

**NEW YORK STATE  
COURT OF APPEALS**

**Preliminary Appeal Statement**

Pursuant to section 500.9 of the Rules of the Court of Appeals

**1. Caption of Case** (as the parties should be denominated in the Court of Appeals):

*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-Appellants,

-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-Respondents.

**2. Name of court or tribunal where case originated, including county, if applicable:**

Supreme Court/Albany County

**3. Civil index number...assigned to the matter in the court or tribunal of original instance:**

Index #5122-16

**4. Docket number assigned to the matter at the Appellate Division or other intermediate appellate court:**

Docket #527081-18 (Appellate Division, Third Department)

**5. Jurisdictional basis for this appeal:**

CPLR 5601(b)(1): constitutional ground (Appellate Division order)

\* NOTE: New York State Constitution, Article VI, §3(b)(1)

**6. How this appeal was taken to the Court of Appeals (CPLR 5515[1]):**

NOTICE OF APPEAL

Date filed: January 30, 2019

Clerk's office where filed: Albany County

**7. Demonstration of timeliness of appeal in civil case (CPLR 5513, 5514):**

Was appellant served by its adversary with a copy of the order, judgment or determination appealed from and notice of its entry? Yes

If yes, date on which appellant was served (if known, or discernible from the papers served): December 27, 2018

If yes, method by which appellant was served: Regular mail

Did the Appellate Division grant or deny a motion for leave to appeal to this Court in this case? No

**8. Party Information:**

No.	Party Name	Original Status	Court of Appeal Status
1.	Center for Judicial Accountability, Inc.	Plaintiff	Appellant
2.	Elena Ruth Sassower, individually and as Director	Plaintiff	Appellant
3.	Governor Andrew M. Cuomo	Defendant	Respondent
4.	Temporary Senate President John Flanagan	Defendant	Respondent
5.	New York State Senate	Defendant	Respondent
6.	Assembly Speaker Carl Heastie	Defendant	Respondent
7.	New York State Assembly	Defendant	Respondent
8.	Attorney General Eric T. Schneiderman	Defendant	Respondent
9.	Comptroller Thomas DiNapoli	Defendant	Respondent

10. Chief Judge Janet DiFiore

Defendant

Respondent

**9. Attorney Information:**

**\*NOTE:** Parties Nos. 3-10 above – the eight defendants-respondents in this citizen-taxpayer action – are here, as below, all represented by the New York State Attorney General, him/herself a defendant-respondent – and the lawfulness and constitutionality of that representation, on multiple grounds, is here, as below, contested and is threshold before the Court.

**For Parties Nos. 3-10 above:**

Law Firm Name: Attorney General of the State of New York Letitia James

Responsible Attorney: Solicitor General Barbara D. Underwood

Assistant Solicitor General Victor Paladino

Assistant Solicitor General Frederick A. Brodie

Street Address: The Capitol

City: Albany State: New York Zip: 12224-0341

Telephone: 518-776-2317

**10. Self-Represented Litigant Information:**

**\*NOTE:** Parties Nos. 1-2 above – the two plaintiffs-appellants in this citizen-taxpayer action, expressly acting “on behalf of the People of the State of New York and the Public Interest” – are here, as below, unrepresented litigants and, as below, are seeking a threshold determination of their entitlement to the Attorney General’s representation/intervention, pursuant to Executive Law §63.1 and State Finance Law, Article 7-A [§123-a(3); §123-c-(3); §123-d; §123-e(2)] based on their *prima facie* summary judgment entitlement to declarations, in their favor, on the ten causes of action of their September 2, 2016 verified complaint – and on the reiterated ten causes of action of their March 29, 2017 verified supplemental complaint.

**For Party No. 1 above:**

Party’s Name: Center for Judicial Accountability, Inc.

Street Address: (c/o Sassower) 10 Stewart Place, Apt. 2D-E

City: White Plains State: New York Zip: 10603

Telephone No.: 914-421-1200

**For Party No. 2 above:**

Party’s Name: Elena Ruth Sassower

Street Address: 10 Stewart Place, Apt. 2D-E

City: White Plains State: New York Zip: 10603

Telephone No.: 914-421-1200

**11. Related motions and applications:**

Does any party to the appeal have any motions or applications related to this appeal pending in the Court of Appeals? No

Does any party to the appeal have any motions or applications in this case currently pending in the court from which the appeal is taken? No

Are there any other pending motions or ongoing proceedings in this case? No

**12. Set forth, in point-heading form, issues proposed to be raised on appeal**  
(this is a nonbinding designation, for preliminary issue identification purposes only):

