an extensive study and review of the Governor's 2015-2016 Executive Budget submission..." (Senate Resolution #950, underlining added).

and

> "WHEREAS, Upon submission, pursuant to Joint Rule III [of the Governor's Executive budget], the Senate finance committee and the Assembly ways and means committee undertake an analysis and public review of all the provisions of such budget; and
>
> WHEREAS, After study and deliberation, each committee makes recommendations in the form of bills and resolutions as to the contents thereof and such other items of appropriation deemed necessary and desirable for the operation of the government in the ensuing fiscal year..." (Assembly Resolution #203, underlining added).

166. Such was false. Neither the Senate Finance Committee nor the Assembly Ways and Means Committee had undertaken any meaningful "analysis" and "study and review" of the Governor's Budget Bill #S.2001/A.3001, as this would have required, *at minimum*, calculating its cumulative dollar total, both its judiciary and legislative portions, each portion inclusive of "General State Charges" – which were missing from the legislative portion – and inclusive of reappropriations, if, in fact, they were properly included. It would also have required calculating the correct

percentage of increase over last year's bill – for which the same set of dollar and other determinations as to Budget Bill #S.6351/A.8551 were necessary.

167. In fact, Senate Resolution #950 did not even list defendant CUOMO's Budget Bill #S.2001 – just as, identically, last year's Senate Resolution #4036 had omitted defendant CUOMO's Senate Budget Bill #S.6351.

168. Likewise, no meaningful "analysis" and "study and review" of Budget Bill #S.2001/A.3001 was undertaken by the Joint Budget Conference Committee. This includes by its "Public Protection" Subcommittee, whose charge – like the "public protection" budget hearing on February 26, 2015 – did not include the Legislature's budget, but, as stated by Co-Chair Assemblyman Joseph Lentol:

> "State Commission of Correction, Department of Corrections and Community of Services, the Division of Criminal Justice Services, the Division of Homeland Security and Emergency Services, Interest on Lawyer Accounts, Judiciary, judicial commissions, Department of Law, Division of Military and Naval Affairs, Office of Indigent Legal Services, Office for the Prevention of Domestic Violence, the Division of State Police, and the Office of Victims Services." (March 16, 2015 meeting).

CAUSES OF ACTION

AS AND FOR A FIFTH CAUSE OF ACTION

The Legislature's Proposed Budget for Fiscal Year 2015-2016, Embodied in Budget Bill #S.2001/A.3001, is Unconstitutional & Unlawful

169. Plaintiffs repeat, reiterate, and reallege ¶¶1-168 with the same force and effect as if more fully set forth herein.

170. The Legislature's proposed budget for fiscal year 2015-2016 is identical to the Legislature's proposed budget for fiscal year 2014-2015. As such, it suffers from all the

unconstitutionality, unlawfulness, and fraudulence as is set forth by the first cause of action of plaintiffs' verified complaint (¶¶76-98).

171. The October 9, 2014 decision and order purporting to dismiss the first cause of action (Exhibit 11-b) does not bar plaintiffs from asserting this fifth cause of action replicating it. *As a matter of law*, dismissal was "not appropriate". In a declaratory judgment action, such as this, the court's duty is to make a declaration as to the rights of the parties – and this was pointed out by plaintiffs' May 16, 2014 memorandum of law in opposition to defendants' dismissal motion and in support of their cross-motion for summary judgment and other relief (at pp. 7-8), citing *Seymour v. Cuomo*, 180 A.D.2d 215, 217-218 (3rd Dept. 1992), and *Donovan v. Cuomo*, 126 A.D.2d 305, 310 (3rd Dept. 1987), and quoting from New York Practice, §440, David D. Siegel (5th ed. 2011):

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

172. This the decision did not do, notwithstanding plaintiffs' requested declarations were succinctly laid out by ¶1A of their "PRAYER FOR RELIEF" as follows:

> "A. that the Legislature's proposed budget for fiscal year 2014-2015, embodied in Budget Bill #S.6351/A.8551, is a wrongful expenditure, misappropriation, illegal, and unconstitutional because it is not based on 'itemized estimates of the financial needs of the legislature, certified by the presiding officer of each house', as Article VII, §1 of the State Constitution expressly mandates; is missing 'General State Charges'; and because its budget figures are contrived by the Temporary Senate President and Assembly Speaker to fortify their power and deprive members and committees of the monies they need to discharge their constitutional duties".

173. Instead, the decision states:

> "Plaintiff's first cause of action alleges that the Budget is unconstitutional because it was not adequately certified and does not contain itemized estimates of the financial needs of the legislature. The itemization challenge clearly must be dismissed as it is nonjusticiable (*see*, Urban Justice Center v. Pataki, 38 AD3d 20, 30 [1st Dept. 2006]. As to the certification issue, the Court finds that the documentary evidence submitted by defendants conclusively demonstrates that defendants have complied with the letter and spirit of the constitutional requirement for certification (*see generally*, Matter of Schneider v. Rockefeller, 31 NY2d 420, 434 [1972]). Accordingly, the first cause of action must be dismissed." (at p. 5).

174. As to certification, the decision does not identify "the documentary evidence submitted by defendants [that] conclusively demonstrates that defendants have complied with the letter and spirit of the constitutional requirement of certification". In fact, there is NONE.

175. The one-sentence November 27, 2013 letter to defendant CUOMO, signed by defendants SKELOS and SILVER and transmitting a 16-page legislative budget – which defendants submitted in support of their dismissal motion (fn. 1, *supra*) – "conclusively demonstrate[d]" precisely what ¶¶17-18, 79 of plaintiffs' verified complaint alleged, *to wit*, that the November 27, 2013 letter did not claim to be transmitting "itemized estimates of the financial needs of the legislature" or that same had been "certified by the presiding officer of each house" and that the 16-page budget it transmitted contained no certification, nor even a reference to "itemized estimates" of the Legislature's "financial needs" or to Article VII, §1 of the New York State Constitution. Indeed, as alleged by plaintiffs' verified complaint, no certification was possible, *inter alia*, because the transmitted budget was missing the Legislature's "General State Charges" and because its figures were a palpable contrivance of leadership, being dollar identical to those of the previous four years.

176. As to itemization, the decision does not discuss or analyze *Urban Justice Center v. Pataki*, let alone identify what plaintiffs had to say about it in opposing defendants' dismissal

motion, *to wit*, that *Urban Justice Center v. Pataki* is distinguishable because it did not involve "the fashioning of 'slush-fund' budgets for purposes asserted and shown to be illegitimate, illegal, unconstitutional, and fraudulent...", as asserted and shown by ¶¶87-97 of plaintiffs' first cause of action, whose content the decision entirely omits.

177. Plaintiffs' May 16, 2014 memorandum of law presented dispositive arguments with respect to "certification" (at pp. 17-19) and "itemization" (at pp. 15-17) . NONE are addressed, or even identified, by the October 9, 2014 decision. This, in face of defendants' own failure to address, or even identify, these arguments, which plaintiffs' (June 6, 2014) reply memorandum of law pointed out (at p. 4). Tellingly, the decision's last page listing of "Papers Considered" omits both these memoranda of law – each meticulously chronicling the state of the record before the Court.

178. Plaintiffs have filed a notice of appeal from the October 9, 2014 decision. Their accompanying pre-calendar statement highlights the state of the record on which plaintiffs rely in further support of this fifth cause of action and their entitlement to summary judgment thereon (Exhibit 11-a).

AS AND FOR A SIXTH CAUSE OF ACTION

The Judiciary's Proposed Budget for 2015-2016, Embodied in Budget Bill #S.2001/A.3001, is Unconstitutional & Unlawful

179. Plaintiffs repeat, reiterate, and reallege ¶¶1-178 with the same force and effect as if more fully set forth herein.

180. The Judiciary's proposed budget for fiscal year 2015-2016, embodied by Budget Bill #S.2001/A.3001, is materially identical to the Judiciary's proposed budget for fiscal year 2014-2015, embodied by Budget Bill #S.6351/A.8551. As such, it suffers from the same unconstitutionality,

unlawfulness, and fraudulence as set forth by the second cause of action of plaintiffs' verified complaint (¶¶99-108).

181. The October 9, 2014 decision purporting to dismiss the second cause of action (Exhibit 11-b) does not bar plaintiffs from asserting this sixth cause of action which replicates it. *As a matter of law*, dismissal was "not appropriate", *inter alia*, because in a declaratory judgment action, such as this, the court's duty is to make a declaration as to the rights of the parties (see ¶171, *supra*). This the decision did not do, although plaintiffs' requested declarations were succinctly laid out by ¶1B of their "PRAYER FOR RELIEF" as follows:

> "B. that the Judiciary's proposed budget for fiscal year 2014-2015, embodied in Budget Bill #S.6351/A.8551, is a wrongful expenditure, misappropriation, illegal and unconstitutional because it conceals the third phase of the judicial salary increase, its cost, and the prerogative of the Legislature and Governor to strike it; that this prerogative is a duty based on plaintiffs' October 27, 2011 Opposition Report because the recommendation on which the salary increase is based is statutorily-violative, fraudulent, and unconstitutional; that the Judiciary budget is so incomprehensible that the Governor, Budget Director, and Legislature cannot agree on its cumulative cost and percentage increase; and that its reappropriations are not certified, including as to their suitability for that purpose, and violate State Finance Law §25, Article VII, §7; Article III, §16".

182. Comparison of the October 9, 2014 decision with plaintiffs' second cause of action shows that it plucks a single allegation, ¶101, which it distorts to remove its substantiating evidentiary content– and that it then falsifies the facts and law with respect to that single allegation to dismiss the entire cause of action.

183. The decision states:

> "Plaintiffs' second cause of action principally alleges that the Senate and Assembly are unable to comprehend the Judiciary's proposed budget for 2014-2015 because the cumulative dollar amount and percentage increase over the prior year's budget is not capable of being discerned. The Court finds that the documentary evidence submitted by defendants clearly and conclusively establishes a

> defense to this cause of action. Said information is readily discernible throughout the Judiciary's proposed budget. Accordingly, the second cause of action must be dismissed. Additionally, this cause of action would also appear to fall under the type of itemization argument already found to be nonjusticiable." (at p. 5).

184. ¶101 of plaintiffs' second cause of action asserts that plaintiffs, by their February 21, 2014 letter – Exhibit K to their verified complaint – had made a:

> "*prima facie* showing (at pp. 3-5) that defendants SENATE and ASSEMBLY, as well as defendant CUOMO and his Division of the Budget, are unable to comprehend the Judiciary's budget for fiscal year 2014-2015 on its most basic level: its cumulative dollar amount and its percentage increase over the Judiciary's budget for fiscal year 2013-2014..."

185. The referred-to pages 3-5 of plaintiffs' February 21, 2014 letter furnished the wildly divergent cumulative dollar figures for the Judiciary's proposed budget and for the percentage increase over the previous year's budget, as follows:

From Defendant CUOMO's "Commentary of the Governor on the Judiciary":

> "The Judiciary has requested appropriations of $2.1 billion for court operations, exclusive of the cost of employee benefits. Disbursements for court operations from State Operating Funds are projected to grow by $53 million or 2.7 percent."

From Defendant CUOMO's Division of the Budget webpage for the Judiciary:

> "The Judiciary's General Fund Operating Budget requests $1.81 billion, excluding fringe benefits, for Fiscal Year 2014-2015. This represents a cash increase of $44.2 million, or 2.5%. The associated appropriation request is $1.82 billion, which represents a $63 million, or 3.6% increase. The slightly higher appropriation increase is because of the technical reasons that relate to the use of reappropriation authority to fund the first two years of the judicial pay raise....
>
> The Judiciary's All Funds budget request for Fiscal Year 2014-2015, excluding fringe benefits, totals $2.04 billion, an appropriation increase of $63.8 million, or 3.2% over the 2013-2014 All Funds budget..."

From the Senate Majority's "White Book", under Senate Finance Committee Chairman DeFrancisco' auspices:

> "(at pp. 75, 85): The Judiciary's 'All Funds total" is $2.03 billion', 'an increase of $53 million' or '2.7 percent'. This is followed by a chart entitled 'Public Protection Proposed Disbursements—All Funds' (at p. 86) listing a figure of $2,723,103,000 for the Judiciary, constituting an increase of $76,403,000, identified as 2.89%."

From the Senate Minority's "Blue Book", under Senate Finance Committee Ranking Member Krueger's auspices:

> "(at p. 155) a chart containing a 'Total All Funds' tally of $2,706,142,084, representing a change of $72,245,608, and a percentage change of 2.74%. No elaboration is provided in the brief accompanying text which instead states:
>
> > 'The Judiciary's General Fund Operating Budget request is $1.82 billion. The request is an increase of $63 million over the current fiscal year appropriation, or 3.6%.' On a cash basis, the requested increase is 2.5% ($44.20 million), the difference relating to a prior year reappropriation technicality. When evaluating this budget, it is the 2.5% cash basis request that is primary.'"

From the Assembly Majority's "Yellow Book", under Assembly Ways and Means Chairman Farrell's auspices:

> "(at p. 141): 'The Judiciary's proposed budget request, as submitted to the Governor, recommends appropriations of $2.73 billion, which is an increase of $77.25 million or 2.9 percent from the State Fiscal Year (SFY) 2013-2014 level.'
>
> More precise figures appear in an 'Appropriations' table immediately beneath: '$2,726.14 in millions', representing a dollar change of '$77.25 in millions' and a percentage change of '2.92%'. Also, a 'Disbursements' table, giving the figures: '$2,723.10 in millions', representing a dollar change of '$76.40 in millions', and a percentage change of '2.89%'."

From the Assembly Minority's "Green Book", under Assembly Ways and Means Ranking Member Oaks' auspices:

> "two sets of untotaled figures: The first: '$2 billion for the Judiciary, $53 million more than last year. This represents a $2.7% increase in

spending.' The second: '$669.1 million in General State Charges...$8.5 million more than last year.'"

186. Defendants' dismissal motion contested none of this – nor ¶103 of plaintiffs' second cause of action asserting that the reason the Judiciary had failed to identify the cumulative dollar amount of its proposed budget was to conceal the reappropriations, which were not contained in their two-part budget presentation, for which there was certification, but only its "single-budget bill", for which there was seemingly no certification.

187. Contrary to the decision, defendants submitted NO "documentary evidence...clearly and conclusively establish[ing] a defense to this cause of action". The unidentified "documentary evidence" that defendants submitted was one part of the Judiciary's proposed budget, that of its operating expenses, which included the "single-budget bill" (fn. 4, *supra*), as well as the Governor's Budget Bill #S.6351/A.8551 (fn. 5, *supra*), whose judiciary portion replicated the "single-budget bill" – NONE containing the cumulative dollar amount of the Judiciary's proposed budget or percentage increase. In other words, here, too, defendants' "documentary evidence" substantiates plaintiffs' verified complaint, *inter alia*, ¶103 of the second cause of action.

188. As to the decision's assertion that "this cause of action would also appear to fall under the type of itemization argument already found to be nonjusticable", the qualifying language – "would also appear" – is insufficient for a declaratory judgment. This, quite apart from the OBVIOUS fact that the cumulative dollar amount of the Judiciary's budget is NOT "itemization".

189. Moreover, the rationale for nonjusticability, not discussed by the decision, is that the Legislature would not pass a budget it did not understand. Such is a judicial fiction, exposed as such by defendants' inability to agree on the relevant figures germane to understanding the Judiciary's budget and its percentage increase – and so-stated by plaintiffs' ¶102 of their second cause of action.

190. Further, the decision entirely conceals that the third phase of the judicial salary increase – which it does not even mention – is not just unitemized, but completely hidden within the Judiciary's proposed budget and Budget Bill S.6351/A.8551. As to it, the issue is not "type of itemization", but, as stated by plaintiffs' May 16, 2014 memorandum of law (at pp. 16-17):

> "the total disregard of 'the constitutional mandate to itemize' – a distinction *Saxton v. Carey* palpably recognizes and *Urban Justice Center v. Pataki* resting thereon."

191. Plaintiffs' arguments with respect to "itemization", presented at pages 15-17 of their May 16, 2014 memorandum of law, are dispositive. NONE are addressed, or even identified, by the October 9, 2014 decision. This, in face of defendants' own failure to address, or even identify, these arguments, which plaintiffs' (June 6, 2014) reply memorandum of law pointed out (at p. 4). Tellingly, the decision's last page listing of "Papers Considered" omits both these memoranda of law – each meticulously chronicling the state of the record before the Court.

192. Suffice to add that the decision's dismissal of this cause of action is also premised on a false prefatory assertion (at p. 4) that it involves "purported violations of Article VII, §1 of New York's Constitution" – implying that it is limited to Article VII, §1. As such, the decision's purported dismissal of the second cause of action does not reach the violations of Article VII, §7 and Article III, §16 of the New York State Constitution and State Finance Law §25, alleged in ¶¶105-107 of the second cause of action pertaining to the reappropriations included in Budget Bill #S.6351/A.8551. Indeed, the decision never mentions the Judiciary's reappropriations, contained in its "single budget bill", but not its two-part budget presentation, including whether they were certified.

193. Plaintiffs have filed a notice of appeal from the October 9, 2014 decision. Their accompanying pre-calendar statement highlights the state of the record on which plaintiffs rely in

further support of this sixth cause of action and their entitlement to summary judgment thereon (Exhibit 11-a).

AS AND FOR A SEVENTH CAUSE OF ACTION

Budget Bill #S.2001/A.3001 is Unconstitutional & Unlawful Over & Beyond the Legislative & Judiciary Budgets it Embodies "Without Revision"

194. Plaintiffs repeat, reiterate, and reallege ¶¶1-193, with the same force and effect as if more fully set forth herein.

195. Defendant CUOMO's Budget Bill #S.2001/A.3001 includes tens of millions of dollars of reappropriations for the Legislature that were never part of the proposed budget for fiscal year 2015-2016 that defendants SKELOS and SILVER transmitted by their December 1, 2014 letter to defendant CUOMO (Exhibit 1-b). This replicates, identically, the inclusion in defendant CUOMO's Budget Bill #S.6351/A.8551 of tens of millions of dollars in reappropriations that were never part of the proposed legislative budget for fiscal year 2014-2015 transmitted by defendants SKELOS' and SILVER's November 27, 2013 letter – the subject of the third cause of action of plaintiffs' verified complaint (¶¶109-112).

196. The October 9, 2014 decision purporting to dismiss the third cause of action (Exhibit 11-b) does not bar plaintiffs from asserting this seventh cause of action replicating it. *As a matter of law*, dismissal was "not appropriate" because, *inter alia*, in a declaratory judgment action, such as this, the court's duty is to make a declaration as to the rights of the parties (see ¶171, *supra*). This, the decision did not do, notwithstanding plaintiffs' requested declarations were succinctly laid out by ¶1C of their "PRAYER FOR RELIEF" as follows:

> "C. that Budget Bill #6351/A.8551 is a wrongful expenditure, misappropriation, illegal and unconstitutional by its inclusion of reappropriations for the Legislature that were not part of its proposed budget and not certified by the Legislature as funds properly designated for reappropriation".

197. The decision states:

> "Plaintiffs' third cause of action alleges that the Legislative Budget transmitted to the Governor by Senator Skelos and Speaker Silver contained no reappropriations. They further contend that the Governor's budget contains nineteen pages of reappropriations. Accordingly, they contend that the reappropriations constitute revisions in violation of New York's Constitution. The Court finds that the documentary evidence submitted by defendants clearly and conclusively establishes a defense to this cause of action. Said submissions clearly establish that the 'reappropriations' at issue do not constitute executive revisions to the proposed Budget. Accordingly, the third cause of action must be dismissed." (at p. 6).

198. Plaintiffs' third cause of action did not contend that "the reappropriations constitute revisions in violation of New York's Constitution" – and this was pointed out at pages 19-20 of plaintiffs' May 16, 2014 memorandum of law in opposition to defendants' pretense that it did.

199. Plaintiffs' third cause of action (¶¶111-112) asserted that absent defendants' response to "basic questions", the legislative reappropriations in Budget Bill #S.6351/A.8551 were unconstitutional and unlawful. The "basic questions" particularized were:

> "where these reappropriations came from, who in the Legislature, if anyone, certified that the monies proposed for reappropriations were suitable for that purpose; their cumulative total; and the cumulative total [of] the monetary allocations for the Legislature in Budget Bill #S.6351/A.8551".

200. Defendants furnished neither "documentary evidence" nor response – and such was pointed out at pages 19-20 of plaintiffs' May 16, 2014 memorandum of law and at page 4 of their (June 6, 2014) reply memorandum of law.

201. This seventh cause of action identically asserts that the 22 pages of legislative reappropriations in Budget Bill #S.2001/A.3001 (Exhibit 5-b) are unconstitutional and unlawful absent defendants' response to the same "basic questions", now pertaining to Budget Bill #S.2001/A.3001.

202. Plaintiffs have filed a notice of appeal from the October 9, 2014 decision. Their accompanying pre-calendar statement highlights the state of the record on which plaintiffs rely in further support of this seventh cause of action and their entitlement to summary judgment thereon (Exhibit 11-a).

AS AND FOR A EIGHTH CAUSE OF ACTION

Nothing Lawful or Constitutional Can Emerge From a Legislative Process that Violates its Own Statutory & Rule Safeguards

203. Plaintiffs repeat, reiterate, and reallege ¶¶1-202, with the same force and effect as if more fully set forth herein.

204. Defendant SENATE and ASSEMBLY's violations of statutory and rule safeguards with respect to Budget Bill #S.2001/A.3001 replicate their violations last year with respect to Budget Bill #S.6351/A.8551 – the subject of the fourth cause of action of plaintiffs' verified complaint (¶¶113-126).

205. This eighth cause of action, therefore, replicates the fourth cause of action so as to apply it to Budget Bill #S.2001/A.3001.

206. As to plaintiffs' fourth cause of action, the October 9, 2014 decision held:

> "Plaintiffs' complaint adequately sets forth a viable cause of action alleging, *inter alia*, that defendants violated Legislative Law §32-a regarding public hearings for New York's Budget. Defendants argue that the cause of action should be dismissed because plaintiffs lack standing to challenge internal legislative rules. The Court has not been persuaded that Legislative Law §32-a constitutes an internal legislative rule. Additionally defendants' submissions did not include any documentary evidence establishing a defense to said cause of action. Accordingly, defendants' motion to dismiss must be denied as to plaintiffs' fourth cause of action." (Exhibit 11-b, at p. 7)

207. Plainly, Legislative Law §32-a is not an "internal legislative rule", but a statute – a fact pointed out by plaintiffs' May 16, 2014 memorandum of law (at p. 13). No persuasion can change its mandatory directive to be other than it is, statutory.

208. Nor does the fourth cause of action "challenge internal legislative rules". Rather, it seeks to prevent violation of legislative rules that are designed to ensure legitimate legislative process and safeguard public monies.

209. Defendants SENATE and ASSEMBLY, being constitutionally enabled to make their own rules, are not free to violate the rules they have made. No caselaw holds they can and plaintiffs' May 16, 2014 memorandum of law not only stated this (at p. 21), but quoted the Appellate Division, Third Department in *Seymour v. Cuomo*, 180 A.D.2d 215, 217 (1992):

> "The rules established by the Senate and Assembly to govern the proceedings in each house (NY Const, art 3, §9) are the functional equivalent of a statute."

210. Senate Rule VII, §6 could not be more explicit that Article VII budget bills are to be deemed "for all legislative purposes, a legislative bill":

> "When a bill is submitted or proposed by the Governor by authority of Article VII of the Constitution, it shall become, for all legislative purposes, a legislative bill and upon receipt thereof by the Senate it shall be endorsed 'Budget Bill' and be given a number by the Secretary and shall be referred to the Finance Committee and be printed. ..." (underlining added)

211. Likewise, Assembly Rule III, §2(g):

> "When a bill is submitted or proposed by the Governor by authority of Article VII of the Constitution, it shall become, for all legislative purposes, a legislative bill, and upon receipt thereof by the Assembly it shall be endorsed 'Budget Bill' and be given a number by the Index Clerk, and shall be referred to the Committee on Ways and Means and be printed. ..." (underlining added).

212. Nevertheless, and despite the requirements of fiscal notes, fiscal impact statements, and introducer's memoranda, mandated by Senate Rule VIII, §7, Senate Rule VII, §1, and Assembly Rule III, §1(f) and §2(a) – which, to no avail, plaintiffs repeatedly pointed out to defendants last year with respect to Budget Bill #S.6351/A.8551, culminating in their citizen-taxpayer action – defendants have willfully and deliberately violated same with respect to Budget Bill #S.2001/A.3001.

213. The information that fiscal notes, fiscal impact statements, and introducer's memoranda would necessarily have provided for Budget Bill #S.6351/A.8551 – and now for #S.2001/A.3001 – includes:

(a) the cumulative dollar amount of the bill in its entirety;

(b) the cumulative dollar amount of the legislative portion, inclusive of "General State Charges" and re-appropriations;

(c) the cumulative dollar amount of the judiciary portion, inclusive of "General State Charges" and reappropriations;

(d) the percentage increase of each cumulative dollar amount over the dollar amounts in last year's corresponding Budget Bill #S.6351/A.8551.

214. Defendants' violations of Senate Rule VIII, §7, Senate Rule VII, §1, and Assembly Rule III, §1(f) and §2(a) are compounded by the fact that Budget Bill #S.2001/A.3001, identically to Budget Bill #S.6351/A.8551, contains NO cumulative dollar amount for the bill and for its separate legislative and judiciary portions.