1. The obliteration of ALL ethical, adjudicative, and evidentiary standards by judges of the courts below in this citizen-taxpayer action in which they have HUGE financial interests – as four of the ten causes of action seek declarations that the commission-based judicial salary increases, of which they are beneficiaries, and the Judiciary budget, in which those increases are embedded, are unconstitutional, statutorily-violative, and fraudulent;
2. Appellants’ *prima facie* summary judgment entitlement to declarations of unconstitutionality and unlawfulness with respect to each of their ten causes of action pertaining to the fiscal year 2016-2017 budget and Chapter 60, Part E, of the Laws of 2015, establishing the Commission on Legislative, Judicial and Executive Compensation – virtually all of whose unconstitutionality and unlawfulness is identically repeated and embodied in the budgets for fiscal years 2017-2018 and 2018-2019, and in the budget for fiscal year 2019-2020, currently being enacted. The title headings of these ten causes of action are:

“AS AND FOR A FIRST CAUSE OF ACTION

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

“AS AND FOR A SECOND CAUSE OF ACTION

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

“AS AND FOR A THIRD CAUSE OF ACTION

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

“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”

“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”

“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

- 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’
- B. Chapter 60, Part E, of the Laws of 2015 Unconstitutionally Delegates Legislative Power Without Safeguarding Provisions
- C. Chapter 60, Part E, of the Law of 2015 Violates Article XIII, §7 of the New York State Constitution
- 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
- 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”

“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

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

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

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

“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”

“AS AND FOR AN NINTH CAUSE OF ACTION

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

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

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

“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”.

13. **Does appellant request that this appeal be considered for resolution pursuant to section 500.11 of the Rules of the Court of Appeals (Alternative Procedure for Selected Appeals)?**

No

14. **Notice to the Attorney General.**

Is any party to the appeal asserting that a statute is unconstitutional? Yes

If yes, has appellant met the requirement of notice to the Attorney General in section 500.9(b) of the Rules of the Court of Appeals? Yes\*

\* NOTE: The attorney general is counsel to defendants-respondents herein – and, additionally, a defendant-respondent.

**15. ITEMS REQUIRED TO BE ATTACHED TO EACH COPY OF THIS STATEMENT:**

- A. A copy of the filed notice of appeal to the Court of Appeals (with proof of service)

A copy of the notice of appeal is herewith attached

- B. A copy of the signed order, judgment or determination appealed from to this Court

Annexed as Exhibit A to the notice of appeal

- C. A signed copy of any order, judgment or determination which is the subject of the order appealed from, or which is otherwise brought up for review

Annexed as Exhibits B, C, D, and E to the notice of appeal

- D. Copies of all decisions or opinions relating to the orders set forth in subsections B and C above

The Appellate Division’s appealed-from December 27, 2018 Memorandum and Order (at pp. 7-8) affirms Judge Denise Hartman’s reliance on decisions in appellants’ prior citizen-taxpayer action (*Center for Judicial Accountability, et al. v. Cuomo, et al*, Albany Co. #1788-14) as the basis for dismissing appellants’ first four causes of action of their September 2, 2016 verified complaint herein.

The three decisions in that prior citizen-taxpayer action, of Judge Roger McDonough – and appellants’ “legal autopsy”/analysis of them – are Exhibits D, E, F, and G to their verified complaint.

I was informed by Assistant Deputy Clerk Susan Dautel, with whom I consulted, that there was no need for me to furnish those three decisions with this Preliminary Appeal Statement – and that if the Court required them, they would be requested.

In any event, the decisions are already in the Court’s possession, as Chief Judge Janet DiFiore – a named defendant (respondent) herein – was served with a copy of the verified complaint, with its exhibits, on September 2, 2016, at the Court of Appeals’ clerk’s office, via Deputy Clerk Heather Davis. They are, additionally, part of the record on appeal at R.315-325; R.326-334; R.335-337; and R.338-373. The direct link to the Center for Judicial Accountability’s webpage posting the record on appeal – and appellants’ appeal brief –

is here: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/appeal/7-4-18-appellants-brief.htm>.

Date: February 26, 2019

Submitted by:



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Elena Ruth Sassower, unrepresented plaintiff-appellant,  
individually and as Director of the Center for Judicial Accountability, Inc.,  
acting on her own behalf and on behalf of the People of the State of New  
York & the Public Interest