215. Defendant Chairs and Ranking Members of the Senate Finance Committee and Assembly Ways and Means Committee did not respond to Plaintiff SASSOWER's February 23, 2015 letter expressly requesting such information about Budget Bill #S.2001/A.3001 – and there is no justification for their not furnishing what would be readily and publicly available had they complied with the mandate of Senate Rule VIII, §7, Senate Rule VII, §1, and Assembly Rule III,

§1(f) and §2(a) of fiscal notes, fiscal impact statements, and introducer's memoranda, which was their duty to do.

216. As stated by ¶118 of plaintiffs' fourth cause of action with respect to last year's violations of Senate Rule VIII, §7, Senate Rule VII, §1, and Assembly Rule III, §1(f) and §2(a) – and equally true with respect to this year's identical violations:

> "...defendant SENATE and ASSEMBLY have demonstrated their utter unconcern in imposing upon taxpayers the expense of two budgets – the Judiciary and Legislative budgets – whose dollar amount they do not know or will not reveal. Such is utterly unconstitutional."

217. Upon information and belief, the reason the Chairs and Ranking Members of the Senate Finance Committee and Assembly Ways and Means Committee made no "effort" to allow plaintiff SASSOWER to testify in opposition to the Legislature's proposed budget, the Judiciary's proposed budget, and Budget Bill #S.2001/A.3001 – in violation of Legislative Law 32-a – was to prevent the public from hearing the dispositive grounds upon which each is unconstitutional, unlawful, and fraudulent – not the least reason being their concealment of relevant dollar costs, both cumulative and by itemizations defying meaningful review.

218. Plaintiff SASSOWER's February 23, 2015 letter to the Chairs and Ranking Members of the Senate Finance Committee and Assembly Ways and Means Committee is true and correct in its analysis that these two committees have effectively subverted Legislative Law §32-a by combining the public hearings on the budget required by Legislative Law 32-a with the very different budget hearings of Article VII, §3 of the New York State Constitution and Legislative Law §31 for the testimony of the Governor, Executive branch agency heads, and the like. As stated,

> "Your combined budget hearings – which you organize by 'programmatic areas' – are filled with testimony from officials and recipients of budgetary appropriations. The public's testimony is shoved to the end – or, if dispositive of the unlawfulness and

unconstitutionality of the budget, shut out entirely on the pretext that the hearing is full.

Exacerbating this subversion of Legislative Law §32-a is your failure to hold the public budget hearings 'regionally', as the statute contemplates, and your assigning the Judiciary's budget to the 'programmatic area' of 'public protection', as if the Judiciary were an Executive branch agency. Apparently you are now also assigning the Legislature's budget to that same Executive branch 'programmatic area' – at least for purposes of denying my request to testify in opposition to it." (Exhibit 8, underlining in the original).

219. In fact, the Chairs and Ranking Members of the Senate Finance Committee and Assembly Ways and Means Committee never intended to examine the Legislature's budget for fiscal year 2015-2016 at the February 26, 2015 budget hearing on "public protection", did not examine it at that budget hearing, and, in violation of Legislative Law §32-a, held no hearing at which plaintiff SASSOWER or any other member of the public could be heard with respect to the Legislature's budget for fiscal year 2015-2016.

220. Underlying this violation of Legislative Law §32-a with respect to holding a hearing on the Legislature's budget – and the budget bill encompassing it – is the Legislature's direct conflict of interest in exposing the constitutional, statutory, and rule violations with respect to its own budget, creating a "slush fund" from which leadership, including its appointed committee chairs and ranking members, monopolize power at the expense of rank-and-file members and functioning committees.

221. The non-function and dysfunction of defendant SENATE and ASSEMBLY committees – and of defendant SENATE and ASSEMBLY as a whole – described and documented by plaintiffs' verified complaint – is manifested, now again, in this budget cycle.

222. Upon the conclusion of the February 26, 2015 "public protection" budget hearing, the course of Budget Bill #S.2001/A.3001 should have followed the procedures for committee action,

including as to hearings and public forums, set forth by Senate Rule VIII, §§3, 4, 5 and Assembly Rule IV, §§2, 4, 6, which mandate open meetings, recorded votes, committee reports.

223. Likewise, Budget Bill #S.2001/A.3001 should have been amended so that, *inter alia*, the Judiciary's budget would be actually limited to the 2% increase misleadingly represented by Chief Administrative Judge Prudenti at the February 26, 2015 "public protection" budget hearing and as to which defendant CUOMO had stated in his "Commentary":

> "For the past four years my Administration and the Legislature have kept spending increases below 2 percent...
>
> I belief, and based on conversations with the Office of Court Administration and its leadership the Judiciary believes, that it can...not breach the 2 percent spending cap to which my Administration and the Legislature have adhered. To that end, I have been assured by the Judiciary that it will work closely with my Administration to find the additional savings that will allow it to fulfil its mission, achieve its goals and still stay within that cap. I urge the Judiciary to continue its discussions with my Administration and the Legislature and thank them for their cooperation." (Exhibit 5-a).

224. The procedures for such amendment are set forth, *inter alia*, by Senate Rule VII, §4(b); and Assembly Rule III, §§1(f) and 6.

225. Based on last year's amending of Budget Bill #S.6351/A.8551 on March 28, 2014, this year's Budget Bill #S.2001/A.3001 may yet be amended the same way: completely anonymously and without compliance with such safeguarding procedural requirements as underscoring new matter and bracketing all matter eliminated; indicating the proposed changes on "detail sheets", including with "page and line numbers"; and furnishing an amended "introducer's memorandum".

226. The result, last year, was to conceal that notwithstanding defendant CUOMO's "Commentary" that the Judiciary's budget increase of 2.7% over the previous year needed to be brought down to 2%, the judiciary portion of Budget Bill #S.6351/A.8551 was not reduced. Rather, last year's amendment to Budget Bill #S.6351/A.8551 was exclusively to reappropriations in the

legislative portion – with approximately 70 reappropriations increased, decreased, or, in at least two instances, added.

227. Such amendment, made without indication of its sponsor and the reason therefor, involved millions of dollars – and further reflected that the inclusion of legislative reappropriations in Budget Bill #S.6351/A.8551 was without their having been certified, either as to their dollar amounts or as to their suitability as reappropriations – the situation replicated with Budget Bill #S.2001/S.3001.

228. Identically to last year, defendants SENATE and ASSEMBLY dispensed with any committee deliberation and vote on Budget Bill #S.2001/A.3001, in favor of resolutions commencing the Joint Budget Conference "process". With words identical to those in last year's Senate Resolution #4036, this year's Senate Resolution #950 states:

> "WHEREAS, It is the intent of the Legislature to engage in the Budget Conference Committee process, which promotes increased participation by the members of the Legislature and the public"

229. Senate Resolution #950 was introduced and adopted on the same day, March 12, 2015, notwithstanding Senate Rule VII, §9. Assembly Resolution #203 was introduced on March 9, 2015 and adopted on March 12, 2105.

230. Identically to last year, and notwithstanding defendants' rhetorical support of "Sunshine Week" – including in Assembly Resolution #203 itself: "WHEREAS, Transparency and sunlight are important to public confidence in the integrity of government" – the public has been shut out from observing any "process" with respect to the Joint Budget Conference Committee – and its subcommittees – as, for instance, deliberations and votes.

231. Upon information and belief, defendants SENATE and ASSEMBLY have perverted the intent behind Legislative Law §54-a. This statute is entitled "Scheduling of legislative consideration of budget bills" and its §1 provides for:

> "establishing a joint budget conference committee or joint budget conference committees within ten days following the submission of the budget by the governor pursuant to article seven of the constitution, to consider and reconcile such budget resolution or budget bills as may be passed by each house..."

232. Obviously, the requirement of establishing one or more joint budget committees "within ten days following the submission of the budget by the governor" is so that they can promptly become operational and do what conference committees are supposed to do: reconcile different versions of bills passed by the two legislative houses.

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

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

235. Of course, identically to last year, the "real action" is taking place behind closed doors by "three men in a room" deal-making by defendant CUOMO, defendant SKELOS, and defendant HEASTIE – expanded to a fourth man by inclusion of defendant KLEIN.

236. Plaintiffs repeat the last paragraph of their verified complaint, ¶126, altering it only to substitute defendant HEASTIE's name for defendant SILVER:

> "...one need only examine the Constitutional, statutory, and Senate and Assembly rule provisions relating to openness – such as Article III, §10 of New York's Constitution '...The doors of each house shall be kept open...' ; Public Officers Law, Article VI 'The legislature therefore declares that government is the public's business...'; Senate Rule XI, §1 'The doors of the Senate shall be kept open'; Assembly Rule II, §1 'A daily stenographic record of the proceedings of the House shall be made and copies thereof shall be available to the public' – to see that government by behind-closed-doors deal-making, such as employed by defendants CUOMO, SKELOS, HEASTIE, SENATE, and ASSEMBLY, is an utter anathema and unconstitutional – and that a citizen-taxpayer action could successfully be brought against the whole of the Executive budget."

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully pray:

1. **For a declaratory judgment pursuant to State Finance Law §123 *et seq.* – Article 7-A, "Citizen-Taxpayer Actions":**

A. that the Legislature's proposed budget for fiscal year 2015-2016, embodied in Budget Bill #S.2001/A.3001, is a wrongful expenditure, misappropriation, illegal, and unconstitutional because it is not based on "itemized estimates of the financial needs of the legislature, certified by the presiding officer of each house", as Article VII, §1 of the State Constitution expressly mandates; is missing "General State Charges"; and because its budget figures are contrived by the Temporary Senate President and Assembly Speaker to fortify their power and deprive members and committees of the monies they need to discharge their constitutional duties;

B. that the Judiciary's proposed budget for fiscal year 2015-2016, embodied in Budget Bill #S.2001/A.3001, is a wrongful expenditure, misappropriation, illegal and unconstitutional because the Judiciary budget is so incomprehensible that the Governor, Budget Director, and Legislature cannot agree on its cumulative cost and percentage increase; that its reappropriations are not certified, including as to their suitability for that purpose, and violate Article VII, §7 and Article III, §16 of the New York State Constitution and State Finance Law §25, and that both by its reappropriations and appropriations it creates a "slush fund", concealing relevant costs, including of the three-phase judicial salary increase, now fully implemented despite its statutory violations, fraudulence, and unconstitutionality, demonstrated by plaintiffs' October 27, 2011 Opposition Report to the

Commission on Judicial Compensation's August 29, 2011 Report recommending the three-phase judicial salary increase;

C. that Budget Bill #2001/A.3001 is a wrongful expenditure, misappropriation, illegal and unconstitutional by its inclusion of reappropriations for the Legislature that were not part of its proposed budget and not certified by the Legislature as funds properly designated for reappropriation;

D. that Budget Bill #2001/A.3001 is a wrongful expenditure, misappropriation, illegal and unconstitutional because nothing lawful or constitutional can emerge from a legislative process that violates its own statutory & rule safeguards, *inter alia*, Legislative Law §32-a (public hearings); Senate Rule VIII, §7, Senate Rule VII, §1, and Assembly Rule III, §1(f) and §2(a) (fiscal notes, fiscal impact statements, and introducer's memoranda); Senate Rule VII, §4; Assembly Rule III, §§1, 2, 8 (bills); Senate Rule VIII, §§3, 4, 5; Assembly Rule IV (committee meetings, hearings, reports, votes); Senate Rule VII, §9 (resolutions); Legislative Law §54-a ("Scheduling of legislative consideration of budget bills"); Senate and Assembly Joint Rule III, §§1, 2 ("Budget Consideration Schedule"; "Joint Budget Conference Committee"), New York Constitution, Article III, §10 "...The doors of each house shall be kept open..." ; Public Officers Law, Article VI "The legislature therefore declares that government is the public's business..."; Senate Rule XI, §1 "The doors of the Senate shall be kept open"; Assembly Rule II, §1 "A daily stenographic record of the proceedings of the House shall be made and copies thereof shall be available to the public", etc.

2. **Pursuant to State Finance Law §123-e, for entry of a judgment permanently enjoining defendants from taking any action to enact Budget Bill #S.2001/A.3001**, by voting on, signing, and disbursing monies for Budget Bill #S.2001/A.3001, or, at least, for the entirety of the legislative portion, both its appropriations and reappropriations (pp. 1-9; 25-46); and, with respect to the judiciary portion, the reappropriations (at pp. 22-24).

3. **Pursuant to State Finance Law §123-g, for costs and expenses, including attorneys' fees;**

4. **For such other and further relief as may be just and proper**, including referral to appropriate state and federal criminal authorities, such as the Albany County District Attorney and the U.S. Attorney for the Northern District of New York – and, additionally, to U.S. Attorney for the Southern District of New York Preet Bharara, who purports to be the successor to the Commission to Investigate Public Corruption.

ELENA RUTH SASSOWER

Sworn to before me this
31st day of March 2015

Notary Public

PATRICIA D RODRIGUEZ
Notary Public - State of New York
NO. 01RO6199133
Qualified in Westchester County
My Commission Expires _____

VERIFICATION

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss:

I am the individual plaintiff in the within action and director of the corporate plaintiff, Center for Judicial Accountability, Inc. I have written the annexed verified supplemental complaint and attest that same is true and correct of my own knowledge, information, and belief, and as to matters stated upon information and belief, I believe them to be true.

ELENA RUTH SASSOWER

Sworn to before me this
31st day of March 2015

Notary Public

PATRICIA D RODRIGUEZ
Notary Public - State of New York
NO. 01R06199133
Qualified in Westchester County
My Commission Expires 01/12/17

EXHIBIT D

STATE OF NEW YORK
SUPREME COURT **COUNTY OF ALBANY**

CENTER FOR JUDICIAL ACCOUNTABILITY, INC. and ELENA RUTH SASSOWER, individually and as Director of the Center for Judicial Accountability, Inc., acting on their own behalf and on behalf of the People of the State of New York & the Public Interest,

Plaintiffs,

-against-

AMENDED DECISION AND ORDER[1]
Index No.: 1788-14
RJI No.: 01-14-113240

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

Defendants.

(Supreme Court, Albany County All Purpose Term)

Appearances:

Elena Ruth Sassower
Self-Represented Plaintiff
10 Stewart Place, Apartment 2D-E
White Plains, NY 10603

Eric T. Schneiderman
Attorney General
State of New York
Attorney for All Defendants
The Capitol
Albany, NY 12224
(Adrienne J. Kerwin, Esq., Assistant

[1] The Court corrected two scrivener's errors on page eight where the Court inadvertently juxtaposed plaintiff and defendant.

Attorney General)

Roger D. McDonough, J.:

Previously, this Court dismissed three of plaintiffs' four causes of action set forth in their original verified complaint. The fourth cause of action survived defendants' motion to dismiss. Eventually, plaintiffs sought leave to supplement their verified complaint. The Court granted said leave. Defendants moved to dismiss the supplemental complaint in its entirety pursuant to CPLR § 3211(a)(7). Additionally, defendants moved for summary judgment as to plaintiffs' fourth cause of action. Plaintiffs opposed the motion and cross-moved for summary judgment and various other relief. During the pendency of the Court's consideration of said motions, plaintiffs brought an Order to Show Cause seeking various injunctive relief and leave to serve a second supplemental complaint. The Court heard oral argument upon the presentation of the Order to Show Cause and denied the temporary injunctive relief. Defendants oppose the remaining injunctive relief and ask the Court to deny plaintiffs' leave to serve a second supplemental complaint.[2]

Background

Familiarity with the relevant background to this action against the Governor and legislative leaders is presumed.

Discussion

Motions with respect to the Supplemental Complaint

The Supplemental Complaint adds four causes of action (causes of action 5-8) to the original four set forth in the complaint. Defendants' motion to dismiss relies upon CPLR § 3211(a)(1), (a)(2) and (a)(7).

Defendants argue that this Court's rationale in dismissing the original causes of action 1-3 should apply equally to the new causes of action numbered 5, 6 and 7. Specifically, defendants maintain that plaintiffs are merely alleging identical claims on indistinguishable facts.

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[2] Plaintiffs' requests for oral argument are denied pursuant to 22 NYCRR 202.8(d) (*see*, Niagara Venture v Niagara Falls Urban Renewal Agency, 56 AD3d 1150, 1150 [4th Dept. 2008]).

Accordingly, relying on the "law of the case" doctrine, defendant assert that the fifth, sixth and seventh causes of action should be dismissed for the reasons cited by the Court in its prior Decision and Order.

As to the eighth cause of action, defendants assert that plaintiffs are impermissibly challenging internal rules of the Legislature. Additionally, as to the fourth[3] and eighth causes of action, defendants argue that plaintiffs' claims of violations of Legislative Law § 32-A are directly disproved by documentary evidence. Specifically, defendants rely upon numerous public documents for the proposition that hearings were scheduled and held in connection with the 2014-15 and 2015-16 Legislative and Judiciary Budgets. Defendants also maintain that plaintiffs' challenges to the locations of the hearings, and the testimony allowed at said hearings, are non-justiciable. Specifically, defendants maintain that the actions/inactions at issue are protected from judicial review by the Speech or Debate Clause of the New York State Constitution.

In opposition/support[4], plaintiffs primarily maintain that they have documentary evidence substantiating their claims of numerous violations of the Legislative Law, a Senate and Assembly Joint Rule and other Senate and Assembly Rules. Plaintiffs argue that these violations, as well as certain constitutional violations, were ignored in defendants' submissions. Additionally, plaintiffs maintain that both the Legislature's and the Judiciary's Proposed Budgets for Fiscal Year 2015-2016 are unconstitutional and unlawful. In particular, plaintiffs rely on the language of the transmittal letters accompanying the particular budgets. Further, plaintiffs cite the importance of the documentation handed up to the Legislature in February of 2013 in opposition to the Judiciary's budget and the second phase of judicial salary increases. Finally, plaintiffs stress that the Court's previous dismissal of the causes of action 1-3 was legally insupportable

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[3] As issue has been joined and discovery conducted on the fourth cause of action, defendants maintain that summary judgment is the appropriate vehicle for dismissal as to said cause of action.

[4] Plaintiffs also ask the Court to convert defendants' dismissal motion into a motion for summary judgment in plaintiffs' favor. Defendants did not take any position on this request. As plaintiffs have cross-moved for summary judgment relief, the Court denies any such conversion as unnecessary.

and factually baseless. In particular, plaintiffs argue that this Court is not bound by the "law of the case" doctrine and can revisit its earlier erroneous rulings.

In reply/further support of their motion, defendants assert that they are unable to decipher any admissible, relevant evidence or reasoned argument "in plaintiffs' defamatory, rambling submissions . . ." Additionally, defendants maintain that plaintiffs have failed to set forth any facts establishing how Article VII, section 7 or Article III, sections 10 and 16 were violated. Further, defendants maintain that there are no allegations in the supplemental complaint that any of the relevant parties listed in Section 31 of the Legislative Law were precluded from appearing before Legislative committees and/or refused to appear pursuant to any committee request. Finally, defendants maintain that the documentary evidence establishes compliance with Section 54-A of the Legislative Law.

In reply/further support of their cross-motion, plaintiffs cite an amendment to the Budget Bill which recognizes the unconstitutionality of the Budget Bill. Said amendment pertains to the replacement of the Commission on Judicial Compensation with the Commission on Legislative, Judicial and Executive Compensation. In light of the amendment, plaintiffs question why defendants' motion for dismissal/summary judgment has not been withdrawn.

Fourth Cause of Action

The Court previously determined that plaintiffs' had adequately stated a fourth cause of action as to defendants' purported violation of Legislative Law § 32-a regarding public hearings for New York's Budget. The Court specifically noted that defendants' submissions did not include any documentary evidence establishing a defense to said cause of action. Defendants have now provide the Court with such documentary evidence. Accordingly, they seek summary judgment.

The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law by providing sufficient evidence to eliminate any genuine material issues of fact from the case. The failure to make such a showing mandates denial of the motion, regardless of the sufficiency of the opposing papers (Alvarez v. Prospect Hosp., 68 NY2d 320 [1986]; Winegard v. New York Univ. Med. Center, 64 NY2d 851 [1985]).

Once such a showing is made, the burden shifts to the party opposing the motion for

summary judgment to come forward with evidentiary proof, in admissible form, to establish the existence of material issues of fact which require a trial (Zuckerman v. City of New York, 49 NY2d 557, 562 [1980]). In order to defeat a motion for summary judgment, the opponent must present evidentiary facts sufficient to raise a triable issue. Averments merely stating conclusions are insufficient (Bethlehem Steel Corp. v. Solow, 51 NY2d 870 [1980]; Capelin Assoc. v. Globe Mfg. Corp., 34 NY2d 338 [1974]).

Summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue (Sternbach v. Cornell University, 162 AD2d 922, 923 [3rd Dept. 1990]). The focus is upon issue finding, not issue resolving, and all inferences and evidence must be viewed in a light most favorable to the party opposing the motion for summary judgment (*see*, B. S. Industrial Contractors, Inc. v. Town of Wells, 173 AD2d 1053 [3rd Dept. 1991]).

The Court finds that the relevant, documentary evidence fully demonstrates that defendants complied with Legislative Law § 32-a. In response to defendants' prima facie showing of entitlement to summary judgment, plaintiffs failed to raise any triable issues of fact. Accordingly, summary judgment dismissing the fourth cause of action is mandated.

Fifth Cause of Action

Plaintiffs allege that the Legislature's Proposed Budget for Fiscal Year 2015-2016 is unconstitutional and unlawful. The gist of this cause of action is that the Proposed Budget was not adequately certified and does not contain itemized estimates of the financial needs of the legislature. The Court again concludes that the itemization challenge must be dismissed as it is nonjusticiable (*see*, Urban Justice Ctr v Pataki, 38 AD3d 20, 30 [1st Dept. 2006]). As to the certification issue, the Court finds that the documentary evidence submitted by defendants conclusively demonstrates that defendants have complied with the letter and spirit of the constitutional requirement for certification (*see generally*, Matter of Schneider v Rockefeller, 31 NY2d 420, 434 [1972]). Accordingly, the fifth cause of action must be dismissed.

Sixth Cause of Action

Plaintiffs allege that the Judiciary's Proposed Budget for Fiscal Year 2015-2016 is unconstitutional and unlawful. The sixth cause of action principally alleges that the Senate and

the Assembly are unable to comprehend the Judiciary's proposed budget for 2015-2016 because the cumulative dollar amount and percentage increase over the prior year's budget cannot be discerned. The Court again finds that the documentary evidence submitted by defendants clearly and conclusively establishes a defense to this cause of action. Said information is readily discernible throughout the Judiciary's proposed budget. Accordingly, the sixth cause of action must be dismissed. Regardless, this cause of action would also appear to fall under the type of itemization argument already found to be nonjusticiable.

Seventh Cause of Action

Plaintiffs' seventh cause of action again alleges that certain reappropriations constitute revisions in violation of New York's Constitution. The Court finds that the documentary evidence submitted by defendants clearly and conclusively establishes a defense to this cause of action. Said submissions clearly establish that the "reappropriations" at issue do not constitute executive revisions to the proposed Budget. Accordingly, the seventh cause of action must be dismissed.

Eighth Cause of Action

The eighth cause of action principally relates to defendants' purported violations of Legislative Law § 32-a regarding public hearings for New York's Budget. The Court finds that the documentary evidence submitted by defendants clearly and conclusively establishes a defense to this portion of the cause of action. To the extent other claims were raised in this cause of action, the Court concludes: (1) that plaintiffs have failed to set forth any facts in the supplemental complaint as to how Article VII, section 7 or Article III, sections 10 and 16 were violated; (2) that there are no allegations in the supplemental complaint that any of the relevant parties listed in Section 31 of the Legislative Law were precluded from appearing before Legislative committees and/or refused to appear pursuant to any committee request; and (3) that the documentary evidence establishes compliance with Section 54-A of the Legislative Law. Accordingly, dismissal of this cause of action is warranted pursuant to CPLR § 3211(a)(1) & (7).

Declaratory Relief

The Court notes that no issues of fact have been raised herein. Rather, the matters are purely questions of law and statutory interpretation. As such, in the context of a motion to

dismiss, the Court may render a determination and declare the rights of the parties (Spilka v Town of Inlet, 8 AD3d 812, 813 [3rd Dept. 2004]). Now that this matter is fully concluded, the Court will issue said declarations below in compliance with CPLR § 3001 (*see*, Stonegate Family Holdings, Inc. v Revolutionary Trails.

Remaining Requested Relief from Plaintiffs' Summary Judgment Motion

The Court notes that plaintiffs' papers are replete with wholly unsubstantiated accusations against the Assistant Attorney General sounding primarily in fraud upon the Court, deceit and making frivolous submissions. In conjunction with the accusations, plaintiffs seek sanctions, costs, penal law punishment, treble damages, referral to disciplinary authorities, disqualification of the Attorney General and an Order directing the Assistant Attorney General to provide certain disclosure.

The Court has reviewed the allegations and finds no basis to impose/award any of the requested relief. Moreover, the Court finds that plaintiffs' request for this Court to vacate its prior Order pursuant to CPLR § 5015 is wholly without merit.