SUPREME COURT OF THE 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,

**NOTICE OF APPEAL**

Plaintiffs-Appellants,

-against-

Index #5122-16  
RJI #01-16-122174  
AD3d #527081-18

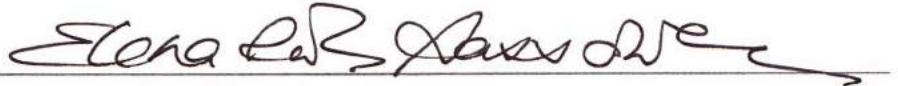
ANDREW M. CUOMO, in his official capacity as Governor  
of the State of New York, JOHN J. FLANAGAN in his official  
capacity as Temporary Senate President, THE NEW YORK  
STATE SENATE, CARL E. HEASTIE, in his official capacity  
as Assembly Speaker, THE NEW YORK STATE ASSEMBLY,  
ERIC T. SCHNEIDERMAN, 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-Respondents.  
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PLEASE TAKE NOTICE that pursuant to Article VI, §3(b)(1) of the New York State  
Constitution and CPLR §5601(b)(1), plaintiffs-appellants hereby appeal to the Court of Appeals of  
the State of New York from the Memorandum and Order of the Appellate Division, Third  
Department, dated and entered December 27, 2018 (Exhibit A), and from every part thereof, and,  
additionally, from the Appellate Division, Third Department's four Decisions and Orders on  
Motions, dated and entered August 7, 2018 (Exhibit B), October 23, 2018 (Exhibit C), November 13,  
2018 (Exhibit D), and December 19, 2018 (Exhibit E), pertaining to threshold appellate integrity  
issues and the prohibition of Judiciary Law §14 divesting the justices of jurisdiction (*Oakley v.*  
*Aspinwall*, 3 N.Y. 547 (1850)).

Dated: White Plains, New York  
January 26, 2019

Yours, etc.



ELENA RUTH SASSOWER, unrepresented plaintiff-appellant, 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](mailto:elena@judgewatch.org)

TO: New York State Attorney General Letitia James  
The Capitol  
Albany, New York 12224-0341  
ATT: Solicitor General Barbara Underwood

State of New York  
Supreme Court, Appellate Division  
Third Judicial Department

Decided and Entered: December 27, 2018

527081

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CENTER FOR JUDICIAL  
ACCOUNTABILITY, INC.,  
Plaintiff,  
and

ELENA RUTH SASSOWER,  
Individually and as  
Director of the Center  
for Judicial  
Accountability, Inc.,  
Appellant,

MEMORANDUM AND ORDER

v

ANDREW M. CUOMO, as Governor  
of the State of New York,  
et al.,  
Respondents.

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Calendar Date: November 13, 2018

Before: McCarthy, J.P., Clark, Mulvey and Rumsey, JJ.

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Elena Ruth Sassower, White Plains, appellant pro se.

Barbara D. Underwood, Attorney General, Albany (Frederick  
A. Brodie of counsel), for respondents.

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Rumsey, J.

Appeal from a judgment of the Supreme Court (Hartman, J.),  
entered December 8, 2017 in Albany County, which, among other

SPA

things, granted defendants' cross motion for summary judgment.

In September 2016, plaintiff Center for Judicial Accountability, Inc. (hereinafter CJA) and plaintiff Elena Ruth Sassower, CJA's director, commenced this action seeking, among other things, a declaratory judgment that the bill establishing the budgets for the Legislature and the Judiciary for the 2016-2017 fiscal year (2016 NY Senate-Assembly Bill S6401, A9001) was unconstitutional and also seeking an injunction permanently enjoining respondents from making certain disbursements under the bill, including judicial salary increases. Plaintiffs also simultaneously moved for a temporary restraining order and a preliminary injunction enjoining defendants from distributing money pursuant to the budget bill. Defendants cross-moved to dismiss the complaint to the extent that it sought to assert claims on behalf of the CJA, because it was not represented by counsel, and to dismiss all 10 causes of action for failure to state a cause of action. Supreme Court declined to grant a temporary restraining order and, in December 2016, denied plaintiffs' motion for a preliminary injunction and partially granted defendants' cross motion by dismissing all claims asserted by the CJA and 9 of the 10 causes of action asserted by Sassower. The court denied defendants' motion to dismiss the sixth cause of action, which challenged the law that created the Commission on Legislative, Judicial and Executive Compensation (hereinafter the Commission) (see L 2015, ch 60, part E) on various constitutional and procedural grounds. Sassower's motion to disqualify Justice Hartman and to vacate, renew and reargue the December 2016 order was denied in May 2017. After issue was joined, Sassower moved for summary judgment on the sixth cause of action and for leave to file a supplemental complaint. The motion was denied. In June 2017, Sassower moved to reargue the court's decision denying her motion for reargument and disqualification. In response, defendants opposed the motions and cross-moved for summary judgment dismissing the sixth cause of action. In November 2017, the court granted defendants' cross motion for summary judgment and dismissed the sixth cause of action. Sassower appeals.

We first consider several threshold issues. Sassower contends that Supreme Court erred by denying her motion for recusal. Sassower correctly notes that Justice Hartman has a pecuniary interest in this action because she is paid in accordance with the salary schedule that is being challenged. Ordinarily, recusal is warranted when a judge has an interest in the litigation (see Matter of Maron v Silver, 14 NY3d 230, 249 [2010]). "However, the Rule of Necessity provides a narrow exception to this principle, requiring a biased adjudicator to decide a case if and only if the dispute cannot be otherwise heard" (Pines v State of New York, 115 AD3d 80, 90 [2014] [internal quotation marks, brackets and citations omitted], appeal dismissed 23 NY3d 982 [2014]; see Matter of Maron v Silver, 14 NY3d at 249). The self-interest inherent in adjudicating a dispute involving judicial compensation would provide grounds for disqualifying not only Justice Hartman, but every judge who might replace her. Accordingly, the Rule of Necessity permitted Justice Hartman to decide this action on the merits (see Pines v State of New York, 115 AD3d at 90-91).

Nor was Justice Hartman required to recuse herself for any other reason. "Absent a legal disqualification under Judiciary Law § 14, which is not at issue here, a trial judge is the sole arbiter of recusal[,] and his or her decision, which lies within the personal conscience of the court, will not be disturbed absent an abuse of discretion" (Kampfer v Rase, 56 AD3d 926, 926 [2008] [internal quotation marks and citations omitted], lv denied 11 NY3d 716 [2009]). We perceive no abuse of discretion here. Justice Hartman's prior employment by the Attorney General's office does not mandate recusal (see e.g. People v Lee, 129 AD3d 1295, 1296 [2015], lv denied 27 NY3d 1001 [2016]; People v Curkendall, 12 AD3d 710, 714 [2004], lv denied 4 NY3d 743 [2004]).

Moreover, Supreme Court's decisions do not evince any instance of fraudulent conduct, concealment or misrepresentation. In this regard, Sassower argues that the court acted fraudulently by failing to specifically address each of her legal arguments and disagreeing with her legal conclusions. A court need not address, in its decision, every

argument raised by a party, and a ruling that is not to a litigant's liking does not demonstrate either bias or misconduct (see Gonzalez v L'Oreal USA, Inc., 92 AD3d 1158, 1160 [2012], lv dismissed 19 NY3d 874 [2012]). Similarly, the Attorney General's office was not required to address every argument made by Sassower; under our adversarial system, each party is permitted to make the arguments that he or she believes are most favorable to his or her position. We similarly find unavailing Sassower's argument that the Attorney General, who is a defendant, must be disqualified from representing the Attorney General's codefendants based on a conflict of interest. The Attorney General has a statutory duty to represent defendants in this action, who are united in interest (see Executive Law § 63 [1]; Matter of Grzyb v Constantine, 182 AD2d 942, 943 [1992], lv denied 80 NY2d 755 [1992]).

Supreme Court properly dismissed the claims asserted by the CJA because it was not represented by counsel.<sup>1</sup> Corporations are required to appear by attorney to prosecute or defend a civil action (CPLR 321 [a]). Causes of action asserted by a corporation are properly dismissed when the corporation does not appear by attorney (see Moran v Hurst, 32 AD3d 909, 910 [2006]; Ficalora v Town Bd. Govt. of E. Hampton, 276 AD2d 666, 666 [2000], appeal dismissed 96 NY2d 813 [2001]). We further find unavailing Sassower's argument that Executive Law § 63 (1) and State Finance Law article 7-A require that the Attorney General be directed to provide her with representation or intervene on her behalf. Executive Law § 63 (1) empowers the Attorney General to prosecute and defend all actions and proceedings in which the state is interested – it does not authorize the Attorney General to represent private citizens. Similarly, State Finance Law article 7-A contains no provision that requires the Attorney General to prosecute a citizen-taxpayer action commenced by a private citizen or that allows a citizen to compel the Attorney General to provide representation in such actions.

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<sup>1</sup> We note that no appeal has been asserted on behalf of the CJA by an attorney (see Schaal v CGU Ins., 96 AD3d 1182, 1183 n 2 [2012]).

Turning to the merits, Supreme Court properly granted defendants' cross motion for summary judgment dismissing the sixth cause of action, which was divided into sections A through E, and which alleged that the enabling statute that created the Commission is facially unconstitutional with respect to judicial compensation. "A party mounting a facial constitutional challenge bears the substantial burden of demonstrating that[,] in any degree and in every conceivable application, the law suffers wholesale constitutional impairment. In other words, the challenger must establish that no set of circumstances exists under which the [legislation] would be valid" (Matter of Moran Towing Corp. v Urbach, 99 NY2d 443, 448 [2003] [internal quotation marks and citations omitted]). Sassower failed to meet this heavy burden.

In sections A and B of the sixth cause of action, Sassower alleged that the enabling statute unconstitutionally delegated legislative authority to the Commission in contravention of the separation of powers doctrine and without reasonable safeguards or standards. "While the Legislature cannot delegate its lawmaking functions to other bodies, there is no constitutional prohibition against the delegation of power to an agency or commission to administer the laws promulgated by the Legislature, provided that power is circumscribed by reasonable safeguards and standards" (Matter of Retired Pub. Empls. Assn., Inc. v Cuomo, 123 AD3d 92, 97 [2014] [internal quotation marks, brackets and citations omitted]).

A predecessor to the Commission – the Commission on Judicial Compensation – was created in 2010 in response to the Court of Appeals decision in Matter of Maron v Silver (14 NY3d 230) to remedy a separation of powers violation by requiring that the proper level of judicial compensation be determined on a regular basis based on objective factors independent of other political considerations (see Larabee v Governor of the State of N.Y., 27 NY3d 469, 472 [2016]; Senate Introducer's Mem in Support, Bill Jacket, L 2010, ch 567).<sup>2</sup> As relevant here, the

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<sup>2</sup> The powers and duties of both the 2010 Commission on Judicial Compensation and the 2015 Commission regarding judicial compensation were substantially identical.