Leave to Serve a Second Supplemental Complaint

The Court has considered the parties' respective arguments as to the issue of plaintiffs' request for leave to serve a second supplemental complaint. Plaintiffs' second supplemental complaint asserts eight new causes of action. The Court denies leave to serve a second supplemental complaint as to causes of action 9-12, based on the Court's dismissal of plaintiffs' original eight causes of action. Under these circumstances, the Court finds that causes of action 9-12 are "patently devoid of merit" (Lucido v Mancuso, 49 AD3d 220, 229 [2nd Dept. 2008]). As to causes of action 13-16, the Court finds that the allegations therein arise out of materially different facts and legal theories as opposed to the original four causes of action and the additional four causes of action set forth in the supplemental complaint. Accordingly, the Court finds that defendants have adequately established the prejudice that would flow from allowing a second supplemental complaint setting forth entirely new facts, theories and causes of action several years after service of the original complaint (*see generally*, Brunetti v Musallam, 59 AD3d 220, 223 [1st Dept. 2009]).

Finally, the Court finds no basis in the record, Judiciary Law, Administrative Code or any

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

Plaintiffs' remaining arguments and requests for relief have been considered and found to be lacking in merit. In light of the Court's dismissal of the supplemental complaint and denial for leave to serve a second supplemental complaint, the Court also concludes that injunctive relief is unwarranted here.

Based upon the foregoing, it is hereby

ORDERED that the supplemental complaint is hereby dismissed in its entirety pursuant to CPLR §§ 3211 and 3212; and it is further

ORDERED that plaintiff's cross-motion for summary judgment is hereby denied in its entirety; and it is further

ORDERED that plaintiff's remaining requests for relief, as set forth in their cross-motion, are hereby denied in their entirety; and it is further

ORDERED that plaintiffs' request for injunctive relief is hereby denied in its entirety; and it is further

ORDERED that plaintiffs' motion for leave to serve a second, supplemental complaint is hereby denied in its entirety; and it is further

ORDERED that, as an alternative basis for dismissal, the supplemental complaint must

be dismissed at to plaintiff Center for Judicial Accountability, Inc., based upon CPLR § 321(a) and the relevant caselaw (*see*, Cinderella Holding Corp. v Calvert Ins. Co., 265 AD2d 444, 444 [2nd Dept. 1999]); and it is further

DECLARED that the Legislature's proposed budget for fiscal year 2014-2015 embodied in Budget Bill # S.6351/A.8551 is not: (1) a wrongful expenditure; (2) a misappropriation; (3) illegal; or (4) unconstitutional; and it is further

DECLARED that the Judiciary's proposed budget for fiscal year 2014-2015 embodied in Budget Bill # S.6351/A.8551 is not: (1) a wrongful expenditure; (2) a misappropriation; (3) illegal; or (4) unconstitutional; and it is further

DECLARED that Budget Bill # S.6351/A.8551 is not: (1) a wrongful expenditure; (2) a misappropriation; (3) illegal; or (4) unconstitutional; and it is further

DECLARED that the Legislature's proposed budget for fiscal year 2015-2016 embodied in Budget Bill # S.2001/A.3001 is not: (1) a wrongful expenditure; (2) a misappropriation; (3) illegal; or (4) unconstitutional; and it is further

DECLARED that the Judiciary's proposed budget for fiscal year 2015-2016 embodied in Budget Bill # S.2001/A.3001 is not: (1) a wrongful expenditure; (2) a misappropriation; (3) illegal; or (4) unconstitutional; and it is further

DECLARED that Budget Bill # S.2001/A.3001 is not: (1) a wrongful expenditure; (2) a misappropriation; (3) illegal; or (4) unconstitutional.

This shall constitute the Decision and Order of the Court. The original decision and order is being returned to the counsel for defendants who is directed to enter this Decision and Order without notice and to serve plaintiffs with a copy of this Decision and Order with notice of entry.

The Court will transmit a copy of the Decision and Order and the papers considered to the Albany County Clerk. The signing of the decision and order and delivery of a copy of the decision and order shall not constitute entry or filing under CPLR Rule 2220. Counsel is not relieved from the applicable provisions of that rule respecting filing, entry and notice of entry.

ENTER.

Dated: Albany, New York
August 1, 2016

R.D. M

Roger D. McDonough
Supreme Court Justice

Papers Considered[5]:

1) Defendants' Notice of Motion, dated July 28, 2015;
2) Affirmation of Adrienne J. Kerwin, Esq., A.A.G., received by the Court on July 29, 2015[6], with annexed exhibits;
3) Plaintiffs' Notice of Cross-Motion, dated September 22, 2015;
4) Affidavit in Opposition/Support of Plaintiff Sassower, sworn to September 22, 2015, with annexed exhibits;
5) Affirmation of Adrienne J. Kerwin, Esq., A.A.G, dated October 23, 2015, with annexed exhibits;
6) Affidavit in Reply & Further Support of Plaintiff Sassower, sworn to November 5, 2015, with annexed exhibits;
7) Order to Show Cause executed by this Court on March 23, 2016;
8) Affidavit of Plaintiff Sassower, sworn to March 23, 2016, with annexed exhibits;
9) Plaintiffs' Verified Second Supplemental Complaint, with annexed exhibits and corrections;
10) Affirmation of Adrienne J. Kerwin, Esq., A.A.G., dated April 8, 2016, with annexed exhibits;

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[5] The parties also submitted several memoranda of law in support of their respective positions. Pursuant to relevant caselaw, it is the Court's policy not to list memoranda of law in the papers considered (*see*, Lyndaker v Board of Education of West Canada Valley Central School District, 129 AD3d 1561 [4th Dept. 2015]).

[6] The affirmation was incorrectly dated July 28, 2014 by virtue of a scrivener's error. The letter accompanying the affirmation was dated July 28, 2015.

11) Affidavit in Reply & Further Support of Plaintiff Sassower, sworn to April 22, 2016, with annexed exhibits;

12) Plaintiffs' 2011 Exhibits regarding the Commission of Judicial Compensation;
13) Plaintiffs' 2002 Exhibits regarding motions before the Court of Appeals in a prior proceeding against the Commission on Judicial Conduct of the State of New York;
14) Plaintiffs' Exhibits pertaining to their action (Index # 302951-12) heard in Supreme Court, Bronx County;
15) Plaintiffs' 2015 Exhibits to Commission on Legislative, Judicial & Executive Compensation.

EXHIBIT
E

STATE OF NEW YORK
SUPREME COURT **COUNTY OF ALBANY**

CENTER FOR JUDICIAL ACCOUNTABILITY, INC. and ELENA RUTH SASSOWER, individually and as Director of the Center for Judicial Accountability, Inc., acting on their own behalf and on behalf of the People of the State of New York & the Public Interest,

Plaintiffs,

-against-

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

Defendants.

DECISION AND ORDER
Index No.: 1788-14
RJI No.: 01-14-113240

(Supreme Court, Albany County All Purpose Term)

Appearances:

Elena Ruth Sassower
Self-Represented Plaintiff
Post Office Box 8101
White Plains, NY 10602

Eric T. Schneiderman
Attorney General
State of New York
Attorney for Respondent
The Capitol
Albany, NY 12224
(Adrienne J. Kerwin, Esq., Assistant Attorney General)

Roger D. McDonough, J.:

This Court (Justice Michael Lynch) executed an Order to Show Cause ("OTSC") on March 28, 2014 directing defendants to show cause as to why an Order should not be made enjoining defendants from voting on, signing, and disbursing monies for the 2014/2015 Budget Bill. Plaintiffs also requested a Temporary Restraining Order enjoining defendants from voting on, signing and disbursing monies for the Budget Bill. Justice Lynch denied the TRO request and the Budget Bill was passed on March 31, 2014. In response to plaintiffs' request for a preliminary injunction, defendants have moved to dismiss the underlying complaint pursuant to CPLR § 3211(a)(1), (2) & (7). Plaintiffs responded with a cross-motion seeking: (1) to convert defendants' motion to dismiss into a motion for summary judgment; (2) the Court to "so-order" plaintiffs' notice to furnish papers; (3) compelling the Assistant Attorney General ("AAG") who has appeared in this matter to provide certain material to the Court regarding, *inter alia*, the Attorney General's representation of defendants in this case; (4) disqualifying the Attorney General from this matter for conflict of interest; (5) imposing costs, sanctions and penal law punishment against the AAG, and all complicit supervisory lawyers in the Attorney General's and Comptroller's respective offices; (6) referring the AAG, and all complicit supervisory lawyers in the Attorney General's and Comptroller's respective offices to the appropriate disciplinary authorities; and (7) other and further relief including motion costs. Defendants oppose the relief requested in the cross-motion.

During the pendency of the Court's consideration of said motions, Ms. Sassower brought an OTSC with TRO seeking to prevent the destruction of certain records and directing that said records be furnished to the Court. Defendants provided the Court with, what they represented to be, a copy of the only documents in their possession that may arguably be those described in the OTSC. Defendants also consented to maintaining the original version of said documents until the completion of the underlying action. Plaintiff's reply papers on the OTSC set forth her conclusions that, *inter alia*, (1) the AAG's submission on the document destruction issue was a flagrant fraud on the Court; (2) the AAG's submission revealed that defendants had violated

Legislative Law § 67[1]; and (3) the AAG and her collaborating superiors and defendants are in contempt of the TRO set forth in the OTSC.

Discussion

Destruction of Documents

The record reflects that defendants have represented to the Court that they have produced all responsive documents in their possession to the Court and have agreed to maintain the original version of said documents until the completion of the underlying action. Accordingly, the Court will Order that said original documents not be destroyed until the completion of the underlying action. To the extent plaintiffs seek additional relief from the June 16, 2014 OTSC, said requested relief is not properly before this Court and/or is wholly without merit. In particular, the Court notes that: (1) plaintiffs' complaint does not set forth any cause of action asserting that any of the defendants violated Legislative Law § 67; and (2) the plaintiffs have not brought a formal motion for contempt and/or sanctions.

Plaintiffs' Cross-Motion

Based upon the Court's review of plaintiffs' complaint and the submissions in this matter, the Court finds that conversion of the motion to dismiss is inappropriate (*see generally*, Bailey v Fish & Neave, 30 AD3d 48, 55-56 [1st Dept. 2006]). The Court also finds that CPLR § 2214(c)

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[1] Legislative Law § 67 provides that:

> All books, papers, transcripts of records, pamphlets, statements, reports, documents, data, memoranda and written or printed matter used by or submitted to the finance committee of the senate and ways and means committee of the assembly during any session of the legislature shall be preserved until the adjournment of the next ensuing annual session of the legislature, in the senate finance committee room. All such matters and things in the committee room of the ways and means committee of the assembly at the close of an annual session of the legislature shall be transferred to the committee room of the senate finance committee. The duty of caring for such matters and things, and keeping them intact, between sessions of the legislature shall devolve on the superintendent of public buildings.

does not warrant the apparent type of discovery relief requested by plaintiffs herein. CPLR § 2214(c) requires the moving party, in this case the plaintiffs, to furnish all papers not already in possession of the Court necessary to the consideration of the questions involved. The Court notes that plaintiffs' Notice specifically refers to documents to be produced regarding plaintiffs' OTSC for a TRO and preliminary injunction. As such, the Court will not "so order" plaintiffs' Notice to Furnish Papers.

Also, the Court has searched the records and found absolutely no basis to award sanctions[2] in this matter or to take any type of disciplinary action against the AAG or any other lawyers affiliated with defendants. Additionally, the Court has not been persuaded that any legal basis exists to compel the AAG to provide the requested information concerning representation of the defendants. Further, the Court finds insufficient basis to disqualify the Attorney General's office or the Attorney General from representing all defendant in this matter. Finally, in light of the Court's findings, the Court declines to award plaintiffs any motion costs on the cross-motion.

Defendants' Motion to Dismiss

Plaintiffs' complaint sets forth four causes of action. The first three involve purported violations of Article VII, § 1 of New York's Constitution. Said section reads as follows:

> For the preparation of the budget, the head of each department of state government, except the legislature and judiciary, shall furnish the governor such estimates and information in such form and at such times as the governor may require, copies of which shall forthwith be furnished to the appropriate committees of the legislature. The governor shall hold hearings thereon at which the governor may require the attendance of heads of departments and their subordinates. Designated representatives of such committees shall be entitled to attend the hearings thereon and to make inquiry concerning any part thereof.

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[2] As to the AAG's suggestion that sanctions against plaintiffs are warranted, the Court declines to entertain such argument absent a formal motion. Plaintiffs are respectfully reminded that frivolous conduct includes the making of a frivolous motion for costs or sanctions (N.Y. Ct. Rules, § 130-1.1).

> Itemized estimates of the financial needs of the legislature, certified by the presiding officer of each house, and of the judiciary, approved by the court of appeals and certified by the chief judge of the court of appeals, shall be transmitted to the governor not later than the first day of December in each year for inclusion in the budget without revision but with such commendations as the governor may deem proper. Copies of the itemized estimates of the financial needs of the judiciary also shall forthwith be transmitted to the appropriate committees of the legislature.

Plaintiffs' fourth cause of action alleges that the legislative processes at issue violated legislative statutory and rule safeguards.

First Cause of Action

Plaintiffs' first cause of action alleges that the Budget is unconstitutional because it was not adequately certified and does not contain itemized estimates of the financial needs of the legislature. The itemization challenge clearly must be dismissed as it is nonjusticiable (*see,* Urban Justice Ctr v Pataki, 38 AD3d 20, 30 [1st Dept. 2006]). As to the certification issue, the Court finds that the documentary evidence submitted by defendants conclusively demonstrates that defendants have complied with the letter and spirit of the constitutional requirement for certification (*see generally,* Matter of Schneider v Rockefeller, 31 NY2d 420, 434 [1972]). Accordingly, the first cause of action must be dismissed.

Second Cause of Action

Plaintiffs' second cause of action principally alleges that the Senate and the Assembly are unable to comprehend the Judiciary's proposed budget for 2014-2015 because the cumulative dollar amount and percentage increase over the prior year's budget is not capable of being discerned. The Court finds that the documentary evidence submitted by defendants clearly and conclusively establishes a defense to this cause of action. Said information is readily discernible throughout the Judiciary's proposed budget. Accordingly, the second cause of action must be dismissed. Additionally, this cause of action would also appear to fall under the type of itemization argument already found to be nonjusticiable.

Third Cause of Action

Plaintiffs' third cause of action alleges that the Legislative Budget transmitted to the Governor by Senator Skelos and Speaker Silver contained no reappropriations. They further contend that the Governor's budget contains nineteen pages of reappropriations. Accordingly, they contend that the reappropriations constitute revisions in violation of New York's Constitution. The Court finds that the documentary evidence submitted by defendants clearly and conclusively establishes a defense to this cause of action. Said submissions clearly establish that the "reappropriations" at issue do not constitute executive revisions to the proposed Budget. Accordingly, the third cause of action must be dismissed.

Fourth Cause of Action

Plaintiffs' complaint adequately sets forth a viable cause of action alleging, *inter alia*, that defendants violated Legislative Law § 32-a regarding public hearings for New York's Budget. Defendants argue that the cause of action should be dismissed because plaintiffs lack standing to challenge internal legislative rules. The Court has not been persuaded that Legislative Law § 32-a constitutes an internal legislative rule. Additionally defendants' submissions did not include any documentary evidence establishing a defense to said cause of action. Accordingly, defendants' motion to dismiss must be denied as to plaintiffs' fourth cause of action.

In light of the Court's findings as to causes of action 1-3, plaintiffs' request for a preliminary injunction is also denied.

Plaintiffs' remaining arguments and requests for relief have been considered and found to be lacking in merit. Defendants' additional arguments in support of dismissal for causes of action 1-3 are unnecessary to reach in light of the Court's findings set forth above. Additionally, the Court finds that the Attorney General and Comptroller are entitled to dismissal of the action in its entirety as plaintiffs' complaint does not adequately state a single cause of action as to either defendant. Finally, based upon the Court's review of the submissions, the Court finds that oral argument is unnecessary in this matter.

Based upon the foregoing, it is hereby

ORDERED that plaintiffs' request for a preliminary injunction is denied based upon the Court's dismissal of the first three causes of action of plaintiffs' underlying complaint; and it is further

ORDERED that plaintiff's cross-motion is hereby denied in its entirety; and it is further

ORDERED that defendants are hereby enjoined from destroying the original versions of the documents attached to AAG Kerwin's July 2, 2014 affirmation until the completion of the underlying action including any and all appeals from the instant Decision and Order; and it is further

ORDERED that any additional relief requested relative to plaintiff's June 16, 2014 OTSC is hereby denied in its entirety; and it is further

ORDERED that defendants' motion to dismiss is hereby granted as to causes of action 1-3 and in its entirety as to the Attorney General and the Comptroller; and it is further

ORDERED that defendants' motion to dismiss is hereby denied as to plaintiffs' fourth cause of action; and it is further

ORDERED that the AAG and Elena Ruth Sassower are directed to confer and thereafter propose to the Court a discovery schedule and/or summary judgment briefing schedule as to the remaining cause of action, said proposal to be submitted to the Court within forty-five (45) days of the date of this Decision and Order. In the event the AAG and Ms. Sassower are unable to agree as to scheduling matters, they should so inform the Court at the expiration of said forty-five (45) day period.

This shall constitute the Decision and Order of the Court. The original decision and order is being returned to the counsel for defendants who is directed to enter this Decision and Order without notice and to serve plaintiff with a copy of this Decision and Order with notice of entry. The Court will transmit a copy of the Decision and Order and the papers considered to the Albany County Clerk. The signing of the decision and order and delivery of a copy of the decision and order shall not constitute entry or filing under CPLR Rule 2220. Counsel is not relieved from the applicable provisions of that rule respecting filing, entry and notice of entry.

ENTER.

Dated: Albany, New York
October 9, 2014

Roger D. McDonough
Supreme Court Justice

Papers Considered[3]:

Order to Show Cause, executed by Justice Lynch on March 28, 2014[4];
Plaintiffs' Summons, Verified Complaint and annexed exhibits, dated March 28, 2014;
Plaintiffs' Unsigned Notice to Furnish Papers, dated March 26, 2014, with annexed exhibit;
Defendants' Notice of Motion, dated April 16, 2014;
Affirmation of Adrienne J. Kerwin, Esq., AAG., dated April 18, 2014, with annexed exhibits;
Plaintiffs' Notice of Cross-Motion, dated May 16, 2014;
Affidavit of Elena Ruth Sassower, sworn to May 16, 2014, with annexed exhibits;
Affirmation of Adrienne J. Kerwin, Esq., AAG., dated May 30, 2014,
Order to Show Cause, executed on June 16, 2014;
Affidavit of Elena Ruth Sassower, sworn to June 6, 2014, with annexed exhibit;
Affidavit of Elena Ruth Sassower, sworn to June 16, 2014, with annexed exhibits;
Affirmation of Adrienne J. Kerwin, Esq., AAG., dated July 2, 2014, with annexed exhibit;
Affidavit of Elena Ruth Sassower, sworn to July 7, 2014, with annexed exhibits.[5]

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[3] Both sides also submitted several memoranda of law in support of their respective positions.

[4] The Order to Show Cause indicates that it is based upon an annexed affidavit and plaintiffs' verified complaint with annexed exhibits. The affidavit attached to the Original Order to Show Cause was unsworn. Additionally, the verified complaint and annexed exhibits were not provided to this Court. The Court retrieved the verified complaint and annexed exhibits from the County Clerk's file. The unsworn affidavit was not considered.

[5] Plaintiff submitted two "corrected" pages to this affidavit in order to correct typographical errors. The corrections were done on notice to the AAG and were not objected to. The Court has attached the unsworn "corrected" pages to the affidavit.

EXHIBIT F

STATE OF NEW YORK
SUPREME COURT **COUNTY OF ALBANY**

CENTER FOR JUDICIAL ACCOUNTABILITY, INC. and ELENA RUTH SASSOWER, individually and as Director of the Center for Judicial Accountability, Inc., acting on their own behalf and on behalf of the People of the State of New York & the Public Interest,

Plaintiffs,

-against-

DECISION AND ORDER
Index No.: 1788-14
RJI No.: 01-14-113240

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

Defendants.

(Supreme Court, Albany County All Purpose Term)

Appearances:

Elena Ruth Sassower
Self-Represented Plaintiff
Post Office Box 8101
White Plains, NY 10602

Eric T. Schneiderman
Attorney General
State of New York
Attorney for All Defendants
The Capitol
Albany, NY 12224
(Adrienne J. Kerwin, Esq., Assistant Attorney General)

Roger D. McDonough, J.:

Plaintiffs seek an Order: (1) granting leave to supplement their verified complaint with a proposed verified supplemental complaint; and (2) disqualifying this Court and vacating the Court's October 9, 2014 Decision and Order. Defendants oppose the relief in its entirety.

The Court finds that plaintiffs are entitled to supplement their verified complaint. Defendants have not made an adequate showing that the new causes of action are "palpably insufficient" or "patently devoid of merit" (Lucido v Mancuso, 49 AD3d 220, 229 [2nd Dept. 2008]). The Court's finding does not, of course, insulate the causes of action from a subsequent challenge to their merits via a CPLR §§ 3211 and/or 3212 motion.

Additionally, the Court finds no basis in the record, Judiciary Law, Administrative Code or any relevant statute or case law for recusal. Similarly, no rational basis exists for this Court to vacate its prior Decision and Order. The alleged financial conflict that plaintiffs describe is equally applicable to every Supreme and Acting Supreme Court Justice in the State of New York, rendering recusal on the basis of financial interest a functional impossibility (*see*, Matter of Maron v Silver, 14 NY3d 230, 248-249 [2010]).

Plaintiffs' remaining requests for relief have been considered and found to be lacking in merit.

Based upon the foregoing, it is hereby

ORDERED that plaintiffs' motion for leave to supplement their complaint is hereby granted; and it is further

ORDERED that plaintiffs' remaining motion requests for relief, including their motion for this Court's recusal, are hereby denied in their entirety; and it is further

ORDERED that defendants are directed to answer or otherwise move with respect to the verified supplemental complaint within thirty-five (35) days of the date of this Order.

This shall constitute the Decision and Order of the Court. The original decision and order is being returned to the counsel for defendants who is directed to enter this Decision and Order without notice and to serve plaintiffs with a copy of this Decision and Order with notice of entry. The Court will transmit a copy of the Decision and Order and the papers considered to the Albany County Clerk. The signing of the decision and order and delivery of a copy of the decision and order shall not constitute entry or filing under CPLR Rule 2220. Counsel is not relieved from the applicable provisions of that rule respecting filing, entry and notice of entry.

ENTER.

Dated: Albany, New York
June 24, 2015

R. D. McD

Roger D. McDonough
Supreme Court Justice

Papers Considered:

Plaintiffs' Notice of Motion, dated March 31, 2015;
Affidavit of Plaintiff Sassower, sworn to March 31, 2015, with annexed exhibits;
Plaintiffs' Proposed Verified Supplemental Complaint;
Affirmation of Adrienne J. Kerwin, Esq., dated April 9, 2015, with annexed exhibits;
Reply Affidavit of Plaintiff Sassower, received by the Court on April 17 2015[1], with annexed exhibits.

[1] The reply affidavit was erroneously dated as March 15, 2015. This date predates the Notice of Motion as well as the opposition papers the reply affidavit was presumably served in reply to.

EXHIBIT G

ANALYSIS OF THE AUGUST 1, 2016 AMENDED DECISION & ORDER OF ACTING SUPREME COURT JUSTICE ROGER McDONOUGH[1]

Center for Judicial Accountability, et al. v. Cuomo, et al.,
Albany Co. #1788-2014
(Citizen-Taxpayer Action: Fiscal Years 2014-2015 & 2015-2016)

This analysis constitutes a "legal autopsy" of the August 1, 2016 amended decision and order of Acting Supreme Court Justice Roger McDonough, consistent with what is proposed in "*Legal Autopsies: Assessing the Performance of Judges and Lawyers Through the Window of Leading Contract Cases*", 73 Albany Law Review 1 (2009), by Gerald Caplan, recognizing that the legitimacy of judicial decisions can only be determined by comparison with the record ("...Performance assessment cannot occur without close examination of the trial record, briefs, oral argument and the like..." (p. 53)).

It also is consistent with what plaintiff Elena Sassower stated on November 29, 2015 in testifying before the Commission on Legislative, Judicial and Executive Compensation at its one and only hearing on judicial compensation – quoting what she said in testifying before the Commission to Investigate Public Corruption at its September 17, 2013 hearing: "Cases are perfect papers trails. There is a record. So it's easy to document judicial corruption."[2]

The "Papers Considered" by Justice McDonough in rendering his decision are listed at the end of the decision (at pp. 10-11). An annotating footnote reads:

> "The parties also submitted several memoranda of law in support of their respective positions. Pursuant to relevant caselaw, it is the Court's policy not to list memoranda of law in the papers considered (*see*, Lyndaker v. Board of Education of West Canada Valley Central School District, 129 AD3d 1561 [4th Dept. 2015])." (at p. 10, fn. 5).

Justice McDonough's "policy" is at odds with CPLR §2219(a), which does not except memoranda of law in requiring that "An order determining a motion made upon supporting papers shall recite the papers used on the motion...". Treatise authority holds:

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[1] Justice McDonough is not an elected Supreme Court justice. He is a Court of Claims judge, whose appointment, in 2006, was by then Governor George Pataki, for whom he was then an assistant counsel. Upon information and belief, in 2009, Governor David Paterson reappointed him to the Court of Claims. He sits on the Supreme Court as an acting Supreme Court justice.