Commission was directed to examine, on four-year intervals, the prevailing adequacy of judicial compensation and to make recommendations regarding whether such compensation warrants adjustment during the ensuing four-year period (see L 2015, ch 60, part E; see also Larabee v Governor of the State of N.Y., 27 NY3d at 472). The Legislature further provided for implementation of any increases in compensation (see L 2015, ch 60, part E, § 4). Recommendations regarding judicial compensation are required to be submitted by December 31 of the year in which the Commission is appointed and have the force of law, unless modified or abrogated by statute prior to April 1 of the succeeding year (see L 2015, ch 60, part E; see also Larabee v Governor of the State of N.Y., 27 NY3d at 472).

In the 2015 enabling statute at issue here, the Legislature made the determination that judicial salaries must be appropriate and adequate. The Legislature directed the Commission to examine judicial salaries and make recommendations regarding the adequacy of judicial compensation based on numerous factors specified by the Legislature, including "the overall economic climate; rates of inflation; changes in public-sector spending; the levels of compensation and non-salary benefits received by executive branch officials and legislators of other states and of the federal government; the levels of compensation and non-salary benefits received by professionals in government, academia and private and nonprofit enterprise; and the state's ability to fund increases in compensation and non-salary benefits" (L 2015, ch 60, part E). The factors established by the Legislature provide adequate standards and guidance for the exercise of discretion by the Commission. Moreover, the enabling statute contains the safeguard of requiring that the Commission report its recommendations directly to the Legislature so that it would have sufficient time to exercise its prerogative to reject any Commission recommendations before they become effective. Thus, we conclude that the statute does not unconstitutionally delegate legislative power to the Commission.

Supreme Court also properly dismissed sections C and D of the sixth cause of action. With respect to section C, we agree



that there is no constitutional prohibition against increasing judicial salaries during the term of office (see NY Const, art VI, § 25 [a]). In section D, Sassower alleged that the bill creating the Commission violated NY Constitution, article VII, §§ 2, 3 and 6. Pursuant to article VII, § 2, defendant Governor was required to submit a budget to the Legislature, as relevant here, by February 1, 2015. Inasmuch as Sassower acknowledged that the executive budget was submitted on January 21, 2015, there was no violation of this section. The original executive budget did not provide for creation of the Commission; rather, the enabling legislation was included in a supplemental budget bill that was submitted by the Governor on March 31, 2015 (see 2015 NY Senate-Assembly Bill S4610-A, A6721-A). However, as relevant here, article VII, § 3 allows submission of supplemental budget bills at any time with the consent of the Legislature. Although there is no evidence of formal consent, the Legislature's consideration and passage of the bill without objection is effective consent (cf. Winner v Cuomo, 176 AD2d 60, 64 [1992]). Article VII, § 6 requires that all provisions of any appropriation bill, or supplemental appropriation bill, submitted by the Governor must specifically relate to an appropriation in the bill. The purpose of this article is "to eliminate the legislative practice of tacking on to budget bills propositions which had nothing to do with money matters; that is, to prevent the inclusion of general legislation in appropriation bills" (Schuyler v South Mall Constructors, 32 AD2d 454, 456 [1969]). There was no violation of article VII, § 6 because the purpose for which the Commission was created - to provide for periodic review of the compensation of state officers - relates to items of appropriation in the budget (see id.).<sup>3</sup> Based on the foregoing, Supreme Court properly determined that defendants were entitled to summary judgment dismissing the sixth cause of action.

Supreme Court's dismissal of Sassower's remaining claims does not require extended discussion. The first through fourth causes of action assert claims that had been dismissed as meritless in a prior action. Sassower had commenced an action in 2014 against defendants challenging aspects of the 2014-2015

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<sup>3</sup> We find no error in Supreme Court's prior dismissal of section E of the sixth cause of action.

budget. Supreme Court denied Sassower's motion for leave to amend her complaint in the prior action to, as relevant here, add four causes of action for the 2016-2017 budget year on the ground that they were "patently devoid of merit." Sassower did not appeal from the order that dismissed these claims. Supreme Court properly dismissed the first through fourth causes of action in this case because they are identical to the four proposed causes of action that were dismissed as meritless (see Biggs v O'Neill, 41 AD3d 1067, 1068 [2007]).

The fifth cause of action, which alleges violations of NY Constitution, article VII, §§ 4, 5 and 6, was also properly dismissed. Article VII, § 4 does not apply to appropriations for the Judiciary. The Governor issued a message of necessity that permitted the Legislature to take immediate action on the budget bill that contained the enabling legislation (see NY Const, art VII, § 5; Maybee v State of New York, 4 NY3d 415, 418-420 [2005] [construing a similar message of necessity provision in NY Const, art III, § 14]), and we have already determined that there was no violation of article VII, § 6.

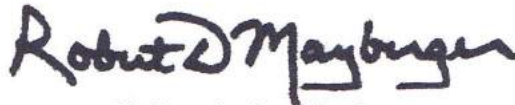
The seventh cause of action, asserting that the statute was unconstitutional as applied, also was properly dismissed as the Legislature had no duty to exercise any oversight of the Commission and, further, the complaint failed to plead facts legally sufficient to demonstrate that any Commission members were actually biased. Dismissal of the eighth cause of action was also proper because the record shows that the Commission considered the requisite statutory factors in making its recommendation regarding judicial compensation. Supreme Court properly dismissed the ninth cause of action, which challenged the constitutionality of "three-men-in-a-room" budget negotiations between the Governor and the Legislature, because budget negotiations between the Governor and the leaders of the Senate and Assembly are not prohibited. Indeed, the Court of Appeals has observed that state budgets are often a "product of such negotiations, often extremely protracted ones" (Pataki v New York State Assembly, 4 NY3d 75, 85 [2004]).

Supreme Court also properly dismissed the tenth cause of action. The appropriation for state reimbursement for District Attorney salaries specifically supersedes County Law § 700 and any other contrary law. Moreover, the mistaken appropriation for budget year 2014-2015, rather than 2016-2017, was an obvious typographical error that is insufficient to invalidate the legislation (see Matter of Morris Bldrs., LP v Empire Zone Designation Bd., 95 AD3d 1381, 1383 [2012], affd sub nom. James Sq. Assoc. LP v Mullen, 21 NY3d 233 [2013]). Sassower's remaining contentions are either moot or have been considered and found to lack merit.

McCarthy, J.P., Clark and Mulvey, JJ., concur.

ORDERED that the judgment is affirmed, without costs.

ENTER:



Robert D. Mayberger  
Clerk of the Court

State of New York  
Supreme Court, Appellate Division  
Third Judicial Department

527081

Decided and Entered: August 7, 2018

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CENTER FOR JUDICIAL  
ACCOUNTABILITY, INC., et al.,  
Appellants,

v

ANDREW M. CUOMO et al.,  
Respondents.

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DECISION AND ORDER  
ON MOTION

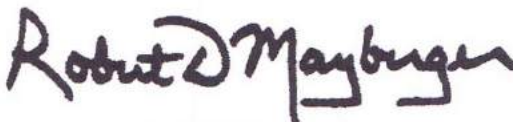
Motion for injunctive and further relief.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

ORDERED that the motion is granted, without costs, only to the extent that the appeal is set down for the November 2018 term of this Court. The brief of respondents shall be filed and served on or before September 21, 2018. Appellants' reply brief, if any, shall be filed and served on or before October 5, 2018.

Garry, P.J., Egan Jr., Devine and Pritzker, JJ., concur.

ENTER:



Robert D. Mayberger  
Clerk of the Court

SpB

State of New York  
Supreme Court, Appellate Division  
Third Judicial Department

Decided and Entered: October 23, 2018

527081

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CENTER FOR JUDICIAL  
ACCOUNTABILITY, INC., et al.,  
Appellants,

v

ANDREW M. CUOMO et al.,  
Respondents.

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DECISION AND ORDER  
ON MOTION

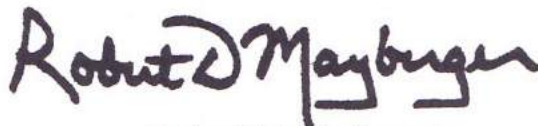
Motion to disqualify this Court and for further relief.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

ORDERED that the motion is denied, without costs.

Garry, P.J., Egan Jr., Devine and Pritzker, JJ., concur.

ENTER:



Robert D. Mayberger  
Clerk of the Court

ESC

State of New York  
Supreme Court, Appellate Division  
Third Judicial Department

Decided and Entered: November 13, 2018

527081

---

CENTER FOR JUDICIAL  
ACCOUNTABILITY, INC., et al.,  
Appellants,

v

ANDREW M. CUOMO et al.,  
Respondents.

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DECISION AND ORDER  
ON MOTION

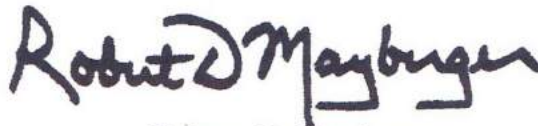
Motion to strike respondents' brief, to declare Attorney General's appellate representation of respondents unlawful and for other relief.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

ORDERED that the motion is denied, without costs.

McCarthy, J.P., Clark, Mulvey and Rumsey, JJ., concur.

ENTER:



Robert D. Mayberger  
Clerk of the Court



State of New York  
Supreme Court, Appellate Division  
Third Judicial Department

Decided and Entered: December 19, 2018

527081

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CENTER FOR JUDICIAL  
ACCOUNTABILITY, INC., et al.,  
Appellants,

v

ANDREW M. CUOMO et al.,  
Respondents.