[2] Plaintiff Sassower's written testimony, from which she read at the Commission on Legislative, Judicial and Executive Compensation's November 29, 2015 hearing, is part of the record, having been furnished on March 23, 2016 as a free-standing exhibit to plaintiffs' March 23, 2016 verified second supplemental complaint.

"An order must indicate papers on which the court exercised its discretion so as to subject it to meaningful appellate review...." (1-3 New York Appellate Practice §3.04 "Appealable Paper", Matthew Bender & Co., citing *In re Dondi*, 63 N.Y.2d 331, 339 (1984).

Nor does Justice McDonough's cited case of *Lyndaker* stand for the proposition that memoranda are excludable, let alone where, as here, they are sworn-to as true by the affidavits accompanying them, thereby giving "probative value" to their "allegations of fact"[3] and where, additionally, they are "incorporated by reference" into those affidavits.

In any event, Justice McDonough had good reason to omit plaintiffs' memoranda of law, as they are the speediest means to verify, within minutes, that his 11-page decision is a criminal act – and violative of a multitude of provisions of New York's Penal Law. Among these:

Penal Law §195 ("official misconduct");
Penal Law §496 ("corrupting the government") – part of the "Public Trust Act";
Penal Law §175.35 ("offering a false instrument for filing in the first degree");
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").

Indeed, plaintiffs' memoranda of law not only establish that the decision is a judicial fraud, falsifying the record in all material respects to grant defendants relief to which they are not entitled, *as a matter of law*, and to deny plaintiffs relief to which they are entitled, *as a matter of law*, but that the evidence for criminally prosecuting and removing Justice McDonough from the bench for corruption is *prima facie* and "open-and-shut". There is NO doubt as to what he did, that it was willful and deliberate, and that he no defense to it. He used his judicial office not to render justice, as was his duty, but to protect the public officer defendants, beginning with defendant New York State Attorney General Schneiderman, from causes of action in the verified complaint, verified supplemental complaint, and verified second supplemental complaint to which they had no defense – and his motive for doing so was his huge financial interest in the judicial salary increases challenged by those causes of action, which he concealed.

Plaintiffs' memoranda of law, each a "road-map" of the record and the best place to start in reviewing the decision, are:

(1) plaintiffs' September 22, 2015 memorandum of law in opposition to defendants' July 28, 2015 dismissal/summary judgment motion & in support of plaintiffs'

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[3] *Zawatski v. Cheektowaga-Maryvale Union Free School District*, 261 A.D.2d 860 (1999, 4th Dept.), cited by *Lyndaker*.

September 22, 2015 cross-motion for summary judgment and other relief;

(2) plaintiffs' November 5, 2015 reply memorandum of law in further support of their cross-motion;

(3) plaintiffs' April 22, 2016 memorandum of law in reply and in further support of their March 23, 2016 order to show cause for leave to file their verified second supplemental complaint and for a preliminary injunction.

These are posted, with the rest of the record on which they are based, on the website of plaintiff Center for Judicial Accountability, www.judgewatch.org, accessible from the prominent homepage links

"CJA's Citizen-Taxpayer Action to End NYS's Corrupt Budget 'Process' & Unconstitutional 'Three Men in a Room' Governance";

"NO PAY RAISES FOR NEW YORK's CORRUPT PUBLIC OFFICERS -- The Money Belongs to Their Victims!";

"What's Taking You So Long, Preet?: CJA's Three Litigations whose Records are Perfect 'Paper Trails' for Indicting New York's Highest Public Officers for Corruption"

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The Decision's Title Page & Footnote

The amended decision and order begins with a title page, its page 1. It contains a footnote 1 explaining why Justice McDonough amended his original decision and order, which had been dated July 15, 2016. It reads:

> "The Court corrected two scrivener's errors on page eight where the Court inadvertently juxtaposed plaintiff and defendant." (at p. 1).

The referred-to two errors, in the second and third ordering paragraphs of the decision (at p. 8), had read:

> "**ORDERED** that defendants' cross-motion for summary judgment is hereby denied in its entirety; and it is further
>
> "**ORDERED** that defendants' remaining requests for relief, as set forth in their cross-motion, are hereby denied in their entirety...". (at p. 8, bold in the original, underlining added).

It was plaintiffs who made the cross-motion. However, there is further glaring error in the decision's six ordering paragraphs. The first ordering paragraph is also erroneous – and it continues to read:

> "**ORDERED** that the supplemental complaint is hereby dismissed in its entirety pursuant to CPLR §§3211 and 3212" (at p. 8, bold in the original, underlining added).

This is false – implying, as it does, that defendants had moved to dismiss plaintiffs' supplemental complaint pursuant to CPLR §§3211 and 3212. That is not correct. Defendants moved to dismiss the supplemental complaint pursuant to CPLR §3211 alone. This is reflected by the decision's second page, albeit with inconsistency. There, an untitled prefatory paragraph of skeletal procedural history states:

> "Defendants moved to dismiss the supplemental complaint in its entirety pursuant to CPLR §3211(a)(7)." (at p. 2).

A bit further down, on the same page under the title heading "Motions with respect to the Supplemental Complaint", the decision states:

> "The Supplemental Complaint adds four causes of action (causes of action 5-8) to the original four set forth in the complaint. Defendants' motion to dismiss relies on CPLR §3211(a)(1), (a)(2), and (a)(7)." (at p. 2).

In other words, defendants did not move to dismiss the supplemental complaint pursuant to CPLR §3212 – nor could they, as CPLR §3212 requires that issue be joined[4] and they had not answered the supplemental complaint.

By ordering that plaintiffs' supplemental complaint be dismissed not only pursuant to CPLR §3211, but §3212, Justice McDonough has *sua sponte*, *sub silentio*, and without notice granted summary judgment to defendants – apparently to give res *judicata* effect to his dismissal of the supplemental complaint:

> "A judgment resulting from the grant of a CPLR 3211 motion is not res judicata of the entire merits of the case (unless the motion was treated as one for summary judgment)...." (underlining added), §276 "Res Judicata Effect of CPLR 3211 Disposition", New York Practice, 4th ed. (2005).[5]

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[4] "Any party may move for summary judgment in any action, after issue has been joined..." (CPLR §3212(a), underlining added); *Historic Albany Foundation v. Michael Breslin, as Albany County Executive*, 282 A.D.2d 981, 983 (3rd Dept. 2001).

[5] See, also, CPLR Annotated, C3211:44 "Treating 3211 Motion as Summary Judgment Motion":

> "Subdivision (c) empowers the court on any CPLR 3211 motion, whether to dismiss a cause of action under subdivision (a) or to dismiss a defense under subdivision (b), to 'treat' the motion as one for summary judgment. The impact of such a determination is that the disposition will as a rule be deemed a disposition on the merits and thus entitled to res judicata treatment. With such an impact, this 'treatment' is not to be lightly indulged." (underlining added).

This is altogether improper. Quite apart from the fact that the record resoundingly establishes plaintiffs' entitlement to summary judgment, *as a matter of law*, Justice McDonough's conversion of defendants' motion to dismiss the supplemental complaint to one for summary judgment for them, pursuant to CPLR §3211(c) – which is seemingly what he has done – required notice, as CPLR §3211(c) itself makes clear:

> "Whether or not issue has been joined, the court, after adequate notice to the parties, may treat the motion as a motion for summary judgment." (underlining added),

with this "adequate notice" required to come from the court, *Mihlovan v. Grozavu*, 72 NY2d 506 (1988); fn. 4 herein; also, CPLR Annotated, C3211:46 "Order Should Clarify That Summary Judgment Treatment is Being Made":

> "...the court can't make this [3211 conversion] treatment on its own motion unless it apprises the parties of its intention, thereby enabling them to submit any proof reflecting on the case that was not submitted on the particular CPLR 3211 motion."

By way of contrast, defendants did move, pursuant to CPLR §3212, for summary judgment on the fourth cause of action of plaintiffs' complaint, as to which they had served an answer. Yet, Justice McDonough's decision conceals this, repeatedly. Thus, the decision's untitled prefatory paragraph does not identify CPLR §3212 in stating:

> "Additionally, defendants moved for summary judgment as to plaintiffs' fourth cause of action." (at p. 2).

Nor does the decision's footnote 3 identify CPLR §3212 in stating:

> "As issue has been joined and discovery conducted on the fourth cause of action, defendants maintain that summary judgment is the appropriate vehicle for dismissal as to said cause of action." (at p. 3).

Not even under the section heading "Fourth Cause of Action" (at pp. 4-5), does the decision identify CPLR §3212, even as it recites that defendants "seek summary judgment" (at p. 4), recites the standards governing summary judgment embodied in caselaw, and proclaims "summary judgment dismissing the fourth cause of action is mandated" (at p. 5).

In fact, the only place in the decision where CPLR §3212 is identified is in the erroneous first ordering paragraph dismissing the supplemental complaint.

Going back to the decision's first page, the case caption reflects that the plaintiffs are the Center for Judicial Accountability, Inc. and Elena Sassower, individually and as its director, "acting on their own behalf and on behalf of the People of the State of New York and the Public Interest". The

defendants are Governor Andrew Cuomo, the Temporary Senate President,[6] the Senate, the Assembly Speaker, the Assembly, Attorney General Eric Schneiderman, and Comptroller Thomas DiNapoli, all in their official capacities. Plaintiff Sassower is identified as "Self-Represented". Attorney General Schneiderman is identified as "Attorney for All Defendants", followed by the name of Assistant Attorney General Adrienne Kerwin in parenthesis.

The Decision's Untitled First Paragraph & Section Entitled "Background"

The decision continues, on page two, with the name of the Court: "Roger D. McDonough, J:", beneath which is its untitled paragraph of skeletal procedural history. Consisting of ten sentences, annotated by a one-sentence footnote,[7] it omits the provision of law pursuant to which the lawsuit was brought: State Finance Law Article 7-A (§123 *et seq.*). In other words, it omits that this is a citizen-taxpayer action. Likewise, it omits that plaintiffs seek a declaration that judicial salary increases resulting from the August 29, 2011 report of the Commission on Judicial Compensation are statutorily-violative, fraudulent, and unconstitutional.

That this is a citizen-taxpayer action and that it seeks to void judicial salary increases are also omitted from the balance of the decision – just as Justice McDonough omitted them from his two prior decisions: his October 9, 2014 decision dismissing the first three causes of action of plaintiffs' complaint and his June 24, 2015 decision granting plaintiffs leave to file their supplemental complaint – decisions referred to in the untitled prefatory paragraph, but not their dates.

No fact was emphasized more by plaintiffs, from the outset, than that this is a citizen-taxpayer action. Especially was this so as Justice McDonough's predecessor, in tandem with AAG Kerwin, concealed this in the two weeks he had the case before being elevated to the Appellate Division,

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[6] When this action was commenced on March 28, 2014, the Temporary Senate President was Dean Skelos and the Assembly Speaker was Sheldon Silver. The caption was not amended when they resigned from their leadership positions in May 2015 and February 2015, respectively. These successors, Temporary Senate President John Flanagan and Assembly Speaker Carl Heastie, have operated identically to their predecessors – and this is so-demonstrated by plaintiffs' March 31, 2015 verified supplemental complaint and March 23, 2016 verified second supplemental complaint.

[7] The single-sentence footnote reads:

> "Plaintiffs' requests for oral argument are denied pursuant to 22 NYCRR 202.8(d) (*see*, Niagara Venture v. Niagara Falls Urban Renewal Agency, 56 AD3d 1150, 1150 [4th Dept. 2008])." (fn. 2 at p. 2).

Concealed by this footnote is that AAG Kerwin had expressly not requested oral argument, for which reason, pursuant to 22 NYCRR §202.8(d), Justice McDonough did not have to find that oral argument was "unnecessary". Indeed, his decision gives no reason for denying plaintiffs' request.

Third Department by defendant Governor Cuomo[8]– concealment that AAG Kerwin then continued in tandem with Justice McDonough. There are four key reasons why they concealed it:

First, the citizen-taxpayer statute, in four separate provisions, contemplates the Attorney General's participation as plaintiff or on behalf of plaintiffs (State Finance Law §123-a(3), §123-c(3); §123-d; §123-e(2)). Based thereon, and upon Executive Law §63.1, which predicates the Attorney General's litigation role on the "interest of the state", plaintiffs, from the outset, sought the Attorney General's representation/intervention and his disqualification from representing defendants on conflict of interest grounds arising from Attorney General Schneiderman's facilitating role in the unlawful judicial salary increases at issue in the case – the very basis of his being named a defendant. This includes by their May 16, 2014 cross-motion, which Justice McDonough's October 9, 2014 decision denied[9], and by their September 22, 2015 cross-motion[10], which his instant decision denies. By these denials, each without identifying ANY of the facts and law upon which they were based, Justice McDonough allowed AAG Kerwin to freely engage in fraudulent defense tactics to get the case dismissed. Indeed, not revealed by the decision's sixth ordering paragraph is that its "alternative basis for dismissal" emanates from her advocacy[11]. It reads:

> "**ORDERED** that, as an alternative basis for dismissal, the supplemental complaint must be dismissed as to plaintiff Center for Judicial Accountability, Inc. based on CPLR §321(a) and the relevant caselaw (*see*, Cinderella Holding Corp. v. Calvert Ins. Co., 265 AD2d 444, 444, 2nd Dept. 1999]". (at pp. 8-9, bold in original).

In other words, the decision dismisses the supplemental complaint as to the corporate plaintiff because it had no lawyer – without ever identifying, let alone confronting, the facts and law establishing that that lawyer should have been the Attorney General.

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[8] Justice McDonough's predecessor was Supreme Court Justice Michael Lynch – and his willful disregard, with AAG Kerwin, of the fact that this is a citizen-taxpayer action when plaintiffs commenced the litigation, on March 28, 2014, also by an order to show cause seeking a TRO, is set forth by ¶¶7-25 of plaintiff Sassower's May 16, 2014 affidavit in further support of plaintiffs' order to show cause, in opposition to AAG Kerwin's April 18, 2014 motion to dismiss the complaint, and in support of plaintiffs' May 16, 2014 cross-motion. Justice McDonough's October 9, 2014 decision conceals it all.

[9] *See*, plaintiffs' May 16, 2014 cross-motion (¶¶3 &4); plaintiff Sassower's May 16, 2014 affidavit (¶¶1-36); plaintiffs' May 16, 2014 memorandum of law (pp. 27-29); plaintiffs' June 16, 2014 reply memorandum of law (pp. 11-12); plaintiff Sassower's June 16, 2014 reply affidavit (¶¶1-9) – and Justice McDonough's October 9, 2014 decision (pp. 3-4).

[10] *See*, plaintiffs' September 22, 2015 cross-motion (¶¶4 &5); plaintiffs' September 22, 2015 memorandum of law (pp. 45-48); plaintiff Sassower's September 22, 2015 affidavit (¶8); plaintiffs' November 5, 2015 memorandum of law (pp. 1-3).

[11] See AAG Kerwin's July 28, 2015 dismissal/summary judgment motion (fn. 1) – and plaintiffs' response thereto by their September 22, 2015 memorandum of law (p. 15, fn. 12).

Second, in citizen-taxpayer actions "A temporary restraining order may be granted pending a hearing for a preliminary injunction notwithstanding the requirements of section six thousand three hundred and thirteen of the civil practice law and rules" (State Finance Law §123-e(2)). Here, the decision's first untitled paragraph (at p. 2) refers to Justice McDonough's denial of "temporary injunctive relief" at the oral argument of plaintiffs' "Order to Show Cause seeking various injunctive relief and leave to serve a second supplemental complaint" without revealing that his stated basis, at the oral argument, for denying the TRO, was his assertion that CPLR §6313 prohibited the granting of a TRO, as if CPLR §6313 controlled. Plaintiffs Sassower's April 22, 2016 affidavit[12] – listed by the decision's "Papers Considered" (at p. 10, #11) – recites the pertinent facts as to Justice McDonough's willful disregard of State Finance Law §123-e(2) in denying the TRO – and does so expressly in support of plaintiffs' request for his disqualification for demonstrated actual bias.

Third, a citizen-taxpayer action affords declaratory relief (State Finance Law §123-b). Yet, the decision conceals that plaintiffs are seeking declaratory relief pursuant to State Finance Law Article 7-A – even as it announces (at pp. 6-7) "now that this matter is fully concluded, the Court will issue...declarations", citing not the citizen-taxpayer statute, but CPLR §3001. Nor does it reveal, in referring to Justice McDonough having "Previously...dismissed three of plaintiffs' four causes of action set forth in their original verified complaint" – which is the decision's first sentence (at p. 2) – that such disposition was improper because in a declaratory judgment action the appropriate course is to render declaratory relief, not to dismiss – and so-identified by the fifth, sixth, and seventh causes of action of plaintiffs' supplemental complaint (§§171, 181, 196).

Fourth, a citizen-taxpayer action is "to be promptly determined" and "have a preference over all other causes in all courts" (State Finance Law §123-c(4)). Here, Justice McDonough delayed each of the three decisions and orders he rendered way past the 60-day time-frame for ordinary cases, set by CPLR §2219(a)[13] – and not because time was needed for fidelity to the record or scholarship, as all three are completely perfunctory: substituting bald, conclusory assertions for specifics, because, when compared to the record, each grants AAG Kerwin relief to which she had no lawful entitlement and denies plaintiffs relief to which they were entitled, *as a matter of law*. Thus, the date of Justice McDonough's decision dismissing plaintiffs' first three causes of action and preserving the fourth is October 9, 2014 – nearly four months after AAG Kerwin's dismissal motion that it decided was fully submitted. Justice McDonough's decision granting plaintiffs leave to supplement their verified complaint is June 24, 2015 – nearly two and a half months after plaintiffs' March 31, 2015 motion for that relief was fully submitted. As for the original July 15, 2016 date of the instant decision, it is more than eight months after AAG Kerwin's July 28, 2015 dismissal/summary judgment motion and plaintiffs' September 22, 2015 cross-motion for summary judgment and other relief were fully

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[12] Plaintiff Sassower's April 22, 2016 reply affidavit annexes the transcript of the March 23, 2016 oral argument.

[13] The first sentence of CPLR §2219(a) reads: "An order determining a motion relating to a provisional remedy shall be made within twenty days, and an order determining any other motion shall be made within sixty days, after the motion is submitted for decision."

submitted – and nearly three months after plaintiffs' March 23, 2016 order to show cause for leave to serve a second supplemental complaint was fully submitted. This may explain why the decision's untitled first paragraph (at p. 2) contains no dates, using words like "Previously", "Eventually", and "During the pendency". Not until page 10 of the decision is there a date: the August 1, 2016 date of Justice McDonough's amended decision and order, followed by dates for the listed "Papers Considered".

The decision's untitled first paragraph is followed by a one-sentence section entitled "Background" (at p. 2). It states: "Familiarity with the relevant background to this action against the Governor and legislative leaders is presumed." In other words, the decision provides no "relevant background" – and does not identify where "relevant background" might be found. Such is not contained in Justice McDonough's October 9, 2014 or June 24, 2015 decisions. Plaintiffs themselves furnished it by their March 28, 2014 verified complaint, under the title heading: "THE PARTIES & BACKGROUND FACTUAL ALLEGATIONS". Among its "relevant background to this action against the Governor and legislative leaders" is the following at its ¶5:

> a. Plaintiffs' focus on the New York State budget had its genesis in the 2011 Special Commission on Judicial Compensation, established pursuant to Chapter 567 of the Laws of 2010. As the Commission's August 29, 2011 Final Report recommending judicial salary increases of 27% over a three-year period were to have the force of law, absent gubernatorial or legislative action, plaintiffs presented defendants CUOMO, SKELOS, and SILVER with an October 27, 2011 Opposition Report, whose first requested relief was for override of the recommended judicial salary increases. The basis for the override was plaintiffs' showing that the Commission had violated express conditions precedent for the judicial salary recommendations, set forth in Chapter 567 of the Laws of 2010, in addition to being fraudulent and unconstitutional.
>
> b. Neither defendants CUOMO, SKELOS, SILVER ever denied or disputed the accuracy of plaintiffs' October 27, 2011 Opposition Report. Nor did defendants SCHNEIDERMAN and DiNAPOLI, to whom plaintiffs filed corruption complaints based thereon. Nor did Chief Administrative Judge Lippman, to whom plaintiffs also furnished the October 27, 2011 Opposition Report. Yet, none took any steps to protect the public purse from judicial salary increases shown to be statutorily violative, fraudulent, and unconstitutional.
>
> c. As a result, plaintiffs were burdened with bringing a declaratory judgment action to secure a determination as to the unconstitutionality of Chapter 567 of the Laws of 2010, *as written and as applied.* The lawsuit, entitled [*CJA v. Cuomo, et al.*] was commenced in Bronx County Supreme Court on March 30, 2012 (#302951-2012), accompanied by an order to show cause, with TRO, to prevent disbursement of the monies for the first phase of the judicial salary increase that was to take effect on April 1, 2012.

d. Defendant SCHNEIDERMAN, a named defendant therein, defended all defendants and, in the absence of any legitimate merits defense, engaged in fraudulent advocacy. At his urging, the TRO was denied and the lawsuit [hereinafter '*CJA v. Cuomo I*'] was transferred to Supreme Court/New York County, with no ruling on the preliminary injunction. In the process, plaintiffs' original verified complaint, ALL substantiating exhibits, and the order to show cause for a preliminary injunction, with TRO, went missing.

e. Since the transfer, in September 2012, *CJA v. Cuomo I* has been in limbo, sitting on a shelf in the New York County Clerk's Office because the New York County Clerk – whose salary is tied to judicial salaries – has ignored plaintiffs' complaints for investigation of the record tampering, ignored their requests that he discharge his mandatory duty under Judiciary Law §255 to certify the missing documents, and ignored their requests that he take action against his Chief Deputy Clerk who has barred plaintiff SASSOWER from reviewing the case file under threat that he will have court officers remove her from the courthouse, which he has already done." (plaintiffs' March 28, 2014 verified complaint, at ¶5, underlining, capitalization in the original) [14]

The Threshold Issue of Justice McDonough's Disqualifying Actual Bias, Born of his Financial Interest – Shoved to the Back & Covered-Up

Although judicial disqualification is a threshold issue, the decision puts it at the end (at pp. 7-8). In a single paragraph, appended without a break to its section entitled "Leave to Serve a Second Supplemental Complaint", the decision states:

> "Finally, the Court finds no basis in the record, Judiciary Law, Administrative Code or any relevant statute or case law, for recusal. The Court again notes that the alleged financial conflicts that plaintiffs describe is equally applicable to every Supreme and Acting Supreme Court Justice in the State of New York, rendering recusal on the basis of financial interest a functional impossibility (*see*, Matter of Maron v Silver, 14 NY3d 230, 248-249 [2010])." (at pp. 7-8, underlining added, except beneath *Matter of Maron v. Silver*).

In so-stating, Justice McDonough repeats, largely *verbatim*, the paragraph of his June 24, 2015 decision that denied plaintiffs' request for his disqualification and vacatur of his October 9, 2014 decision:

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[14] The index number that New York County assigned to the declaratory judgment action *CJA v. Cuomo I*, following its transfer from Bronx County, is New York Co. #401988-2012. On July 28, 2016, plaintiff Sassower was able to view the file, still on the shelves of the Clerk's Office in Supreme Court/New York County. The original documents that were missing three years ago, identified by ¶5(d), are still missing.

> "Additionally, the Court finds no basis in the record, Judiciary Law, Administrative Code or any relevant statute or case law for recusal. Similarly, no rational basis exists for this Court to vacate its prior [October 9, 2014] Decision and Order. The alleged financial conflict that plaintiffs describe is equally applicable to every Supreme and Acting Supreme Court Justice in the State of New York, rendering recusal on the basis of financial interest a functional impossibility (*see*, Matter of Maron v. Silver, 14 NY3d 230, 248-249 [2010])." (June 24, 2015 decision, at p. 2, underlining added, except beneath *Matter of Maron v. Silver*).

Now, as then, these conclusory assertions are utter frauds. Justice McDonough's decision, like his two prior decisions, materially falsifies the record and, by the record, proves his pervasive actual bias, whose source is reasonably attributable to his actual "financial conflicts".

Common to all three decisions is that they conceal ALL the facts giving rise to the "financial conflicts". For starters, they do not identify that plaintiffs were challenging the judicial salary increases recommended by the August 29, 2011 report of the Commission on Judicial Compensation – and do not identify plaintiffs' asserted proof establishing the statutory violations, fraud, and unconstitutionality of those increases, *to wit*, their October 27, 2011 opposition report and March 30, 2012 verified complaint in their declaratory judgment action *CJA v. Cuomo, et al.*, which plaintiff Sassower handed up to defendants Senate and Assembly on February 6, 2013 in testifying at its "public protection" budget hearing.

Thus, the instant decision conceals the October 27, 2011 opposition report and March 30, 2012 verified complaint in stating:

> "Further, plaintiffs cite the importance of the documentation handed up to the Legislature in February of 2013 in opposition to the Judiciary's budget and the second phase of judicial salary increases." (at p. 3, underlining added).

That "documentation" was not only "cite[d]" by plaintiffs, but furnished by them[15] – and the decision's listing of "Papers Considered" (at pp. 10-11) furthers the concealment of their October 27, 2011 opposition report and March 30, 2012 verified complaint by distorting them as:

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[15] As stated by plaintiffs' September 22, 2015 memorandum of law (at p. 41):

> "With respect to the judicial salary increase – whose third phase was concealed in the judiciary's budget for fiscal year 2014-2015 and Budget Bill #S.6351/A.8551 – the *prima facie* proof that such increase is statutorily-violative, fraudulent and unconstitutional are the documents specified by ¶108 of the second cause of action, *to wit*, plaintiffs' October 27, 2011 Opposition Report to the August 29, 2011 Report of the Commission on Judicial Compensation and the verified complaint in *CJA v. Cuomo I* based thereon. Through litigation fraud and deceit, AAG Kerwin was able to withhold them from the Court and impede plaintiffs' summary judgment entitlement to a declaration based thereon. They are

"12) Plaintiffs' 2011 Exhibits regarding the Commission of Judicial Compensation;

13) Plaintiffs' 2002 Exhibits regarding motions before the Court of Appeals in a prior proceeding against the Commission on Judicial Conduct before the State of New York;

14) Plaintiffs' Exhibits pertaining to their action (Index #302951-12) heard in Supreme Court, Bronx County" (at p. 10).

Then, too, the decision's sole mention of the Commission on Judicial Compensation is in stating:

"In reply/further support of their cross-motion, plaintiffs cite an amendment to the Budget Bill which recognizes the unconstitutionality of the Budget Bill. Said amendment pertains to the replacement of the Commission on Judicial Compensation with the Commission on Legislative, Judicial and Executive Compensation. In light of the amendment, plaintiffs question why defendants' motion for dismissal/summary judgment has not been withdrawn." (at p. 4).

There is only one explanation for all this concealment by the decision – and for the even more total concealment by the October 9, 2014 and June 24, 2015 decisions. It enables Justice McDonough to obliterate the existence of an issue that can only be decided in plaintiffs' favor, at a substantial financial loss to him.

As for Justice McDonough's financial interest in the judicial salary increases recommended by the Commission on Judicial Compensation's August 29, 2011 report, plaintiffs particularized it repeatedly.[16] The Commission's August 29, 2011 report raised his yearly salary by nearly $40,000 since March 1, 2012. Effective April 1, 2012, his salary rose from $136,700 to $160,000; effective April 1, 2013, it rose from $160,000 to $168,000; and, effective April 1, 2014 – as a result of the fraudulent denial of the TRO and preliminary injunction sought by plaintiffs' March 28, 2014 order to show cause at the outset of the litigation, which Justice McDonough's October 9, 2014 decision covered up, it rose from $168,000 to $174,000.

Now, with the successor December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation, his salary has been boosted by a further $19,000. This further increase

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now furnished to the Court, by plaintiffs, in a free-standing file folder, due to their volume." (underlining added).

[16] Plaintiff Sassower's June 6, 2014 reply affidavit (¶¶10-15 – quoted below at fn.18; plaintiff Sassower's March 31, 2015 affidavit (¶¶10-13); plaintiffs' November 5, 2015 reply memorandum of law (p. 4 & fn.1); plaintiff Sassower's April 22, 2016 affidavit (¶6); plaintiffs' April 22, 2016 reply memorandum of law (at p. 3, fn. 2).

became effective April 1, 2016, as a result of Justice McDonough's fraudulent denial of the TRO and preliminary injunction sought by plaintiffs' March 23, 2016 order to show cause. And, it doesn't end there. Based on the December 24, 2015 report, Justice McDonough's now $193,000 annual salary will likely go up next year to reflect a cost-of-living increase and then, as of April 1, 2018, will be upped to $203,000, with a likely further cost-of-living increase the following year.

Thus, Justice McDonough has a HUGE financial interest in not voiding the August 29, 2011 and December 24, 2015 reports. Declarations of their nullity would cause his now $193,000 annual judicial salary to take a nearly $60,000 nosedive and entail a "claw-back" of what he has received since April 1, 2012: approximately $100,000 in salary increases, plus tens of thousands of dollars from salary-based non-salary benefits, such as pensions.

Yet, the decision conceals all this in casting Justice McDonough's "financial conflicts" as "alleged".

That Justice McDonough does not even concede the actuality of the "financial conflicts" only underscores the flagrant dishonesty that permeates his decision and prior ones. Likewise, his deceit that disqualification is a "functional impossibility". It is not. As stated by plaintiff Sassower's April 22, 2016 affidavit in support of Justice McDonough's disqualification – replicating what plaintiffs had previously and repeatedly stated[17], concealed by his prior decisions:

> "A judge can be financially interested, yet nonetheless rise above that interest to discharge his duty. A judge who cannot or will not do that and so-demonstrates this by manifesting his actual bias – must disqualify himself or be disqualified." (April 22, 2016 affidavit, ¶6, underlining in the original).

The Threshold Issue of Assistant Attorney General Kerwin's Litigation Fraud & the Attorney General's Disqualification – Shoved to the Back & Covered-Up

As the record shows, it was AAG Kerwin's brazen and unrestrained litigation fraud that compelled plaintiffs to raise the issue of Justice McDonough's disqualification, time after time.[18] Thus, in

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[17] See, fn. 16 and fn. 18.

[18] The first time was in opposing AAG April 18, 2014 motion to dismiss plaintiffs' complaint – and plaintiff Sassower's response was as follows:

> "10. No fair and impartial tribunal would tolerate AAG Kerwin's litigation fraud, upending the most basic legal standards and ethical rules. Yet AAG Kerwin, Attorney General Schneiderman, Comptroller DiNapoli, and their high-ranking staff are seemingly unconcerned about any consequences for their violative conduct. Apparently, they believe the Court will let them get away with anything.
>
> 11. This belief is understandable. The Court has a direct financial interest in this citizen-taxpayer action, challenging, as it does, not only the monies for the Judiciary in the Governor's Budget Bill #S.6351/A.8551, but the third phase of the judicial salary increase by which, on April 1, 2014, this Court's own annual salary rose from $167,000 to $174,000.

opposing AAG Kerwin's July 28, 2014 dismissal/summary judgment motion, plaintiffs' November 5, 2016 reply memorandum of law summed up the situation as follows:

> "Needless to say, the ONLY inference that can be drawn from the fact that AAG Kerwin has continued her litigation misconduct is that she holds to the view that the Court will NOT discharge its duty to ensure the integrity of the judicial process – not the least reason being because it has a financial interest amounting to some $40,000 a year in 'throwing' the case so as not to render the declaration to which plaintiffs are entitled as to the unconstitutionality Chapter 567 of the Laws of 2010, *as written and as applied*, and the judicial salary increases resulting therefrom, embodied in plaintiffs' second and sixth causes of action. [fn.1] That entitlement, uncontested by AAG Kerwin, is set forth at pages 19-25, *infra*.
>
> Suffice to say, more than a century ago, in *Matter of Bolte*, 97 AD 551 (1904), the Appellate Division, First Department stated:
>
> > 'A judicial officer may not be removed for merely making an erroneous decision or ruling, but he may be removed for ***willfully*** making a wrong

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12. Plaintiffs have a summary judgment entitlement to a declaration that the third phase of the judicial salary increase is statutorily-violative, fraudulent, and unconstitutional. This will be evident to the Court upon its ordering defendants to produce the documents I handed up to the Legislature at its February 6, 2013 joint budget hearing on 'public protection' in substantiation of my oral testimony opposing the judicial salary increases recommended by the August 29, 2011 Report of the Special Commission on Judicial Compensation. That is why these documents have not been voluntarily produced by AAG Kerwin in response to plaintiffs' Notice to Furnish Papers to the Court Pursuant to CPLR §2214(c) (Exhibit X-2, p. 3). Indeed, it is why her dismissal motion conceals that plaintiffs' complaint even challenges the third phase of the judicial salary increase – a fraud in and of itself requiring denial of her dismissal motion, *as a matter of law*. (see plaintiffs' May 16, 2014 memorandum of law, pp. 8-9, 10-11, 29).

13. Suffice to say, with the fall of the third phase of the judicial salary increase – the first two phases will also fall – bringing this Court's yearly salary down to $136,700 – a whopping drop of nearly $40,000 a year.

14. Although the 'rule of necessity' holds that where all judges are disqualified, none are disqualified, that does not mean that a judge who is unable to rise above his direct and substantial financial interest is not required to disqualify himself; or that a judge not disqualifying himself is not required to acknowledge his self-interest and make other appropriate disclosure, such as the extent to which he is dependent upon defendants for his continuance on the bench and relevant personal, professional, and political relationships impacting on his fairness and impartiality.

15. This Court can powerfully model fairness and impartiality. All it takes is making disclosure and addressing the fundamental, black-letter, legal and ethical standards, laid out by plaintiffs' May 16, 2014 memorandum of law, that AAG Kerwin and her high-level accomplices would have the Court completely ignore." (plaintiff Sassower's June 6, 2014 reply affidavit, at pp. 5-7, italics and underlining in the original).

decision or an erroneous ruling, or for a reckless exercise of his judicial functions without regard to the rights of litigants, or for manifesting friendship or favoritism toward one party or his attorney to the prejudice of another...' (at 568, emphasis in the original).

'...Favoritism in the performance of judicial duties constitutes corruption as disastrous in its consequence as if the judicial officer received and was moved by a bribe.' (at 574)." (November 5, 2015 reply memorandum of law, at p. 4).

Yet here, too, as with the threshold issue of Justice McDonough's disqualification, the threshold issues of AAG Kerwin's litigation fraud and Attorney General Schneiderman's disqualification are shoved to the back of the decision – where they are disposed of with brazen lies that do not identify ANY of the particularized facts and law plaintiffs furnished in support. There, under the title heading "Remaining Requested Relief from Plaintiffs' Summary Judgment Motion" (at p. 7), the decision states:

"The Court notes that plaintiffs' papers are replete with wholly unsubstantiated accusations against the Assistant Attorney General sounding primarily in fraud upon the Court, deceit and making frivolous submissions. In conjunction with the accusations, plaintiffs seek sanctions, costs, penal law punishment, treble damages, referral to disciplinary authorities, disqualification of the Attorney General and an Order directing the Assistant Attorney General to provide certain disclosure.

The Court has reviewed the allegations and finds no basis to impose/award any of the requested relief. Moreover, the Court finds that plaintiffs' request for this Court of vacate its prior Order pursuant to CPLR §5015 wholly without merit." (at p. 7, underlining added).

This is utter fraud – and the decision does not supply a single example of a "wholly unsubstantiated accusation[]" made by plaintiffs' "papers". Nor is there one. ALL of plaintiffs' so-called "accusations" and "allegations" of AAG Kerwin's "fraud", "deceit" and "making frivolous submissions" and of "the disqualification of the Attorney General" are buttressed by specific facts, law, and evidence – so much so as to establish plaintiffs' entitlement to ALL ten branches of their September 22, 2015 cross-motion, *as a matter of law*:

"(1) pursuant to CPLR §3211(c), giving notice that Attorney General Eric T. Schneiderman's July 28, 2015 motion to dismiss plaintiffs' verified supplemental complaint by Assistant Attorney General Adrienne Kerwin is being converted by the Court to a motion for summary judgment for plaintiffs on their four causes of action therein;

(1) pursuant to CPLR §3212(b), granting plaintiffs summary judgment on their verified complaint's fourth causes of action;

(2) pursuant to this Court's October 9, 2014 decision/order, granting sanctions & other relief against AAG Kerwin and all complicit with her, following determination of the three issues undetermined by the October 9, 2014 decision/order pertaining to plaintiffs' order to show cause with TRO that the Court signed on June 16, 2014, *to wit*, whether AAG Kerwin's 4-page document turnover was (a) a 'flagrant fraud on the Court'; (b) constituted evidence of defendants' violation of Legislative Law §67; and (c) a possible contempt of the TRO;

(4) pursuant to Executive Law §63.1 and State Finance Law Article 7-A, directing Attorney General Schneiderman to identify who in the Attorney General's office has independently evaluated the 'interest of the state' in this citizen-taxpayer action and plaintiffs' entitlement to the Attorney General's representation/intervention;

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

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

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

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

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

(10) for such other and further relief as may be just and proper, including $100 motion costs pursuant to CPLR §8202."

Plaintiffs' November 5, 2015 reply memorandum of law states this, explicitly – and, together with their September 23, 2015 memorandum of law, proves it, resoundingly. These two memoranda, 28 pages and 55 pages, respectively, are incorporated by reference by plaintiff Sassower's accompanying affidavits, which swear to their truth. Each demonstrates that AAG Kerwin's motion papers were, "from beginning to end, and in virtually every line", fashioned on fraud and deceit – and that a fair and impartial tribunal had no discretion but to grant plaintiffs ALL branches of their cross-motion, *as a matter of law*.

The starting point is the legal insufficiency of AAG Kerwin's July 28, 2015 dismissal/summary judgment motion – which plaintiffs' September 22, 2015 memorandum of law (at pp. 4-11) shows to be frivolous, *as a matter of law*. This, because it did not remotely meet the legal standards for either dismissal pursuant to CPLR §3211 or summary judgment motions pursuant to §3212– standards it did not explicate in any way. These required AAG Kerwin not to cherry-pick and distort selected allegations of the pleadings, but to set forth ALL the pleadings' allegations which, taken together and accepted as true, failed to state a cause of action, or were conclusively disposed of, *as a matter of law*, by documentary evidence – and which, with regard to her request pursuant to CPLR §3212 for summary judgment on the fourth cause of action of plaintiffs' complaint, required an "affidavit...by a person having knowledge of the facts; it shall recite all the material facts; and it shall show that...the cause of action...has no merit."

Plaintiffs' September 22, 2015 memorandum of law detailed that AAG Kerwin's July 28, 2015 motion had furnished only her own sham, non-probative affirmation, rested on a select handful of allegations of the pleadings, whose content she simplified, distorted, and falsified, and furnished exhibits that did not constitute "documentary evidence" in support of dismissal/summary judgment for defendants, but, rather, supported summary judgment to plaintiffs.

Justice McDonough's decision utilizes the same stratagem as AAG Kerwin had: concealment, distortion, and falsification of the allegations of plaintiffs' causes of action, disregard of fundamental adjudicative standards – and on NO EVIDENCE. In other words, on fraud.

Justice McDonough's Dismissals of Plaintiffs' Causes of Action

The decision precedes its seriatim dismissals of plaintiffs' causes of action with a section entitled "Motions with respect to the Supplemental Complaint" (at pp. 2-4), purporting to summarize the parties' contentions as presented by:

- AAG Kerwin's July 28, 2015 dismissal/summary judgment motion;
- plaintiffs' September 22, 2015 opposition/cross-motion for summary judgment;
- AAG Kerwin's October 23, 2015 reply in further support of her motion;
- plaintiffs' November 5, 2015 reply in further support of their cross-motion.

This section, the lengthiest of the decision's titled sections, actually serves no purpose other than as filler. Apart from not setting forth a single one of plaintiffs' contentions as to the legal insufficiency of AAG Kerwin's dismissal/summary judgment motion, requiring denial of the motion, *as a matter of law*, the decision conceals the material fact that every contention advanced by defendants, usually in the most simplistic, generalized fashion, was challenged by plaintiffs, with factual and legal specifics, and shown to be false and deceitful – and knowingly so. Tellingly, the decision nowhere makes findings as to its summarized recitation in this section, including in dismissing plaintiffs' causes of action by, inferentially, adopting AAG Kerwin's various deceits.

As illustrative, this section cites AAG Kerwin's assertions "In reply/further support of their motion" as contending that:

> "plaintiffs have failed to set forth any facts establishing how Article VII, section 7 or Article III, sections 10 and 16 were violated. Further, defendants maintain that there are no allegations in the supplemental complaint that any of the relevant parties listed in Section 31 of the Legislative Law were precluded from appearing before Legislative committees and/or refused to appear pursuant to any committee request. Finally, defendants maintain that the documentary evidence establishes compliance with Section 54-A of the Legislative Law." (at p. 4)

Not revealed is that AAG Kerwin was responding to plaintiffs' assertions in their September 22, 2015 memorandum in law (at pp. 18, 34, 38-39) that her dismissal motion had to be denied, *as a matter of law*, as it had not denied, but instead concealed, the violations of Article VII, §7, Article III, §16, and Article III, §10 of the New York State Constitution, set forth in the sixth cause of action of their supplemental complaint (¶¶181, 191, 236, PRAYER FOR RELIEF/'WHEREFORE' clause: pp. 39, 40), and the violations of Legislative Law §54-A, set forth in their eighth cause of action (¶¶231-234) – all of which were, therefore, conceded, *as a matter of law*.

Nor does this section include plaintiffs' response to AAG Kerwin's above extracted assertions. This, because plaintiffs' particularized response, spanning 10 pages of their 26-page November 5, 2015 reply memorandum of law (at pp. 9-19), not only thoroughly rebutted them, but reinforced plaintiffs' entitlement to the summary judgment sought by their cross-motion.

The result? Two pages later, without any determination of plaintiffs' fact-specific, law-supported showing, the decision (at p. 6) dismisses plaintiffs' eighth cause of action, utilizing AAG Kerwin's baseless assertions included in this section and, two pages after that (at p. 8), denies plaintiffs' cross-motion for summary judgment in its second ordering paragraph. Suffice to say that nowhere in the body of the decision is there the slightest discussion, let alone findings of fact and conclusions of law, with respect to the basis upon which plaintiffs cross-moved for summary judgment – only a rejection of it, inferentially, immediately before the decision's ordering paragraphs as:

> "Plaintiffs' remaining arguments and requests for relief have been considered and found to be lacking in merit." (at p. 8).

This same section of "Motions with respect to the Supplemental Complaint" also contains two footnotes (at p. 3), each materially false – and known by Justice McDonough to be false. The first, annotating AAG Kerwin's contentions regarding plaintiffs' fourth cause of action, states:

> "As issue has been joined and discovery conducted on the fourth cause of action, defendants maintain that summary judgment is the appropriate vehicle for dismissal as to said cause of action." (fn. 3).[19]

In fact, joinder and discovery were completely sham and worthless, subverted by AAG Kerwin. And Justice McDonough had all the particulars, especially with respect to the fourth cause of action, as plaintiffs had furnished them to him by ¶¶9-24 of plaintiff Sassower's April 15, 2015 reply affidavit in further support of their March 31, 2015 motion for leave to supplement their verified complaint, annexing the substantiating proof as exhibits. Justice McDonough's June 24, 2015 decision had concealed the issue entirely with the boilerplate assertion:

> "Plaintiffs' remaining requests for relief have been considered and found to be lacking in merit." (at p. 2).

This was an utter lie – and the documented particulars set forth by the aforesaid ¶¶9-24 of plaintiff Sassower's April 15, 2015 affidavit are the proof.

As for the second footnote of this section (at p. 3), annotating the paragraph pertaining to plaintiffs' "opposition/support", the decision states:

> "Plaintiffs also ask the Court to convert defendants' dismissal motion into a motion for summary judgment in plaintiffs' favor. Defendants did not take any position on this request. As plaintiffs have cross-moved for summary judgment relief, the Court denies any such conversion as unnecessary." (fn. 4).

This is another lie – and proving it are the first two branches of plaintiffs' September 22, 2015 cross-motion, which read:

> "(1) pursuant to CPLR §3211(c), giving notice that Attorney General Eric T. Schneiderman's July 28, 2015 motion to dismiss plaintiffs' verified supplemental

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[19] In fact, AAG Kerwin had relegated her explanation of the "appropriate vehicle" to a footnote of her July 28, 2015 memorandum of law (at p. 11, fn. 5), which without referencing joinder or discovery, merely stated:

> "While plaintiffs' eighth cause of action must be considered using a motion to dismiss standard, see CPLR 3211, the court should apply a summary judgment standard as to defendants' motion relating to plaintiffs' fourth cause of action. See CPLR 3212."

complaint by Assistant Attorney General Adrienne Kerwin is being converted by the Court to a motion for summary judgment for plaintiffs on their four causes of action therein;

(2) pursuant to CPLR §3212(b), granting plaintiffs summary judgment on their verified complaint's fourth cause[] of action".

These establish that plaintiffs were NOT seeking conversion with respect to summary judgment relief that they were simultaneously cross-moving for directly – which is the basis upon which Justice McDonough found the conversion relief "unnecessary". Rather, they were seeking conversion ONLY with respect to the four causes of action of their supplemental complaint, pursuant to CPLR §3211(c). This had nothing to do with the fourth cause of action of their complaint, as to which plaintiffs were entitled to – and did – cross-move for summary judgment, directly, pursuant to CPLR §3212(b). Consequently, the decision's express basis for denying plaintiffs' conversion request is a fraud.

1. The Decision's Summary Judgment Dismissal of the Fourth Cause of Action of Plaintiffs' Verified Complaint, Pursuant to CPLR §3212

Under its heading "Fourth Cause of Action" (at pp. 4-5), the decision recites the standard for summary judgment:

> "The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law by providing sufficient evidence to eliminate any genuine material issues of fact from the case. The failure to make such a showing mandates denial of the motion, regardless of the sufficiency of the opposing papers (Alvarez v. Prospect Hosp., 68 NY2d 320 [1986]; Winegard v. New York Univ. Med. Center, 64 NY2d 851 [1985]).
>
> Once such a showing is made, the burden shifts to the party opposing the motion for summary judgment to come forward with evidentiary proof, in admissible form, to establish the existence of material issues of fact which require a trial (Zuckerman v. City of New York, 49 NY2d 557, 562 [1980]). In order to defeat a motion for summary judgment, the opponent must present evidentiary facts sufficient to raise a triable issue. Averments merely stating conclusions are insufficient (Bethlehem Steel Corp. v. Solow, 51 NY2d 870 [1980]; Capelin Assoc. v. Globe Mfg. Corp., 34 NY2d 338 [1974]).
>
> Summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue (Sternbach v. Cornell University, 162 AD2d 922, 923 [3rd Dept. 1990]). The focus is upon issue finding, not issue resolving, and all inferences and evidence must be viewed in a light most favorable to the party opposing the motion for summary judgment (*see*, B.S. Industrial Contractors, Inc. v. Town of Wells, 173 AD2d 1053 [3rd Dept. 1991])."

As pointed out by plaintiffs' September 22, 2015 memorandum of law (at p. 8), AAG Kerwin's July 28, 2015 motion had not identified "the rudimentary standards governing dismissal and summary judgement motions – reflective of her knowledge that she had not remotely met the standard for either."

Here, the ONLY reason the decision recites the standard is to make it appear that Justice McDonough is adjudicating in conformity therewith. This is fraud, as are Justice McDonough's two surrounding paragraphs: the one preceding and the one following. These read:

> "The Court previously determined that plaintiffs' had adequately stated a fourth cause of action as to defendants' purported violation of Legislative Law §32-a regarding public hearings for New York's Budget. The Court specifically noted that defendants' submissions did not include any documentary evidence establishing a defense to said cause of action. Defendants have now provided the Court with such documentary evidence. Accordingly, they seek summary judgment.
>
> ...
>
> The Court finds that the relevant, documentary evidence fully demonstrates that defendants complied with Legislative Law §32-a. In response to defendants' prima facie showing of entitlement to summary judgment, plaintiffs failed to raise any triable issue of fact. Accordingly, summary judgment dismissing the fourth cause of action is mandated." (at pp. 4-5, underlining added).

This is the entirety of what the decision says under the heading "Fourth Cause of Action" – and its fraud begins with its assertion as to of what "the Court previously determined". That determination, by the Court's October 9, 2014 decision, had stated with respect to the fourth cause of action:

> "Plaintiffs' complaint adequately sets forth a viable cause of action alleging, *inter alia*, that defendants violated Legislative Law 32-a regarding public hearings for New York's Budget. ..." (October 9, 2014 decision, at p. 6, italics in the original).

In other words – and by the words "*inter alia*" – the Court's October 9, 2014 decision recognized that the fourth cause of action involved more than violation of Legislative Law §32-a. Indeed, the plethora of violations it involved were listed by the complaint's proposed declaratory judgment relating to the fourth cause of action:

> "A. that Budget Bill #6351/A.8551 is a wrongful expenditure, misappropriation, illegal and unconstitutional because nothing lawful or constitutional can emerge from a legislative process that violates its own statutory & rule safeguards, *inter alia*, Legislative Law §32-a (public hearings); Senate Rule VIII, §7, Senate Rule VII, §1, and Assembly Rule III, §1(f) (fiscal notes and introducer's memoranda); Senate Rule VII, §4 ('Title and body of bill'); Assembly Rule III, 1, 8) 'Contents'; 'Revision and engrossing'; Senate Rule VIII, §§3, 4, 5; Assembly Rule IV (committee meetings, hearings, reports, votes); Senate Rule VII, 9 (resolutions); New York Constitution,

> Article III, §10 '...The doors of each house shall be kept open...'; Public Officers Law, Article VI 'The legislature therefore declares that government is the public's business...'; Senate Rule XI, §1 'The doors of the Senate shall be kept open'; Assembly Rule II, §1 'A daily stenographic record of the proceedings of the House shall be made and copies thereof shall be available to the public', etc." (verified complaint, at p. 45, underlining in the original).

Consequently, even if the unspecified "documentary evidence" referred-to by the Court's instant decision actually established defendant Legislature's compliance with Legislative Law §32-a – which it does not –it could not support summary judgment on plaintiffs' fourth cause of action whose other violations of statutory, rule, and constitutional provisions are not just unaddressed by the decision, but concealed.