---

DECISION AND ORDER  
ON MOTION

Motion to disqualify appeal panel and for other relief.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

ORDERED that the motion is denied, without costs.

McCarthy, J.P., Clark, Mulvey and Rumsey, JJ., concur.

ENTER:



Robert D. Mayberger  
Clerk of the Court



**AFFIDAVIT OF SERVICE**

STATE OF NEW YORK            )  
COUNTY OF WESTCHESTER    ) ss:

ELENA RUTH SASSOWER, being duly sworn, deposes and says:

I am the unrepresented individual plaintiff-appellant herein, over 18 years of age, and reside in the State of New York.

On January 26, 2019, I served the within:

Plaintiffs-Appellants' Notice of Appeal

by first-class mail upon counsel for respondents:

New York State Attorney Letitia James  
The Capitol  
Albany, New York 12224

ATT: New York State Attorney General Barbara Underwood

  
ELENA RUTH SASSOWER

Sworn to before me this  
26<sup>th</sup> day of January 2019

  
\_\_\_\_\_  
Notary Public

Windy DeJesus  
Notary Public State of New York  
No. 01DE6265592  
Qualified In Bronx County  
Commision Expires July 23, 2020



SUPREME COURT OF THE 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-Appellants,

-against-

Index #5122-16  
RJI #01-16-122174  
AD3d #527081-18

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-Respondents.

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**PLAINTIFFS-APPELLANTS' NOTICE OF APPEAL**  
(January 26, 2019)

---

ELENA RUTH SASSOWER, unrepresented plaintiff-appellant,  
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](mailto:elena@judgewatch.org)

**AFFIDAVIT OF SERVICE**

STATE OF NEW YORK            )  
COUNTY OF WESTCHESTER    ) ss:

ELENA RUTH SASSOWER, being duly sworn, deposes and says:

I am the unrepresented individual plaintiff-appellant herein, over 18 years of age, and reside in the State of New York.

On February 26, 2019, I served the within:

Preliminary Appeal Statement

by first-class mail upon counsel for respondents:

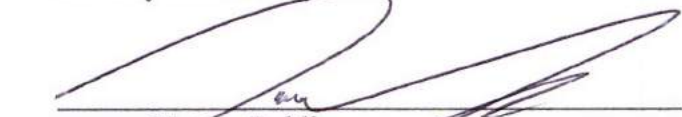
New York State Attorney Letitia James  
The Capitol  
Albany, New York 12224-0341

ATT: Solicitor General Barbara D. Underwood  
Assistant Solicitor General Victor Paladino  
Assistant Solicitor General Frederick A. Brodie

Prior thereto, I e-mailed a copy to Solicitor General Underwood and Assistant Solicitors General Paladino and Brodie – and the February 26, 2019 e-mail receipt is attached.

  
ELENA RUTH SASSOWER

Sworn to before me this  
26<sup>th</sup> day of February 2019

  
\_\_\_\_\_  
Notary Public

JOSEPH GONNELLA JR  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01GO6357364  
Qualified in Westchester County  
My Commission Expires 04-17-2021

## Center for Judicial Accountability, Inc. (CJA)

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**From:** Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>  
**Sent:** Tuesday, February 26, 2019 11:06 AM  
**To:** 'Barbara.Underwood@ag.ny.gov'  
**Cc:** 'Paladino, Victor'; 'Brodie, Frederick'  
**Subject:** Citizen-Taxpayer Action: CJA v. Cuomo, et al -- REVISED Preliminary Appeal Statement/NY Court of Appeals  
**Attachments:** 2-26-19-preliminary-appeal-statement-compressed.pdf

**TO: Solicitor General Barbara Underwood  
Assistant Solicitor General Victor Paladino  
Assistant Solicitor General Frederick Brodie**

Attached is a REVISED Preliminary Appeal Statement – making minor clarifying changes, most significantly (at pp. 4-6), quoting, *verbatim*, the title headings of the ten causes of action of appellants' September 2, 2016 verified complaint.

This Preliminary Appeal Statement, bearing today's February 26<sup>th</sup> date, is what I will now be mailing you a hard copy original of – with two hard copy originals simultaneously mailed to the Court.

Apologies for any inconvenience.

Thank you.

Elena Sassower, unrepresented plaintiff-appellant, individually  
& as director of the Center for Judicial Accountability, Inc.  
& on behalf of the People of the State of New York & the Public Interest

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**From:** Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>  
**Sent:** Monday, February 25, 2019 11:58 PM  
**To:** 'Barbara.Underwood@ag.ny.gov' <Barbara.Underwood@ag.ny.gov>  
**Cc:** 'Paladino, Victor' <Victor.Paladino@ag.ny.gov>; 'Brodie, Frederick' <Frederick.Brodie@ag.ny.gov>  
**Subject: Citizen-Taxpayer Action: CJA v. Cuomo, et al -- Preliminary Appeal Statement/NY Court of Appeals**

**TO: Solicitor General Barbara Underwood  
Assistant Solicitor General Victor Paladino  
Assistant Solicitor General Frederick Brodie**

Attached is appellants' Preliminary Appeal Statement. Hard copy will be mailed tomorrow, February 26<sup>th</sup>.