Plaintiffs' September 22, 2015 memorandum of law pointed out (at pp. 7-8) that the predicate for AAG Kerwin's motion for summary judgment pursuant to CPLR §3212 on plaintiffs' fourth cause of action was having answered the complaint, but that defendants' answer, which she signed and verified, was so sham that she had NOT cited it in support of summary judgment on the fourth cause of action – and had furnished "NO documentary evidence to substantiate its denials, nor affidavit from anyone with 'knowledge or information...to admit or deny'" what, by the answer, she had professed to have no knowledge or information to...admit or deny". This would not have been new to the Court, as the particulars had been provided to it previously by ¶¶ 9-24 of plaintiff Sassower's April 15, 2015 reply affidavit in further support of plaintiffs' March 31, 2015 motion for leave to file their supplemental complaint – and AAG Kerwin did not then or thereafter deny or dispute the accuracy of that presentation in any respect.

As for AAG Kerwin's supposed "documentary evidence" establishing "defendants' prima facie showing of entitlement to summary judgment" on plaintiffs' fourth cause of action, the decision does not specify what it is – and for good reason. It does NOT exist. AAG Kerwin furnished NO evidence establishing that defendants had not violated Legislative Law §32-a in the respects specified by plaintiffs' fourth cause of action, all concealed by Justice McDonough's decision. Nor did she refute plaintiffs' evidentiary presentation that they had. This is particularized at pages 26-31, 34 of plaintiffs' September 22, 2015 memorandum of law – with pages 39-42 further detailing plaintiffs' entitlement to summary judgment in their favor on their fourth cause of action.

None of this was denied or disputed by AAG Kerwin's October 23, 2015 reply/opposition – and plaintiffs' November 5, 2015 reply memorandum of law highlighted this (at pp. 1, 5), demonstrating that entitlement to summary judgment was wholly plaintiffs'.

2. The Decision's Dismissals of the Four Causes of Action of Plaintiffs' Verified Supplemental Complaint, Pursuant to CPLR §3211

The decision's dismissal of the four causes of action of plaintiffs' verified supplemental complaint, pursuant to CPLR §3211, is without reciting the standard for motions thereunder.

Plaintiffs' September 22, 2015 memorandum of law (at p. 9) recited the standard, quoting from the Court of Appeals decision in *Leon v. Martinez*, 84 NY2d 83, 88 (1994):

> "On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction (see, CPLR 3026). We accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory (*Morone v Morone*, 50 NY2d 481, 484; *Rovello v Orofino Realty Co.*, 40 NY2d 633, 634). Under CPLR 3211 (a) (1), a dismissal is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law (see, e.g., *Heaney v Purdy*, 29 NY2d 157). In assessing a motion under CPLR 3211 (a) (7), however, a court may freely consider affidavits submitted by the plaintiff to remedy any defects in the complaint (*Rovello v Orofino Realty Co., supra*, at 635) and 'the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one''(*Guggenheimer v Ginzburg*, 43 NY2d 268, 275; *Rovello v Orofino Realty Co., supra*, at 636)."

Plaintiffs stated that such controlling standard,

> "recited in an abundance of Third Department cases[fn9] – made it frivolous, *as a matter of law*, for AAG Kerwin to have made a dismissal motion under CPLR §§3211(a)(7) and (a)(1) unless she could identify ALL the accepted-as-true allegations of the verified supplemental complaint which, taken together, fail to state a cause of action; and ALL the allegations which, stating a cause of action, are conclusively disposed of, *as a matter of law*, by documentary evidence. AAG Kerwin's dismissal motion does neither. Her affirmation does not cite any of the paragraphs of either the complaint or supplemental complaint. As for her memorandum of law, its citations to the complaint and verified complaint[fn4] either

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"fn9 Among these, *Moulton v. New York*, 114 A.D.3d 115 (3rd Dept. 2013); *Kosmider v. Garcia*, 111 A.D.3d 1134 (3rd Dept. 2013); *Delaware County v. Leatherstocking Healthcare*, 110 A.D.3d 1211 (3rd Dept. 2013); *Nelson v. Lattner Enterprises*, 108 A.D.3d 970 (3rd Dept. 2013); *McBride v. Springsteen-El*, 106 A.D.3d 1402 (3rd Dept. 2013).

Mason v. First Central National Life Insurance Inc., 86 A.D.3d 854, 855 (3rd Dept. 2010); *Erie Insurance Group v. National Grange Mutual Insurance Co.*, 63 A.D.3d 1412 (3rd Dept. 2009); *Weston v. Cornell University*, 56 A.D.3d 1074 (3rd Dept. 2008); *Ozdemir v. Caithness Corporation*, 285 A.D.2d 961, 963 (3rd Dept. 2001)."

materially simplify, distort, or falsify the content of the cited paragraphs or do not reveal their content at all." (Plaintiffs' September 22, 2015 memorandum of law, at p. 9, capitalization and italics in the original).

Identically, Justice McDonough's dismissals of the fifth, sixth, seventh, and eighth causes of action of plaintiffs' verified supplemental complaint – each by single paragraphs – rest on materially simplifying, distorting and falsifying the content of those four causes of action – and on NO EVIDENCE.

In dismissing plaintiffs' fifth, sixth, and seventh causes of action, the decision essentially replicates its single paragraph dismissals of the first, second, and third causes of action plaintiffs' verified complaint – a fact it does not reveal.

Thus, under the heading "Fifth Cause of Action", (at p. 5), the decision states:

> "Plaintiffs allege that the Legislature's Proposed Budget for Fiscal Year 2015-2016 is unconstitutional and unlawful. The gist of this cause of action is that the Proposed Budget was not adequately certified and does not contain itemized estimates of the financial needs of the legislature. The Court again concludes that the itemization challenge must be dismissed as it is nonjusticiable (*see*, Urban Justice Ctr v Pataki, 38 AD3d 20, 20 [1st Dept. 2006]). As to the certification issue, the Court finds that the documentary evidence submitted by defendants conclusively demonstrates that defendants have complied with the letter and spirt of the constitutional requirement for certification (*see generally*, Matter of Schneider v Rockefeller, 31 NY2d 420, 434 [1972]). Accordingly, the fifth cause of action must be dismissed."

The near identical single paragraph of Justice McDonough's October 9, 2014 decision dismissing plaintiffs' first cause of action was as follows:

> "Plaintiff's first cause of action alleges that the Budget is unconstitutional because it was not adequately certified and does not contain itemized estimates of the financial needs of the legislature. The itemization challenge clearly must be dismissed as it is nonjusticiable (*see*, Urban Justice Center v. Pataki, 38 AD3d 20, 30 [1st Dept. 2006]. As to the certification issue, the Court finds that the documentary evidence submitted by defendants conclusively demonstrates that defendants have complied with the letter and spirit of the constitutional requirement for certification (*see generally*, Matter of Schneider v. Rockefeller, 31 NY2d 420, 434 [1972]). Accordingly, the first cause of action must be dismissed." (at p. 5).

Under the heading "Sixth Cause of Action" (at pp. 5-6), the decision states:

> "Plaintiffs allege that the Judiciary's Proposed Budget for Fiscal Year 2015-2016 is unconstitutional and unlawful. The sixth cause of action principally alleges that the

Senate and the Assembly are unable to comprehend the Judiciary's proposed budget for 2015-2016 because the cumulative dollar amount and percentage increase over the prior year's budget cannot be discerned. The Court again finds that the documentary evidence submitted by defendants clearly and conclusively establishes a defense to this cause of action. Said information is readily discernible throughout the Judiciary's proposed budget. Accordingly the sixth cause of action must be dismissed. Regardless, this cause of action would appear to fall under the type of itemization already found to be nonjusticiable."

The near identical single paragraph of Justice McDonough's October 9, 2014 decision dismissing plaintiffs' second cause of action was as follows:

"Plaintiffs' second cause of action principally alleges that the Senate and Assembly are unable to comprehend the Judiciary's proposed budget for 2014-2015 because the cumulative dollar amount and percentage increase over the prior year's budget is not capable of being discerned. The Court finds that the documentary evidence submitted by defendants clearly and conclusively establishes a defense to this cause of action. Said information is readily discernible throughout the Judiciary's proposed budget. Accordingly, the second cause of action must be dismissed. Additionally, this cause of action would also appear to fall under the type of itemization argument already found to be nonjusticiable." (at p. 5).

Under the heading "Seventh Cause of Action" (at p. 6), the decision states:

"Plaintiffs' seventh cause of action again alleges that certain reappropriations constitute revisions in violation of New York's Constitution. The Court finds that the documentary evidence submitted by defendants clearly and conclusively establishes a defense to this cause of action. Said submissions clearly establish that the 'reappropriations' at issue do not constitute executive revisions to the proposed Budget. Accordingly, the seventh cause of action must be dismissed."

The materially identical single paragraph of Justice McDonough's October 9, 2014 decision dismissing plaintiffs' third cause of action was as follows:

"Plaintiffs' third cause of action alleges that the Legislative Budget transmitted to the Governor by Senator Skelos and Speaker Silver contained no reappropriations. They further contend that the Governor's budget contains nineteen pages of reappropriations. Accordingly, they contend that the reappropriations constitute revisions in violation of New York's Constitution. The Court finds that the documentary evidence submitted by defendants clearly and conclusively establishes a defense to this cause of action. Said submissions clearly establish that the 'reappropriations' at issue do not constitute executive revisions to the proposed Budget. Accordingly, the third cause of action must be dismissed." (at p. 6).

Yet, the fifth, sixth, and seventh causes of action of plaintiffs' verified supplemental complaint (¶¶194-202) were NOT identical to the first, second, and third causes of action of their verified complaint (¶¶76-112), such that they could be identically dismissed. Rather, each of the subsequent three causes of action consisted, in the main, of analyses demonstrating that Justice McDonough's dismissals of the first, second, and third causes of action, by his October 9, 2014 decision, were legally insupportable and factually baseless. This was the "gist" of each and "principally alleged" – and plaintiffs' September 22, 2015 memorandum of law (at pp. 1, 14-23) highlighted this because AAG Kerwin had fraudulently purported that the fifth, sixth, and seventh causes of action were identical to the first, second, and third causes of action and should be dismissed for the same reasons. Rather than confronting AAG Kerwin's fraud and the accuracy of plaintiffs' analyses, uncontested by her, the decision simply repeats the fraud Justice McDonough had committed in dismissing the first three causes of action. This includes NOT identifying the supposed "documentary evidence" furnished by AAG Kerwin that "clearly and conclusively" established defenses to the fifth, sixth, and seventh causes of action – because she had NO such evidence.[20] Rather, what she furnished

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[20] As to the fifth cause of action (¶¶169-178), the "documentary evidence" that AAG Kerwin furnished – replicating what she had furnished for dismissal of the plaintiffs' first cause of action – consisted of the one-sentence December 1, 2014 letter signed by defendants Skelos and Silver to defendant Cuomo, transmitting the 16-page legislative budget for fiscal year 2015-2016.

These "conclusively demonstrate[d]" precisely what ¶¶131-138, of plaintiffs' supplemental complaint alleged, *to wit*, the letter did not claim to be transmitting "itemized estimates of the financial needs of the legislature" or that same had been "certified by the presiding officer of each house"; and its transmitted 16-page budget contained no certification, nor even a reference to "itemized estimates" of the Legislature's "financial needs" or to Article VII, §1 of the New York State Constitution. Nor was certification even possible, *inter alia*, because the transmitted budget was missing the Legislature's "General State Charges" and because its figures were a palpable contrivance of leadership, being dollar identical to those of the previous four years.

As to the sixth cause of action (¶¶179-193), the "documentary evidence" that AAG Kerwin furnished – replicating what she had furnished for dismissal of the plaintiffs' second cause of action – consisted of only one part of the Judiciary's December 1, 2014 two-part budget: that of operating expenses, with its attached "single budget bill". This "clearly and conclusively" established precisely what ¶¶139-144, 169-170 of plaintiffs' verified supplemental complaint alleged, *to wit*, the 'single budget bill" was seemingly uncertified and did not tally the judiciary's appropriations and reappropriations, thereby concealing the discrepancy of tens of millions of dollars between the "single budget bill" that contained reappropriations and the Judiciary's two-part budget presentation, which did not. As for the judiciary reappropriations, AAG Kerwin concealed the issue entirely, including the violations of Article VII, 7, Article III, 16, and State Finance Law alleged by plaintiffs sixth cause of action, and their use for illegitimate, slush-fund purposes – as for instance, to hide the funding of the statutorily-violative, fraudulent, and unconstitutional judicial salary increases.

As to the seventh cause of action (¶¶194-202), the "documentary evidence" that AAG Kerwin furnished -- replicating what she had furnished for dismissal of plaintiffs' third cause of action – consisted of defendant Cuomo's legislative/judiciary budget bill #S.2001/A.3001, introduced on January 21, 2015. It "clearly and conclusively" established precisely what ¶¶145, 149-150 of plaintiffs' verified supplemental complaint alleged, *to wit*, it concealed 22 pages of reappropriations for the legislature, in an out-of-sequence section in the back of the bill, which did not appear to be suitable for reappropriation and which had not been part of the Legislature's budget request.

established plaintiffs' entitlement to summary judgment on those causes of action.

Justice McDonough's dismissals of plaintiffs' fifth, sixth, and seventh causes of action cannot be justified, factually or legally, and are frauds in the same respects as those causes of action particularize pertaining to his dismissals of their first, second, and third causes of action by his October 9, 2014 decision. The further specifics set forth at pages 1, 14-23 of plaintiffs' September 22, 2015 memorandum of law and pages 2, 6 of their November 5, 2015 reply memorandum of law establish this, resoundingly.

Under the heading "Eighth Cause of Action" (p. 6), the decision states:

> "The eighth cause of action principally relates to defendants' purported violations of Legislative Law §32-a regarding public hearings for New York's Budget. The Court finds that the documentary evidence submitted by defendants clearly and conclusively establishes a defense to this portion of the cause of action. To the extent other claims were raised in this cause of action, the Court concludes: (1) that plaintiffs have failed to set forth any facts in the supplemental complaint as to how Article VII, section 7 or Article III, sections 10 and 16 were violated; (2) that there are no allegations in the supplemental complaint that any of the relevant parties listed in Section 31 of the Legislative Law were precluded from appearing before Legislative committees and/or refused to appear pursuant to any committee request; and (3) that the documentary evidence establishes compliance with Section 54-A of the Legislative Law. Accordingly, dismissal of this cause of action is warranted pursuant to CPLR §3211(a)(1) and (7)." (p. 6, underlining added).

This single paragraph misrepresents and conceals what plaintiffs' eighth cause of action (¶¶203-236) "principally relates to". Of its 33 paragraphs only six pertain to Legislative Law §32. As to these six paragraphs (¶¶206-207, 217-220), the decision identifies nothing about the violation of Legislative Law §32 they particularize – reflective of Justice McDonough's knowledge that AAG Kerwin furnished NO "documentary evidence that "establishes a defense" to them, let alone "clearly and conclusively".[21]

Nor did AAG Kerwin provide any documentary evidence establishing "compliance with Section 54-A of the Legislative Law", other than in respects not relevant to the violations of Legislative Law §54-A alleged by the eighth cause of action, but not disclosed by the decision. And establishing this "clearly and conclusively" is plaintiffs' November 5, 2015 memorandum of law (at pp. 17-19).

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[21] As to the eighth cause of action (¶¶203-236), the "documentary evidence" that AAG Kerwin furnished was defendant Legislature's press release and schedule for its public budget hearings for fiscal year 2015-2016, its agenda/witness list for its February 26, 2015 "public protection" budget hearing, and the transcript of the February 26, 2015 "public protection" budget hearing. These "clearly and conclusively" establish[ed] that she had no rebuttal to ¶¶151-162, 206-207, 217-220 of plaintiffs' supplemental complaint.

As for the decision's assertion "To the extent other claims were raised in this cause of action", the implication that there might be some question as to whether "other claims were raised" is a further fraud. The eighth cause of action rests on violations of a multitude of constitutional, statutory, and rule provisions. However, NOT among them are Article VII, §7 and Article III, §16 of the New York State Constitution and Legislative Law §31, cited by the decision as if they are. Indeed, as pointed out by plaintiffs' November 5, 2015 reply memorandum of law (at pp. 7, 9), the supplemental complaint never alleged any violation of Legislative Law §31, contrary to AAG Kerwin's falsehood on the subject. As for the Article VII, §7 and Article III, §16 constitutional violations, contrary to the decision, these have nothing to do with plaintiffs' eighth cause of action – and AAG Kerwin never purported that they did. Rather, they pertain to the judiciary's reappropriations and are part of plaintiffs' sixth cause of action. Plaintiffs' November 5, 2015 reply memorandum of law (at pp. 10-13) makes this clear, as likewise that AAG Kerwin has no defense to them.

As for the violations of constitutional, statutory and rule provisions alleged by plaintiffs' eighth cause of action that the decision does not identify, let alone address, in dismissing it, they are:

- Senate Rules VIII, §7, VII, §1, Assembly Rules III, §1(f), §2(a) (fiscal notes, fiscal impact statements, and introducer's memoranda);
- Senate Rule VII, §4; Assembly Rule III, §§1, 2, 8 (bills);
- Senate Rules VIII, §§3, 4, 5; Assembly Rule IV (committee meetings, hearings, reports, votes);
- Senate Rule VII, §9 (resolutions);
- Legislative Law §54-a ("Scheduling of legislative consideration of budget bills");
- Senate/Assembly Joint Rule III, §§1, 2 ("Budget Consideration Schedule"; "Joint Budget Conference Committee");
- New York Constitution, Article III, §10; Public Officers Law, Article VI; Senate Rule XI, §1; Assembly Rule II, §1 (public access).

These, too, are particularized by plaintiffs' September 22, 2015 memorandum of law (pp. 26-31, 34, 38) – and the state of the record with respect to them, entitling plaintiffs to summary judgment, is highlighted by plaintiffs' November 5, 2015 reply memorandum of law (at p. 7), totally ignored by the decision.

The Decision's Section Entitled "Declaratory Relief"

Having dismissed plaintiffs' five causes of action without revealing their allegations, including that plaintiffs sought declaratory judgments as to each, the decision continues (at pp. 6-7) with a five-sentence paragraph reading:

> "The Court notes that no issues of fact have been raised herein. Rather, the matters are purely questions of law and statutory interpretation. As such, in the context of a motion to dismiss, the Court may render a determination and declare the rights of the parties (Spilka v. Town of Inlet, 8 AD3d 812, 813 [3rd Dept. 2004]). Now that this matter is fully concluded, the Court will issue said declarations below in compliance with CPLR §3001 (*See*, Stonegate Family Holdings, Inc. v. Revolutionary Trails."

This paragraph is multitudinously fraudulent. To the extent that "no issues of fact have been raised", it is because the documentary evidence, both as furnished by plaintiffs and as furnished by AAG Kerwin, substantiates the causes of action of plaintiffs' complaint and supplemental complaint, entitling plaintiffs to summary judgment. That is why the decision conceals ALL the specifics of plaintiffs' allegations, as likewise, ALL specifics of defendants' "documentary evidence" upon which, in whole or in part, it is dismissing plaintiffs' five causes of action.[22]

The decision's assertion that "no issues of fact have been raised" and that "the matters are purely questions of law and statutory interpretation" is its pretext for issuing declaratory judgments "in compliance with CPLR §3001"[23]. In so doing, it does not reveal that plaintiffs have brought a declaratory judgment action, or that they have done so pursuant to State Finance Law Article 7-A. Indeed, the decision goes out of its way to conceal that plaintiff have brought a declaratory judgment actions, as may be seen from its materially abridged paraphrase of *Spilka* to remove its reference to "a declaratory judgment action".

The relevant language from *Spilka* that Justice McDonough materially expurgates is as follows:

> "Where no question of fact is raised but only a question of law or statutory interpretation is presented on a motion to dismiss a declaratory judgment action, the court may render a determination and declare the rights of the parties (*see*

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[22] *Cf.*, *Kurylov v Icahn School of Medicine at Mount Sinai*, 139 A.D.3d 451 (1st Dept. 2016) ("the questions raised about whether plaintiff has any evidence...are not solely ones of law or statutory interpretation.").

[23] CPLR §3001, entitled "Declaratory judgment", states, in pertinent part:

> "The supreme court may render a declaratory judgment having the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy whether or not further relief is or could be claimed. If the court declines to render such a judgment it shall state its grounds."

Washington County Sewer Dist. No. 2 v White, 177 A.D.2d 204, 206, 581 N.Y.S.2d 485 [1992]; see also Hopkinson v Redwing Constr. Co., 301 A.D.2d 837, 837-838, 754 N.Y.S.2d 86 [2003])." (underlining added).

Then, too, the decision omits any paraphrase or quote of the next two sentences from *Spilka* – the first of which is:

> "This Court may convert a motion to dismiss to a motion for summary judgment (*see* CPLR 3211 [c]), and the notice of such conversion is excepted where only questions of law are raised, they have been fully briefed by the parties and such treatment is requested by one party (*see Historic Albany Found. v Breslin, 282 A.D.2d 981, 983-984, 724 N.Y.S.2d 113 [2001], lv dismissed 97 N.Y.2d 636, 760 N.E.2d 1284, 735 N.Y.S.2d 489 [2001]; Four Seasons Hotels v Vinnik, 127 A.D.2d 310, 320, 515 N.Y.S.2d 1 [1987]*)."

Quite possibly, the reason the decision purports that "no issues of fact have been raised" is to confer on defendants a summary judgment dismissal of plaintiffs' supplemental complaint, without revealing that this is what it is doing. Is this the explanation for the erroneous first ordering paragraph (at p. 8) dismissing the supplemental complaint "pursuant to CPLR §3212", which is summary judgment?

As for the further sentence in *Spilka*:

> "If defendant prevails on any point, the proper determination would be a declaration in its favor rather than dismissal of the complaint (*see Bresky v Ace INA Holdings, 287 A.D.2d 912, 913, 731 N.Y.S.2d 791 [2001]*).",

as well as its referred-to citation to the Third Department decision in *Bresky*, which states:

> "since plaintiff sought a declaratory judgment in this action, the proper remedy should have been a declaration in favor of defendant rather than the dismissal of the complaint (*see, Maurizzio v Lumbermens Mut. Cas. Co., 73 NY2d 951, 954*)",

such underscores precisely what plaintiffs had identified in the record before Justice McDonough, prior to his October 9, 2014 decision dismissing their first, second, and third causes of action[24] and, thereafter, by their fifth, sixth, and seventh causes of action (¶¶171-172; 181, 196), *to wit*, that

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[24] See plaintiffs' May 16, 2014 memorandum of law in opposition to AAG Kerwin's April 18, 2014 dismissal motion and in support of plaintiffs' cross-motion for summary judgment and other relief, pp. 7-8.

dismissals are "not appropriate" in declaratory judgment actions, but, rather declarations in defendants' favor.[25]

As for the decision's assertion that it will issue declarations "Now that this matter is fully concluded", such presumably is to explain away what plaintiffs' fifth, sixth, and seventh causes of action had pointed out (¶¶171-172; 181, 196): Justice McDonough's failure to have rendered declarations in his October 9, 2014 decision, which had instead, improperly, dismissed plaintiffs' first, second, and third causes of action. Justice McDonough's cited case, *Stonegate Family Holdings, Inc. v. Revolutionary Trails* – whose caption he gives, but no legal citation, 73 A.D.3d 1257 (3rd Dept. 2001) – is not to the contrary.

The Decision's Section Entitled "Leave to Serve a Second Supplemental Complaint"

Justice McDonough's dismissal of plaintiffs' five causes of action – based on NO evidence and on perfunctory legal grounds shown to be inapplicable by the very causes of action he dismisses – is the predicate for its denying "leave to serve a second supplemental complaint" (at p. 7). The decision states:

> "The Court has considered the parties' respective arguments as to the issue of plaintiffs' request for leave to serve a second supplemental complaint. Plaintiffs' second supplemental complaint asserts eight new causes of action. The Court denies leave to serve a second supplemental complaint as to causes of action 9-12, based on the Court's dismissal of plaintiffs' original eight causes of action. Under these circumstances, the Court finds that causes of action 9-12 are 'patently devoid of merit' (Lucido v. Mancuso, 49 AD3d 220, 229 [2nd Dept. 2008]). As to causes of action 13-16, the Court finds that the allegations therein arise out of materially different facts and legal theories as opposed to the original four causes of action and the additional four causes of action set forth in the supplemental complaint. Accordingly, the Court finds that defendants have adequately established the prejudice that would flow from allowing a second supplemental complaint setting forth entirely new facts, theories and causes of action several years after service of the original complaint (*see generally*, Brunetti v Musallam, 59 AD3d 220, 223 [1st Dept. 2009])." (at p. 7).

This is utterly fraudulent – proven by plaintiffs' "respective arguments" which the decision does not reveal, let alone determine with findings of fact and conclusions of law. These "arguments" are set forth at ¶¶2-8 of plaintiff Sassower's March 23, 2016 affidavit in support of plaintiffs' order to show cause for leave to file the second supplemental complaint – and by plaintiff Sassower's April 22,

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[25] Matthew Bender & Co, "ANALYSIS of CPLR 3001, New York Civil Practice: CPLR P 3001.18 (David Ferstendig); also, *Washington County Sewer Dist. No. 2 et al. v. White, et al.*, 177 A.D.2d 204 (3rd Dept 1992).