Thank you.

Elena Sassower, unrepresented plaintiff-appellant, individually  
& as director of the Center for Judicial Accountability, Inc.  
& on behalf of the People of the State of New York & the Public Interest

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**From:** Center for Judicial Accountability, Inc. (CJA) <[elena@judgewatch.org](mailto:elena@judgewatch.org)>  
**Sent:** Friday, February 22, 2019 4:16 PM  
**To:** 'Brodie, Frederick' <[Frederick.Brodie@ag.ny.gov](mailto:Frederick.Brodie@ag.ny.gov)>  
**Cc:** 'Barbara.Underwood@ag.ny.gov' <[Barbara.Underwood@ag.ny.gov](mailto:Barbara.Underwood@ag.ny.gov)>; 'Paladino, Victor' <[Victor.Paladino@ag.ny.gov](mailto:Victor.Paladino@ag.ny.gov)>

**Subject: Thank you -- RE: Citizen-Taxpayer Action: CJA v. Cuomo, et al -- Appeal to the NY Court of Appeals of the Appellate Division, Third Dept's Dec. 27, 2018 Memorandum & Order (#527081)**

Dear Assistant Solicitor General Brodie –

Thank you for your kind message of condolence. It is a difficult loss to bear, but I soldier on, in tribute to my extraordinary, heroic father – &, hopefully, with his help, from above.

I am just now turning my attention to the preliminary appeal statement, which I expect to be able to e-mail and mail to you on Monday.

Thank you.

Elena Sassower

**From:** Brodie, Frederick <[Frederick.Brodie@ag.ny.gov](mailto:Frederick.Brodie@ag.ny.gov)>  
**Sent:** Friday, February 15, 2019 6:25 PM  
**To:** Center for Judicial Accountability, Inc. (CJA) <[elena@judgewatch.org](mailto:elena@judgewatch.org)>

**Subject: RE: Citizen-Taxpayer Action: CJA v. Cuomo, et al -- Appeal to the NY Court of Appeals of the Appellate Division, Third Dept's Dec. 27, 2018 Memorandum & Order**

Dear Ms. Sassower,

I did not see your email before today. Please accept my belated condolences on the loss of your father.

Sincerely,

Frederick A. Brodie  
Assistant Solicitor General  
New York State Office of the Attorney General  
Appeals & Opinions Bureau  
The Capitol  
Albany, NY 12224-0341  
(518) 776-2317  
[Frederick.Brodie@ag.ny.gov](mailto:Frederick.Brodie@ag.ny.gov)

**From:** Center for Judicial Accountability, Inc. (CJA) <[elena@judgewatch.org](mailto:elena@judgewatch.org)>  
**Sent:** Monday, February 11, 2019 4:52 PM  
**To:** Underwood, Barbara <[Barbara.Underwood@ag.ny.gov](mailto:Barbara.Underwood@ag.ny.gov)>; Brodie, Frederick <[Frederick.Brodie@ag.ny.gov](mailto:Frederick.Brodie@ag.ny.gov)>; Paladino, Victor <[Victor.Paladino@ag.ny.gov](mailto:Victor.Paladino@ag.ny.gov)>

**Subject: Citizen-Taxpayer Action: CJA v. Cuomo, et al -- Appeal to the NY Court of Appeals of the Appellate Division, Third Dept's Dec. 27, 2018 Memorandum & Order**

**TO: Solicitor General Barbara Underwood  
Assistant Solicitor General Frederick Brodie  
Assistant Solicitor General Victor Paladino**

Please be advised that due to the death of my beloved father, George Sassower, on January 31, 2019, I have been in mourning. I expect to be able to file appellants' preliminary appeal statement, in support of appellants' notice of appeal to the Court of Appeals by the end of next week. According to Susan Dautel, Esq., at the Court of Appeals (518-455-7701), I do not require an extension, pursuant to Rule 500.15 – and, indeed, am not even required to give you notice that the filing of appellants' preliminary appeal statement, pursuant to Rule 500.9(a), will be delayed. Nonetheless, I do so.

Thank you.

Elena Sassower, unrepresented plaintiff-appellant, individually  
& as director of the Center for Judicial Accountability, Inc.  
& on behalf of the People of the State of New York & the Public Interest

STATE OF NEW YORK  
COURT OF APPEALS

----- 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-Appellants,

-against-

Albany Co. Index #5122-16  
RJI #01-16-122174  
AD3d #527081-18

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-Respondents.

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**PRELIMINARY APPEAL STATEMENT**  
(February 26, 2019)

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ELENA RUTH SASSOWER, unrepresented plaintiff-appellant,  
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](mailto:elena@judgewatch.org)