2016 reply affidavit and plaintiffs' April 22, 2016 reply memorandum of law, each in further support of their leave to file.

Suffice to say that the merit of plaintiffs' ninth, tenth, eleventh, and twelfth causes of action of their verified second supplemental complaint (¶¶301-384) is obvious from their content, supported by fact, evidence, and law. These four causes of action pertain to fiscal year 2016-2017 and the decision does not contest that they parallel the four causes of action of plaintiffs' verified complaint pertaining to fiscal year 2014-2015 (¶¶ 76-126) and the four causes of action of plaintiffs' verified supplemental complaint pertaining to fiscal year 2015-2016 (¶¶169-236). As the record establishes that plaintiffs were entitled to summary judgment as to each of those eight causes of action, so it establishes that their ninth, tenth, eleventh, and twelfth causes of action are not only meritorious, but entitle them to summary judgment, as well.

As for plaintiffs' thirteenth, fourteenth, fifteenth, and sixteenth causes of action (¶¶385-470), the decision's bald pretense that "the allegations therein arise out of materially different facts and legal theories" is a repetition of AAG Kerwin's fraudulent opposition papers, exposed by pages 11-14 of plaintiffs' April 22, 2016 memorandum of law. And even more completely than AAG Kerwin had, the decision conceals the ENTIRE content of the thirteenth, fourteenth, fifteenth, and sixteenth causes of action, as likewise the relevant content of plaintiffs' second, fourth, sixth, and eighth causes of action (¶¶108, ¶113-126, ¶¶190, ¶¶203-236).

Plaintiffs' thirteenth, fourteenth, and fifteenth causes of action (¶¶385-457) particularize the unconstitutionality, *as written and as applied*, of Chapter 60, Part E of the Laws of 2015, establishing the Commission on Legislative, Judicial and Executive Compensation – and parallel the unconstitutionality, *as written and as applied*, of the materially identical statute, Chapter 567 of the Laws of 2010, establishing the predecessor Commission on Judicial Compensation – encompassed by plaintiffs' second and sixth causes of action (and, indirectly, by their fourth and eighth causes of action), proven by their October 27, 2011 opposition report and by their March 30, 2012 verified complaint in their declaratory judgment action based thereon.

As for plaintiffs' sixteenth cause of action (¶¶458-470), pertaining to the unconstitutionality of three-men-in-a-room budget-dealing, *as unwritten and as applied*, it only elaborates upon, with specifics, what their fourth and eighth causes of action set forth (¶¶113-126, 203-236). The final two paragraph of the eighth cause of action of their supplemental complaint reflect this, stating:

> "235. Of course, identically to last year, the real action is taking place behind closed doors by 'three men in a room' deal-making by defendant CUOMO, defendant SKELOS, and defendant HEASTIE – expanded to a fourth man by defendant KLEIN.
>
> 236. Plaintiffs repeat the last paragraph of their verified complaint, ¶126, altering it only to substitute defendant HEASTIE's name for defendant SILVER:

'...one need only examine the Constitutional, statutory, and Senate and Assembly rule provisions relating to openness – such as Article III, §10 of New York's Constitution '...The doors of each house shall be kept open...' ; Public Officers Law, Article VI 'The legislature therefore declares that government is the public's business...'; Senate Rule XI, §1 'The doors of the Senate shall be kept open'; Assembly Rule II, §1 'A daily stenographic record of the proceedings of the House shall be made and copies thereof shall be available to the public' – to see that government by behind-closed-doors deal-making, such as employed by defendants CUOMO, SKELOS, HEASTIE, SENATE, and ASSEMBLY, is an utter anathema and unconstitutional – and that a citizen-taxpayer action could successfully be brought against the whole of the Executive budget.'"

All of the foregoing is set forth, with greatest particularity, by plaintiffs' April 22, 2016 reply memorandum of law in further support of their March 23, 2016 order to show cause. The decision neither identifies nor addresses ANY of its specification of fact and law – for the obvious reason that it establishes plaintiffs' entitlement for leave to file their verified second supplemental complaint, overwhelmingly and *as a matter of law*.

It is under this final section heading "Leave to Serve a Second Supplemental Complaint" (at pp. 7-8) that the decision stashes its single paragraph pertaining to recusal, notwithstanding the issue of Justice McDonough's disqualification was raised by plaintiffs not only with respect to their March 23, 2016 second supplemental complaint, but with respect to their September 22, 2015 cross-motion for summary judgment and other relief, by their November 5, 2015 reply memorandum of law (at p. 4).

The decision then leaves a gap of a few lines before adding:

"Plaintiffs' remaining arguments and requests for relief have been considered and found to be lacking in merit. In light of the Court's dismissal of the supplemental complaint and denial for leave to serve a second supplemental complaint, the Court also concludes that injunctive relief is unwarranted here." (at p. 8).

Here, too, Justice McDonough furnishes no specificity to support his bald assertions. He does not identify what "Plaintiffs' remaining arguments and requests for relief" might be or why they have been "found to be lacking in merit". Nothing in the record supports this – and, certainly, if Justice McDonough actually "considered" such "remaining arguments and requests for relief" – as was his duty – he could have readily specified what he was talking about.

As for "injunctive relief [being] unwarranted here", this, too, is not only false, but fraudulent. Injunctive relief was compelled, *as a matter of law*, because the record establishes that plaintiffs were entitled to summary judgment on their causes of action – and plaintiffs' April 22, 2016 reply memorandum of law, which, pursuant to Justice McDonough's footnote 5, his decision does not list among its "Papers Considered", lays out the state of the record concisely.

The decision's Concluding Clause "Based upon the foregoing, it is hereby..."

Beneath the clause "Based upon the foregoing, it is hereby" (at p. 8), the decision sets forth six ordering paragraphs and six declaratory paragraphs.

1. The Six Ordering Paragraphs (at pp. 8-9)

As hereinabove set forth (at pp. 4-6, *supra*), the amended decision and order corrects two of the six ordering paragraphs of Justice McDonough's initial July 15, 2016 decision, but leaves intact an additional error – this, in the first ordering paragraph – so as to fraudulently dismiss plaintiffs' verified supplemental complaint, not only pursuant to CPLR §3211, but §3212.

There is no ordering paragraph pertaining to the fourth cause of action of plaintiffs' verified complaint – and none granting defendants summary judgment pursuant to CPLR §3212, the provision under which AAG Kerwin moved with respect to it.

For that matter, there is no ordering paragraph granting defendants' motion to dismiss plaintiffs' verified supplemental complaint pursuant to CPLR §§3211(a)(1), (a)(2), and (a)(7).

2. The Six Declaratory Paragraphs (at p. 9)

The decision's six declaratory paragraphs are, *on their face*, overbroad and deficient – and, when compared to the record, fraudulent. In boiler-plate fashion, each identically states, without the slightest specificity, that the Legislative and Judiciary budgets for fiscal years 2014-2015 and 2015-2016, as likewise the Legislative/Judiciary budget bills for those years, are:

> "not: (1) a wrongful expenditure; (2) a misappropriation; (3) illegal; or (4) unconstitutional".

At minimum, these declarations were required to identify the cherry-picked grounds upon which the instant decision and the October 9, 2014 decision dismissed the causes of action on which the declarations rest. Indeed, the declarations are so generic that Justice McDonough is able to avail himself of six to dispose of the eight causes of action of plaintiffs' complaint and supplemental complaint: combining the substantively different third and fourth causes of action of the complaint into a single declaration, as likewise the substantively different eleventh and twelfth causes of action of the supplemental complaint into a single declaration.

CPLR §3017(b), entitled "Declaratory judgment", states:

> "In an action for a declaratory judgment, the demand for relief in the complaint shall specify the rights and other legal relations on which a declaration is requested..." (underlining added).

The obvious reason for this requirement is so that a court's declaration can be responsive thereto.

Plaintiffs complied with their obligation pursuant to CPLR §3017(b). Their verified complaint (pp. 44-45) and their supplemental complaint (pp 39-40), by their "PRAYER FOR RELIEF/WHEREFORE" clauses, specify the respects in which the Legislative budget, the Judiciary budget, and the combined Legislative/Judiciary budget bills were each "a wrongful expenditure, misappropriation, illegal, and unconstitutional."

Thus, for example, the requested declarations for the sixth cause of action:

> "that the Judiciary's proposed budget for fiscal year 2015-2016, embodied in Budget Bill #S.2001/A.3001, is a wrongful expenditure, misappropriation, illegal and unconstitutional because the Judiciary budget is so incomprehensible that the Governor, Budget Director, and Legislature cannot agree on its cumulative cost and percentage increase; that its reappropriations are not certified, including as to their suitability for that purpose, and violate Article VII, §7 and Article III, §16 of the New York State Constitution and State Finance Law §25, and that both by its reappropriations and appropriations it creates a 'slush fund', concealing relevant costs, including of the three-phase judicial salary increase, now fully implemented despite its statutory violations, fraudulence, and unconstitutionality, demonstrated by plaintiffs' October 27, 2011 Opposition Report to the Commission on Judicial Compensation's August 29, 2011 Report recommending the three-phase judicial salary increase" (verified supplemental complaint, "WHEREFORE", pp. 39-40).

This provided Justice McDonough with the declaration that he could have readily adapted to state the negative. However, doing so would have exposed that his simplistic dismissal of the sixth cause of action – and identically simplistic dismissal of the second cause of action – concealed essentially ALL of plaintiffs' particularized grounds of misappropriation, unlawfulness, and unconstitutionality, rested on NO EVIDENCE, and flew in the face of a record establishing plaintiffs' entitlement, *as a matter of law*, to all their requested declarations.

Here, as with every other aspect of the decision, the best proof of Justice McDonough's fraud are plaintiffs' memoranda of law – omitted by the decision's recitation of "Papers Considered" (at pp. 10-11).

EXHIBIT H

STATE OF NEW YORK

S. 6403--D A. 9003--D

SENATE - ASSEMBLY

January 13, 2016

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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- 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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT making appropriations for the support of government; and to amend a chapter of the laws of 2016 enacting the state operations budget and to amend a chapter of the laws of 2016 enacting the capital projects budget, in relation to the support of government

AID TO LOCALITIES BUDGET

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. a) The several amounts specified in this chapter for aid to localities, or so much thereof as shall be sufficient to accomplish the purposes designated by the appropriations, are hereby appropriated and authorized to be paid as hereinafter provided, to the respective public officers and for the several purposes specified.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD12653-10-6

b) Where applicable, appropriations made by this chapter for expenditures from federal grants for aid to localities may be allocated for spending from federal grants for any grant period beginning, during, or prior to, the state fiscal year beginning on April 1, 2016 except as otherwise noted.

c) The several amounts named herein, or so much thereof as shall be sufficient to accomplish the purpose designated, being the undisbursed and/or unexpended balances of the prior year's appropriations, are hereby reappropriated from the same funds and made available for the same purposes as the prior year's appropriations, unless herein amended, for the fiscal year beginning April 1, 2016. Certain reappropriations in this chapter are shown using abbreviated text, with three leader dots (an ellipsis) followed by three spaces (...) used to indicate where existing law that is being continued is not shown. However, unless a change is clearly indicated by the use of brackets [ ] for deletions and underscores for additions, the purposes, amounts, funding source and all other aspects pertinent to each item of appropriation shall be as last appropriated.

For the purpose of complying with the state finance law, the year, chapter and section of the last act reappropriating a former original appropriation or any part thereof is, unless otherwise indicated, chapter 53, section 1, of the laws of 2015 and, for the education department, chapter 61, section 1, of the laws of of 2015.

d) No moneys appropriated by this chapter shall be available for payment until a certificate of approval has been issued by the director of the budget, who shall file such certificate with the department of audit and control, the chairperson of the senate finance committee and the chairperson of the assembly ways and means committee.

e) The appropriations contained in this chapter shall be available for the fiscal year beginning on April 1, 2016 except as otherwise noted.

DIVISION OF CRIMINAL JUSTICE SERVICES

AID TO LOCALITIES 2016-17

For payment according to the following schedule:

	APPROPRIATIONS	REAPPROPRIATIONS
General Fund	157,632,000	161,044,163
Special Revenue Funds - Federal	29,900,000	86,585,820
Special Revenue Funds - Other	18,243,000	51,754,468
All Funds	205,775,000	299,384,451

SCHEDULE

CRIME PREVENTION AND REDUCTION STRATEGIES PROGRAM 205,775,000

General Fund
Local Assistance Account - 10000

For prosecutorial services of counties, to be distributed in the same manner as the prior year or through a competitive process (20241) 10,680,000

For payment to the New York state district attorneys association and the New York state prosecutors training institute for services and expenses related to the prosecution of crimes and the provision of continuing legal education, training, and support for medicaid fraud prosecution (20242) 2,304,000

For services and expenses associated with a witness protection program pursuant to a plan developed by the commissioner of the division of criminal justice services (20243) 304,000

For grants to counties for district attorney salaries. Notwithstanding the provisions of subdivisions 10 and 11 of section 700 of the county law or any other law to the contrary, for state fiscal year 2014-15 the state reimbursement to counties for district attorney salaries shall be equal to the amount received by a county for such purpose in 2013-14 and 100 percent of the difference between the minimum salary for a full-time district attorney established pursuant to section 183-a of the judiciary law prior to April 1, 2014, the minimum salary on or after April 1, 2014. For those counties whose salaries are not covered by section 183-a of the judiciary

law, the state reimbursement for these counties will be pursuant to a plan prepared by the commissioner of criminal justice services and approved by the director of the budget (20244) ..... 4,212,000 *

Payment of state aid for expenses of the special narcotics prosecutor (20245) 825,000

For payment of state aid for expenses of crime laboratories for accreditation, training, capacity enhancement and lab related services to maintain the quality and reliability of forensic services to criminal justice agencies, distributed through a competitive process, which includes an evaluation of the effectiveness of such process. Some of these funds herein appropriated may be transferred to state operations and may be suballocated to other state agencies (20205) 6,635,000

For payment of state aid for Westchester county policing program (20206) 1,984,000

For additional services and expenses for Westchester county policing program 316,000

For reimbursement of the services and expenses of municipal corporations, public authorities, the division of state police, authorized police departments of state public authorities or regional state park commissions for the purchase of ballistic soft body armor vests, such sum shall be payable on the audit and warrant of the state comptroller on vouchers certified by the commissioner of the division of criminal justice services and the chief administrative officer of the municipal corporation, public authority, or state entity making requisition and purchase of such vests. A portion of these funds may be transferred to state operations and may be suballocated to other state agencies (20207) 1,350,000

For services and expenses of programs aimed at reducing the risk of re-offending, to be distributed through a competitive process, which will include an evaluation of the effectiveness of such programs (20249) ... 4,063,000

For services and expenses of project GIVE as allocated pursuant to a plan prepared by the commissioner of criminal justice services and approved by the director of the budget which will include an evaluation of the effectiveness of such

DIVISION OF CRIMINAL JUSTICE SERVICES

AID TO LOCALITIES - REAPPROPRIATIONS 2016-17

For services and expenses of School Resource Officers and Anti-Crime Initiatives ... 1,920,000 ..... (re. $1,488,000)
For services and expenses or continued operation of Operation S.N.U.G - Bronx, Jacobi Medical Center Auxillary, Incorporated ..... 315,000 ..... (re. $248,000)
Northeast Bronx Crime Prevention Project ... 65,000 .... (re. $25,000)
Northeast Bronx Crime Prevention - Peep Hole Project ..... 15,000 ..... (re. $4,000)
District Attorney Office - Bronx County ... 100,000 ... (re. $100,000)
District Attorney Office - Queens County ... 250,000 ... (re. $13,000)
District Attorney Office - Rockland County ..... 100,000 ..... (re. $26,000)
For services and expenses of specialized training for the New York City correction officers ... 250,000 ..... (re. $250,000)
For the purchase of equipment and safety needs of the Bureau of Criminal Investigation within the Division of State Police. Funds may be transferred to state operations and may be suballocated to the division of state police ... 435,000 ..... (re. $4,000)

The appropriation made by chapter 53, section 1, of the laws of 2014, is hereby amended and reappropriated to read:
For services and expenses or continued operation of Operation S.N.U.G - Brooklyn, Man Up, Incorporated .....
[350,000] 100,000 ..... (re. $100,000)
Urban Neighborhood Services Incorporated ... 35,000 .... (re. $35,000)
Jewish Community Council of Greater Coney Island Incorporated ..... 215,000 ..... (re. $215,000)

By chapter 53, section 1, of the laws of 2013:
For prosecutorial services of counties, to be distributed in the same manner as the prior year or through a competitive process ..... 10,680,000 ..... (re. $118,000)
For payment to the New York state district attorneys association and the New York state prosecutors training institute for services and expenses related to the prosecution of crimes and the provision of continuing legal education, training, and support for medicaid fraud prosecution ... 2,304,000 ..... (re. $950,000)
For services and expenses associated with a witness protection program pursuant to a plan developed by the commissioner of the division of criminal justice services ... 304,000 ..... (re. $9,000)
For grants to counties for district attorney salaries. Notwithstanding the provisions of subdivisions 10 and 11 of section 700 of the county law or any other law to the contrary, for state fiscal year 2012-13 the state reimbursement to counties for district attorney salaries shall be equal to the amount received by a county for such purpose in 2011-12 and 100 percent of the difference between the minimum salary for a full-time district attorney established pursuant to section 183-a of the judiciary law prior to April 1, 2012, and the minimum salary on or after April 1, 2013 ..... 3,862,000 ..... (re. $56,000)
For payment of state aid for expenses of crime laboratories for accreditation, training, capacity enhancement and lab related

DIVISION OF CRIMINAL JUSTICE SERVICES

AID TO LOCALITIES - REAPPROPRIATIONS 2016-17

counties: Bronx, Queens, Rockland, and Onondaga ..... 1,000,000 ..... (re. $428,000)

For services and expenses of the establishment, or continued operation, of regional Operation S.N.U.G. programs, pursuant to a plan submitted by the division of criminal justice services and approved by the director of the budget ... 2,000,000 ..... (re. $355,000)

For services and expenses of law enforcement initiatives including but not limited to, enhanced prosecution, enhanced defense, local law enforcement programs, youth violence and/or crime reduction programs, crime laboratories, re-entry services, and judicial diversion and alternative to incarceration programs, pursuant to a plan submitted by the division of criminal justice services and approved by the director of the budget ... 1,000,000 ..... (re. $325,000)

For services and expenses of programs that prevent domestic violence or aid the victims of domestic violence. Notwithstanding any provision of law this appropriation shall be allocated only pursuant to a plan setting forth an itemized list of grantees with the amount to be received by each, or the methodology for allocating such appropriation. Such plan shall be subject to the approval of the temporary president of the senate and the director of the budget and thereafter shall be included in a resolution calling for the expenditure of such monies, which resolution must be approved by a majority vote of all members elected to the senate upon a roll call vote ... 609,000 ..... (re. $40,000)

For services and expenses of law enforcement, anti-drug, antiviolence, crime control and prevention programs. Notwithstanding any provision of law this appropriation shall be allocated only pursuant to a plan setting forth an itemized list of grantees with the amount to be received by each, or the methodology for allocating such appropriation. Such plan shall be subject to the approval of the temporary president of the senate and the director of the budget and thereafter shall be included in the resolution calling for the expenditure of such monies, which resolution must be approved by a majority vote of all members elected to the senate upon a roll call vote ..... 1,891,000 ..... (re. $281,000)

By chapter 53, section 1, of the laws of 2013, as amended by chapter 53, section 1, of the laws of 2014:

Chinese-American Planning Council Youth Training Program ..... 165,387 ..... (re. $2,000)

Ohel Children's Home & Family Services Drug Prevention Program ..... 76,000 ..... (re. $49,000)

Education Alliance ... 80,000 ..... (re. $7,000)

Asian Americans for Equality ... 80,000 ..... (re. $1,000)

Finger Lakes Law Enforcement ... 500,000 ..... (re. $142,000)

For the purchase of safety equipment for New York City correction officers ... 250,000 ..... (re. $250,000)

For the purchase of safety equipment for the New York State Correctional Officer and Police Benevolent Association, Incorporated (NYSCOPBA) ... 250,000 ..... (re. $250,000)

By chapter 53, section 1, of the laws of 2012:

DIVISION OF CRIMINAL JUSTICE SERVICES

AID TO LOCALITIES - REAPPROPRIATIONS 2016-17

For services and expenses associated with a witness protection program pursuant to a plan developed by the commissioner of the division of criminal justice services ... 304,000 ..... (re. $230,000)

For additional grants to counties for district attorney salaries. Notwithstanding the provisions of subdivisions 10 and 11 of section 700 of the county law or any other law to the contrary, for state fiscal year 2012-13 the state reimbursement to counties for district attorney salaries shall be equal to the amount received by a county for such purpose in 2011-12 and one hundred percent of the difference between the minimum salary for a full-time district attorney established pursuant to section 183-a of the judiciary law prior to April 1, 2012, and the minimum salary on or after April 1, 2012 .... 700,000 ..... (re. $56,000)

For services and expenses of programs aimed at reducing the risk of re-offending, to be distributed through a competitive process, which will include an evaluation of the effectiveness of such programs ... 3,063,000 ..... (re. $62,000)

For services and expenses of operation IMPACT including anti-gun trafficking initiative as allocated and distributed by competitive process which includes an evaluation of the effectiveness of such process ... 15,219,000 ..... (re. $907,000)

For payments to not-for-profit and government operated programs providing alternatives to incarceration, to be distributed pursuant to existing contracts or through a competitive process which includes an evaluation of the effectiveness of such process ... 3,973,000 ..... (re. $225,000)

For services and expenses of family court domestic violence services. Notwithstanding any provision of law this appropriation shall be allocated only pursuant to a plan setting forth an itemized list of grantees with the amount to be received by each, or the methodology for allocating such appropriation. Such plan shall be subject to the approval of the temporary president of the senate and the director of the budget and thereafter shall be included in a resolution calling for the expenditure of such monies, which resolution must be approved by a majority vote of all members elected to the senate upon a roll call vote ... 600,000 ..... (re. $78,000)

For services and expenses of local law enforcement and judges for domestic violence training. Notwithstanding any provision of law this appropriation shall be allocated only pursuant to a plan setting forth an itemized list of grantees with the amount to be received by each, or the methodology for allocating such appropriation. Such plan shall be subject to the approval of the temporary president of the senate and the director of the budget and thereafter shall be included in a resolution calling for the expenditure of such monies, which resolution must be approved by a majority vote of all members elected to the senate upon a roll call vote ..... 500,000 ..... (re. $70,000)

For services and expenses of law enforcement, anti-drug, anti-violence, crime control and prevention programs. Notwithstanding any provision of law this appropriation shall be allocated only pursuant to a plan setting forth an itemized list of grantees with the amount to be received by each, or the methodology for allocating such

DIVISION OF CRIMINAL JUSTICE SERVICES

AID TO LOCALITIES - REAPPROPRIATIONS 2016-17

For payment as assistance to localities to provide supervision and treatment for at-risk youth or offenders by public or not-for-profit agencies to be distributed pursuant to existing contracts or through a competitive process which includes an evaluation of the effectiveness of such process ... 988,000 ..... (re. $200,000)

For payment as assistance to localities to provide supervision and treatment of offenders by public or not-for-profit agencies. Eligible services shall include but not be limited to substance abuse assessments, treatment program placement, monitoring client compliance with treatment programs, outpatient and residential treatment, TASC program services, drug treatment, and alternatives to prison programs. Funds shall be awarded on a competitive basis and shall be available for up to 100 percent of program costs incurred. In no event shall any part of these funds be used to replace expenditures previously incurred for such services .....
566,000 ..... (re. $490,000)

For services and expenses of programs that provide alternatives to incarceration for eligible individuals and families whose income do not exceed 200 percent of the federal poverty level .....
3,164,000 ..... (re. $750,000)

By chapter 50, section 1, of the laws of 2008, as amended by chapter 53, section 3, of the laws of 2008:

For grants to counties for district attorney salaries pursuant to subdivisions 10 and 11 of section 700 of the county law.

Notwithstanding the provisions of any other law to the contrary, for state fiscal year 2008-2009 the liability of the state and the amount to be distributed or otherwise expended by the state pursuant to subdivisions 10 and 11 of section 700 of the county law shall be determined by first calculating the amount of the expenditure or other liability pursuant to such law, and then reducing the amount so calculated by two percent of such amount .....
2,869,000 ..... (re. $113,000)

By chapter 50, section 1, of the laws of 2008, as amended by chapter 496, section 1, of the laws of 2008:

For payment to the New York state district attorneys association and the New York state prosecutors training institute for services and expenses related to the prosecution of crimes and the provision of continuing legal education, training, and support for medicaid fraud prosecution, provided, however, that the amount of this appropriation available for expenditure and disbursement on and after September 1, 2008 shall be reduced by six percent of the amount that was undisbursed as of August 15, 2008 .....
3,146,000 ..... (re. $650,000)

For services and expenses associated with a witness protection program pursuant to a plan developed by the commissioner of the division of criminal justice services ... 390,000 ..... (re. $15,000)

For payment of state aid for expenses of crime laboratories for accreditation, training, capacity enhancement and lab related services to maintain the quality and reliability of forensic services to criminal justice agencies, distributed through a compet-

resolution calling for the expenditure of such monies, which resolution must be approved by a majority vote of all members elected to the senate upon a roll call vote ... 650,000 ..... (re. $34,000)

By chapter 53, section 1, of the laws of 2011:
For services, expenses or reimbursement of expenses incurred by local government agencies and/or not-for-profit providers or their employees providing civil or criminal legal services in accordance with the following schedule:
Greenhope Services for Women ... 36,556 ..... (re. $3,000)

By chapter 53, section 1, of the laws of 2011, as amended by chapter 53, section 1, of the laws of 2012:
For services and expenses of civil or criminal domestic violence legal services in accordance with the following schedule:
For our Children and Us (FOCUS) ... 5,000 ..... (re. $5,000)
SOS Shelter ... 20,000 ..... (re. $6,000)

By chapter 50, section 1, of the laws of 2010, as amended by chapter 53, section 1, of the laws of 2012:
For services and expenses of:
For services, expenses or reimbursement of expenses incurred by local government agencies and/or not-for-profit providers or their employees providing civil or criminal legal services in accordance with the following schedule:
New York Legal Assistance Group - Brooklyn Conflicts Office .....
122,850 ..... (re. $122,850)
Legal Services of the Hudson Valley ... 49,500 ..... (re. $2,000)
CASA of Westchester Mental Health ... 1,658 ..... (re. $1,600)
Chautauqua County Legal services ... 7,212 ..... (re. $7,200)
Medicare Rights Center ... 3,103 ..... (re. $3,000)
Research Foundation CUNY-Brookdale ... 3,317 ..... (re. $3,300)

By chapter 50, section 1, of the laws of 2009, as amended by chapter 50, section 1, of the laws of 2010:
Notwithstanding any law to the contrary, for payment of grants for the provision of civil legal services. These funds shall not be available until a plan for their administration has been approved by the director of the budget, which plan provides for the distribution of these funds through existing contracts or through a competitive process. Amounts appropriated herein may be transferred in full to any other state department or agency ... 432,000 ..... (re. $59,000)

By chapter 50, section 1, of the laws of 2008:
For recruitment and retention of district attorneys in counties located outside a city of a population of 1,000,000 or more persons to be distributed in accordance with a formula based upon the population of each county receiving a grant of a portion of such funds, provided that no county shall receive an award of less than $4,000 ... 1,500,000 ..... (re. $550,000)

DIVISION OF CRIMINAL JUSTICE SERVICES

AID TO LOCALITIES - REAPPROPRIATIONS 2016-17

By chapter 50, section 1, of the laws of 2007, as amended by chapter 50, section 1, of the laws of 2008:
For prosecutorial services of counties, pursuant to chapter 56 of the laws of 2007 ... 2,500,000 ..... (re. $50,000)
For services and expenses related to the district attorney loan forgiveness program and the recruitment and retention of district attorneys, pursuant to the following sub-schedule:

sub-schedule

For recruitment and retention of district attorneys in counties located outside a city of a population of 1,000,000 or more persons to be distributed in accordance with a formula based upon the population of each county receiving a grant of a portion of such funds, provided that no county shall receive an award of less than $4,000 ... 1,500,000 ..... (re. $55,000)

By chapter 50, section 1, of the laws of 2006, as amended by chapter 50, section 1, of the laws of 2007:
For services, expenses or reimbursement of expenses incurred by local government agencies and/or not-for-profit providers or their employees providing civil or criminal legal services; provided, however, no funds shall be allocated from this amount until a memorandum of understanding is agreed to by the governor and the majority leader of the senate ... 3,000,000 ..... (re. $3,000,000)
For services, expenses or reimbursement of expenses incurred by local government agencies and/or not-for-profit providers or their employees providing civil or criminal legal services according to the following:
Caribbean Women's Health Association (CWHA) ... 25,000 .. (re. $5,000)

By chapter 50, section 1, of the laws of 2004:
Maintenance Undistributed
For services, expenses or reimbursement of expenses incurred by local government agencies and/or not-for-profit providers or their employees providing civil or criminal legal services .....
6,000,000 ..... (re. $5,653,000)

Special Revenue Funds - Other
State Police Motor Vehicle Law Enforcement and Motor Vehicle Theft and Insurance Fraud Prevention Fund
Motor Vehicle Theft and Insurance Fraud Account - 22801

By chapter 53, section 1, of the laws of 2015:
For services and expenses associated with local anti-auto theft programs, in accordance with section 89-d of the state finance law, distributed through a competitive process (20235) .....
3,749,000 ..... (re. $3,749,000)

By chapter 53, section 1, of the laws of 2014:
For services and expenses associated with local anti-auto theft programs, in accordance with section 89-d of the state finance law,

EXHIBIT I

CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101
White Plains, New York 10602

Tel. (914)421-1200

E-Mail: mail@judgewatch.org
Website: www.judgewatch.org

July 13, 2016

TO: Jane Hall, FOIL/Records Access Officer/New York State Comptroller DiNapoli

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

RE: FOIL: State Aid to the Counties for District Attorney Salaries for Calendar Years 2010-2016

County Law §700.11(c), pertaining to district attorney salaries, states:

> "(c) Commencing with the nineteen hundred eighty-seven calendar year, the comptroller shall annually determine the amount of state aid payable to each county pursuant to paragraphs (a) and (b) hereof for each calendar year and shall pay such amount on his audit and warrant to the chief fiscal officer of each such county during the month of September in each such year. Where a county first becomes entitled to state aid pursuant to paragraphs (a) and (b) hereof on a day other than January first, nineteen hundred ninety-nine or January first of any other year thereafter, the amount of state aid payable to such county in the year it first becomes entitled to such state aid shall be prorated accordingly."

Pursuant to the Freedom of Information Law (F.O.I.L.) [Public Officers Law, Article VI], request is made for records identifying:

(1) any plain language translation of subparagraph (a) of County Law §700.11, including a list of those counties that fall within its last sentence;

(2) Such annual determinations as Comptroller DiNapoli made, pursuant to County Law §700.11(c) for calendar years 2010 through 2015, of the state aid payable for district attorney salaries to each of New York State's 62 counties – and which he paid to their chief fiscal officers in September of those years;

(3) Such determination as Comptroller DiNapoli made, pursuant to County Law §700.11(c), for calendar year 2016 of the state aid payable for district attorney salaries to each of New York's 62 counties – and which he expects to pay this September to their chief fiscal officers;

(4) any other payments that Comptroller DiNapoli made to each of the 62 counties for district attorney salaries in calendar years 2010 through 2015 – and the statutory basis for his doing so;

(5) any other payments that Comptroller DiNapoli made or expects to make to each of the 62 counties for district attorney salaries in calendar year 2016 – and the statutory basis for his doing so.

Pursuant to Public Officers Law §89.3, your response/acknowledgment is required "within five business days" of your receipt of this request. Kindly e-mail it to me at elena@judgewatch.org.

Thank you.

THOMAS P. DiNAPOLI
STATE COMPTROLLER

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER
110 STATE STREET
ALBANY, NEW YORK 12236

PRESS OFFICE
Tel: (518) 474-4015
Fax: (518) 473-8940

July 20, 2016

Ms. Elena Sassower
Center for Judicial Accountability, Inc.
PO Box 8101
White Plains, NY 10602
elena@judgewatch.org

Re: FOIL Request #2016-335

Dear Ms. Sassower:

I have received your Freedom of Information Law (FOIL) request dated 7/13/2016 and received in this office on 7/13/2016 via email.

I have asked the appropriate personnel within this agency to gather the requested information to the extent that it is kept or held by this agency.

We will process your request as soon as possible. After the records you described are retrieved, we will be better able to determine if additional time is needed to review the records to establish whether they are available pursuant to FOIL and, if they are, to reproduce the records.

I will contact you within twenty business days to advise you regarding our determination or, if additional time is needed, to provide a date when you can expect our determination. If such records are available under FOIL, we will notify you when you may expect to receive the records.

Sincerely,

Jane Hall
Records Access Officer

JH/jp

THOMAS P. DiNAPOLI
STATE COMPTROLLER

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER
110 STATE STREET
ALBANY, NEW YORK 12236

PRESS OFFICE
Tel (518) 474-4015
Fax (518) 473-8940

July 22, 2016

Ms. Elena Sassower
Center for Judicial Accountability, Inc.
PO Box 8101
White Plains, NY 10602
elena@judgewatch.org

Re: FOIL Request #2016-335

Dear Ms. Sassower:

This is in reply to your email dated 7/13/2016, receipt of which has previously been acknowledged, wherein, pursuant to the Freedom of Information Law (Public Officers Law, Article 6), you requested information on County Law 700.

Personnel have informed me that after a diligent search, they have been unable to locate any records that satisfy your request.

Sincerely,

Jane Hall
Records Access Officer

JH/jp

EXHIBIT

J

CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101
White Plains, New York 10602

Tel. (914)421-1200

E-Mail: mail@judgewatch.org
Website: www.judgewatch.org

July 11, 2016

TO: Valerie Friedlander, Records Access Officer/Division of Criminal Justice Services
Alan Lebowitz, Records Access Officer/Division of the Budget

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

RE: FOIL REQUEST: The "plan" to reimburse counties not covered by Judiciary Law §183-a for district attorney salaries: fiscal years 2016-17, 2015-16, and 2014-15

Governor Cuomo's Aid to Localities Budget Bill for fiscal year 2016-2017, both original (#S.6403/A.9003, at p. 45) and enacted (#S.6403-D/A.9003-D, at p. 74), contains an entry which begins with the words: "For grants to counties for district attorney salaries". It ends, as follows:

> "...For those counties whose salaries are not covered by section 183-a of the judiciary law, the state reimbursement for these counties will be pursuant to a plan prepared by the commissioner of criminal justice services and approved by the director of the budget (20244)" (underlining added).

Except for the parenthesized number "(20244)", the identical entry appears in Governor Cuomo's Aid to Localities Budget Bill for fiscal year 2015-2016, both original (S.2003/A.3003, at p. 46-47) and enacted (S.2003-C/A.3003-C, pp. 61-62), and in his Aid to Localities Budget Bill for fiscal year 2014-2015, both original (S.6353/A.8553, at p. 37) and enacted (S.6353-E/A.8553-E, at p. 60-61).

Pursuant to FOIL, request is made for the referred-to "plan prepared by the commissioner of criminal justice services and approved by the director of the budget" for fiscal years 2016-17, 2015-16, and 2014-15, as well as records identifying the plans' dollar reimbursement for district attorney salaries to each county in each of those three fiscal years.

Pursuant to Public Officers Law §89.3, your response/acknowledgment is required "within five business days" of your receipt of this request. I would appreciate if you e-mailed it to me at elena@judgewatch.org.

Thank you.

Center for Judicial Accountability, Inc. (CJA)

From: dcjs.sm.legal.foil <dcjslegalfoil@dcjs.ny.gov>
Sent: Friday, July 15, 2016 10:20 AM
To: Center for Judicial Accountability, Inc. (CJA)
Subject: FOIL Request -- plan to reimburse counties not covered by Judiciary Law 183-a for D.A. salaries: fiscal years 2016-17, 2015-16, and 2014-15
Attachments: 7-11-16-ltr-to-cjs-dob.pdf

Dear Ms. Sassower:

This will acknowledge receipt of your Freedom of Information Law request for the "plan prepared by the Commissioner of Criminal Justice Services and approved by the director of the budget" for fiscal years 2016-17,2015-16, and 2014-15, as well as records identifying the plans' dollar reimbursement for district attorney salaries to each county in each of those three fiscal years.

Please be advised that your request is under active review and you may expect a formal response to your inquiry within twenty business days.

Very truly yours,

Valerie Friedlander
Records Access Officer

From: Center for Judicial Accountability, Inc. (CJA) [mailto:elena@judgewatch.org]
Sent: Monday, July 11, 2016 4:31 PM
To: dcjs.sm.legal.foil <dcjslegalfoil@dcjs.ny.gov>; dob.sm.foil <foil@budget.ny.gov>
Subject: FOIL Request -- plan to reimburse counties not covered by Judiciary Law 183-a for D.A. salaries: fiscal years 2016-17, 2015-16, and 2014-15

Attached is the Center for Judicial Accountability's FOIL request of today's date.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
914-421-1200
www.judgewatch.org

Center for Judicial Accountability, Inc. (CJA)

From: dcjs.sm.legal.foil <dcjslegalfoil@dcjs.ny.gov>
Sent: Friday, August 12, 2016 4:05 PM
To: Center for Judicial Accountability, Inc. (CJA)
Subject: FOIL Request -- plan to reimburse counties not covered by Judiciary Law 183-a for D.A. salaries: fiscal years 2016-17, 2015-16, and 2014-15
Attachments: 7-11-16-ltr-to-cjs-dob.pdf

Dear Ms. Sassower:

This is in response to your attached Freedom of Information Law request for the "plan prepared by the Commissioner of Criminal Justice Services and approved by the director of the budget" for fiscal years 2016-17, 2015-16, and 2014-15, as well as records identifying the plans' dollar reimbursement for district attorney salaries to each county in each of those three fiscal years.

Please be advised that your request is in process and we anticipate that a response will be provided to you by October 26, 2016. This additional time to respond is required due to the extensive volume of FOIL requests the Division is responding to and the time required to compile and review the responsive records.

Very truly yours,

Valerie Friedlander
Records Access Officer

From: dcjs.sm.legal.foil
Sent: Friday, July 15, 2016 10:20 AM
To: 'Center for Judicial Accountability, Inc. (CJA)' <elena@judgewatch.org>
Subject: FOIL Request -- plan to reimburse counties not covered by Judiciary Law 183-a for D.A. salaries: fiscal years 2016-17, 2015-16, and 2014-15

Dear Ms. Sassower:

This will acknowledge receipt of your Freedom of Information Law request for the "plan prepared by the Commissioner of Criminal Justice Services and approved by the director of the budget" for fiscal years 2016-17,2015-16, and 2014-15, as well as records identifying the plans' dollar reimbursement for district attorney salaries to each county in each of those three fiscal years.

Please be advised that your request is under active review and you may expect a formal response to your inquiry within twenty business days.

Very truly yours,

Valerie Friedlander
Records Access Officer

From: Center for Judicial Accountability, Inc. (CJA) [mailto:elena@judgewatch.org]
Sent: Monday, July 11, 2016 4:31 PM
To: dcjs.sm.legal.foil <dcjslegalfoil@dcjs.ny.gov>; dob.sm.foil <foil@budget.ny.gov>
Subject: FOIL Request -- plan to reimburse counties not covered by Judiciary Law 183-a for D.A. salaries: fiscal years 2016-17, 2015-16, and 2014-15

NEW YORK STATE OF OPPORTUNITY. | **Division of the Budget**

ANDREW M. CUOMO
Governor

ROBERT F. MUJICA, JR.
Director of the Budget

Via Electronic Mail

July 25, 2016

Elena Sassower
Center for Judicial Accountability, Inc.
elena@judgewatch.org

Dear Ms. Sassower:

This is to acknowledge receipt by the Division of the Budget (the "Division") of your Freedom of Information Law ("FOIL") request dated July 11, 2016, in which you seek the following: "the referred-to "plan prepared by the commissioner of criminal justice services and approved by the director of the budget" for fiscal years 2016-17, 2015-16, and 2014-2015, as well as records identifying the plans' dollar reimbursement for district attorney salaries to each county in each of those three fiscal years."

Division staff has been asked to review applicable files and provide pertinent records in the possession of the Division, if any, that are responsive to your request. Any such pertinent records will be reviewed to determine what records and/or information should be disclosed under FOIL. We estimate that the Division will respond to your request by October 25, 2016. We need extended time to complete a response to your request because of (i) the limited resources available at the Division, and (ii) the time needed to collect and review the materials, if any, that are responsive to your request.

The Division will notify you in writing when/if any responsive materials are available for release or if the time needed to complete the processing of your request extends beyond the above date.

Sincerely,

Alan P. Lebowitz /ja

Alan P. Lebowitz
FOIL Officer

EXHIBIT K

CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101
White Plains, New York 10602

Tel. (914)421-1200

E-Mail: mail@judgewatch.org
Website: www.judgewatch.org

September 1, 2016

TO: Division of the Budget Director Robert Mujica
ATT: Records Access Officer Alan Lebowitz
Comptroller Thomas DiNapoli
ATT: Records Access Officer Jane Hall
Senate Finance Committee Chair Catharine Young
ATT: Secretary of the Senate Francis Patience
Assembly Ways and Means Chair Herman Farrell
ATT: Records Access Officer Robin Marilla
Criminal Justice Services' Executive Deputy Commissioner Michael Green
ATT: Records Access Officer Valarie Friedlander

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

RE: FOIL/RECORDS REQUEST: Director of the Budget's certificate of approval of the Division of Criminal Justice Services' budget for fiscal year 2016-2017, contained in Aid to Localities Budget Bill #S.6403-d/A.9003-d – & any certification by the Division of Criminal Justice Services of its own budget

The Division of Criminal Justice Services' budget for fiscal year 2016-2017 is embodied in Governor Cuomo's Aid to Localities Budget Bill, #S.6403/A.9003 – enacted as #S.6403-d/A.9003-d.

Section 1 of Aid to Localities Budget Bill #S.6403-d/A.9003-d states as follows by its subparagraph d:

> "No moneys appropriated by this chapter shall be available for payment until a certificate of approval has been issued by the director of the budget, who shall file such certificate with the department of audit and control, the chairperson of the senate finance committee and the chairperson of the assembly ways and committee."

Pursuant to the Freedom of Information Law (F.O.I.L.) [Public Officers Law, Article VI], request is made for the director of the budget's "certificate of approval" for the Division of Criminal Justice Service's budget for fiscal year 2016-2017, filed with "the department of audit and control, the chairperson of the senate finance committee and the chairperson of the assembly ways and means committee".

Additionally, pursuant to FOIL, request is made for any certification of the Division of Criminal Justice Services' budget for fiscal year 2016-2017 by the Division of Criminal Justice Services itself.

Pursuant to Public Officers Law §89.3, your response/acknowledgment is required "within five business days" of your receipt of this request. I would appreciate if you e-mailed it to me at elena@judgewatch.org. Thank you.

EXHIBIT B

ORIGINAL

At an IAS Part of the Supreme Court of the State of New York, held in and for the County of Albany at the Courthouse, located at 16 Eagle Street, New York, New York on the 2nd day of September, 2016.

SUPREME COURT OF STATE OF NEW YORK
ALBANY COUNTY

---------- x

CENTER FOR JUDICIAL ACCOUNTABILITY, INC. and ELENA RUTH SASSOWER, individually and as Director of the Center for Judicial Accountability, Inc., acting on their own behalf and on behalf of the People of the State of New York & the Public Interest,

Plaintiffs,

-against-

ANDREW M. CUOMO, in his official capacity as Governor of the State of New York, JOHN J. FLANAGAN in his official capacity as Temporary Senate President, THE NEW YORK STATE SENATE, CARL E. HEASTIE, in his official capacity as Assembly Speaker, THE NEW YORK STATE ASSEMBLY, ERIC T. SCHNEIDERMAN, in his official capacity as Attorney General of the State of New York, THOMAS P. DiNAPOLI, in his official capacity as Comptroller of the State of New York, and JANET M. DiFIORE, in her official capacity as Chief Judge of the State of New York and chief judicial officer of the Unified Court System,

Defendants.

----------x

ORDER TO SHOW CAUSE WITH STAY & TRO

Index #

Upon the annexed affidavit of ELENA RUTH SASSOWER, plaintiff *pro se*, sworn to on September 2, 2016, plaintiffs' September 2, 2016 verified complaint, and the record of the predecessor citizen-taxpayer action, *Center for Judicial Accountability, et al. v. Cuomo, et al.* (Albany Co. #1788-2014),

LET defendants show cause before this Court at 16 Eagle Street, Albany, New York 12207 on the 16th day of September 2016 at 9:30 a.m. or as soon thereafter as the parties or their

counsel may be heard, why an order should not issue in this citizen-taxpayer action pursuant to State Finance Law Article 7-A (§123 *et seq.*):

(1) enjoining defendants from disbursing monies pursuant to Legislative/Judiciary Budget Bill #S.6401-a/A.9001-a; or, alternatively:

(i) as to the legislative portion, enjoining disbursement of monies for its §1 appropriations and §4 reappropriations (at pp. 2-9; 25-48); and;

(ii) as to the judiciary portion, enjoining disbursement of monies for its §3 reappropriations (at pp. 22-24), particularly for purposes of funding "the force of law" judicial salary increases recommended by the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation for fiscal year 2016-2017;

(2) enjoining defendants from disbursing monies pursuant to the appropriation item "For grants to counties for district attorney salaries" in the Division of Criminal Justice Services' budget, contained in Aid to Localities Budget Bill #S.6403-d/A.9003-d (at pp. 72-73), and, additionally, pursuant to reappropriation items therein pertaining to previous "grants to counties for district attorney salaries" and "recruitment and retention" incentives (at pp. 94, 97, 100, 124-125);

(3) disqualifying Albany County Supreme Court Justice Roger McDonough as a judge eligible for assignment to this citizen-taxpayer action by reason of his demonstrated actual bias, born of financial interest, in the related and now concluded citizen-taxpayer action *Center for Judicial Accountability, et al. v. Cuomo, et al.* (Albany Co. #1788-2014);

(4) for such other relief as may be just and proper, including $100 motion costs pursuant to CPLR §8202.

In the event this case is assigned to Justice McDonough:

(5) an order that he disqualify himself for demonstrated actual bias, born of his financial interest – and, based thereon, that he vacate his August 1, 2016 amended decision and order in the prior citizen-taxpayer action (#1788-2014), including pursuant to CPLR §5015(a)(4): "lack of jurisdiction" by reason of his disqualification for interest and pursuant to CPLR §5015(a)(3), for "fraud, misrepresentation, [and] other misconduct" of defendants and their counsel.

~~SUFFICIENT CAUSE APPEARING THEREFORE,~~ let a temporary restraining order issue pursuant to State Finance Law §123-e(2), enjoining defendants as hereinabove set forth pending ~~hearing and determination~~ of this motion.

RDMcD 9/2/16

LET SERVICE of this order to show cause, together with the papers on which it is based, be made on or before the 6TH day of September 2016 upon the defendants herein by personal service be deemed good and sufficient service.

R.D.McD

Supreme Court Justice

Hon. Roger D. McDonough, A.J.S.C.

A ROSI NOT LATER THAN 9/15/16

SUPREME COURT OF STATE OF NEW YORK
ALBANY COUNTY

CENTER FOR JUDICIAL ACCOUNTABILITY, INC.
and ELENA RUTH SASSOWER, individually and
as Director of the Center for Judicial Accountability, Inc,
acting on their own behalf and on behalf of the People
of the State of New York & the Public Interest,

Plaintiffs,

-against-

ANDREW M. CUOMO, in his official capacity as Governor of the State of New York, JOHN J. FLANAGAN in his official capacity as Temporary Senate President, THE NEW YORK STATE SENATE, CARL E. HEASTIE, in his official capacity as Assembly Speaker, THE NEW YORK STATE ASSEMBLY, ERIC T. SCHNEIDERMAN, in his official capacity as Attorney General of the State of New York, THOMAS P. DiNAPOLI, in his official capacity as Comptroller of the State of New York, and JANET M. DiFIORE, in her official capacity as Chief Judge of the State of New York and chief judicial officer of the Unified Court System,

Defendants.

Affidavit in Support of Order to Show Cause

Index #

STATE OF NEW YORK)
ALBANY COUNTY) ss.:

ELENA RUTH SASSOWER, being duly sworn deposes and says:

1. I am the above-named *pro se* individual plaintiff in this citizen-taxpayer action brought under State Finance Law Article 7-A [§123 *et seq.*] for declaratory judgment. I am fully familiar with all the facts, papers, and proceedings recited by plaintiffs' accompanying verified complaint, which I wrote and incorporate by reference in support of both the injunctive and disqualification relief sought by plaintiffs' order to show cause.

2. In view of the extensive nature of the verified complaint, any further recitation would be redundant.

3. The only prior application for the relief herein sought was in plaintiffs' prior citizen-taxpayer action, *Center for Judicial Accountability, et al. v. Cuomo, et al.* (Albany Co. #1788-2014), concluded by Justice McDonough's August 1, 2016 amended decision and order (Exhibit D to the verified complaint herein) – and such did not include the second branch of injunctive relief:

> "(2) enjoining defendants from disbursing monies pursuant to the appropriation item "For grants to counties for district attorney salaries" in the Division of Criminal Justice Services' budget, contained in Aid to Localities Budget Bill #S.6403-d/A.9003-d (at pp. 72-73), and, additionally, pursuant to reappropriation items therein pertaining to previous "grants to counties for district attorney salaries" and "recruitment and retention" incentives (at pp. 94, 97, 100, 124-125)".

4. The facts entitling plaintiffs to this second branch of injunctive relief are set forth by the tenth cause of action of plaintiffs' verified complaint herein (¶¶85-110).

5. As to the facts pertaining to Justice McDonough's denial of the first branch of injunctive relief – as, likewise, pertaining to his denial of the disqualification relief herein sought – they are set forth by plaintiffs' analysis of Justice McDonough's August 1, 2016 amended decision and order, annexed as Exhibit G to plaintiffs' accompanying verified complaint (see, in particular, pp. 9, 11-14).

ELENA RUTH SASSOWER

Sworn to before me this
2nd day of September 2016

Notary Public

CHARLES E DIAMOND
Notary Public, State of New York
Qualified in Albany County
No 4802106
Commission Expires Oct. 31, 2018