"LEGAL AUTOPSY"/ANALYSIS OF THE DECEMBER 27, 2018 MEMORANDUM AND ORDER OF THE APPELLATE DIVISION, THIRD DEPARMENT

Center for Judicial Accountability, et al. v. Cuomo…DiFiore – Citizen-Taxpayer Action
AD3d #527081

This analysis constitutes a "legal autopsy"[1] of the December 27, 2018 "Memorandum and Order"[2] of a four-judge Appellate Division, Third Department panel, purporting to "affirm" the November 28, 2017 decision and judgment of Acting Supreme Court Justice/Court of Claims Judge Denise A. Hartman, but, actually, *sub silentio*, modifying it, in material respects.

Identical to Judge Hartman's appealed-from decision and judgment [R.31-41][3], the Appellate Division's Memorandum is "so totally devoid of evidentiary support as to render [it] unconstitutional under the Due Process Clause" of the United States Constitution, *Garner v. State of Louisiana*, 368 U.S. 157, 163 (1961), *Thompson v. City of Louisville*, 362 U.S. 199 (1960) – and, comparably, under Article I, §6 of the New York State Constitution, "No person shall be deprived of life, liberty or property without due process of law". The Memorandum wipes out any semblance of "due process of law", falsifying the record, *in toto*, and upending ALL ethical, adjudicative, and evidentiary standards – including with regard to its *sub silentio* modifications.

---

1 The term "legal autopsy" is taken from the law review article "*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)).

2 There is no reference to "Memorandum" in the Practice Rules of the Appellate Divisions – 1250.16(a) entitled "Decisions, Orders and Judgments…", nor in the Appellate Division, Third Department's Rule 850.16, comparably titled. The Appellate Division, Third Department's Clerk refused to furnish answers or records in response to a written request about this and asking: "(1) what is the Court's meaning of the term 'Memorandum'?; (2) how does it differ from 'Decision'?; (3) what is the legal authority for the Court's substituting the term 'Memorandum' for 'Decision' in its disposition of appeals?; and (4) under what circumstances does the Court adjudicate an appeal by 'Memorandum and Judgment' as opposed to 'Memorandum and Order'?" (Exhibits A-3, A-5).

According to Black's Law Dictionary, 8th ed., a "memorandum opinion" is:

> "A unanimous appellate opinion that succinctly states the decision of the court; an opinion that briefly reports the court's conclusions, usu. without elaboration because the decision follows a well-established legal principle or does not relate to any point of law. – Also termed *memorandum decision*; *memorandum disposition*". (underlining added)

3 This and similar record references are to appellants' three-volume record on appeal, filed with their appeal brief on July 25, 2018 at the Appellate Division.

This is easily verified. It requires nothing more than a reading of appellants' brief, chronicling the record before Judge Hartman, and a reading of appellants' reply brief, chronicling the record before the Appellate Division. EVERYTHING presented by those two briefs – ALL the particularized facts, law, and legal argument – are omitted from the Appellate Division's "affirmance". Likewise omitted are ALL the particularized facts, law, and legal argument presented by appellant Sassower directly to the four-judge appeal panel at the November 13, 2018 oral argument of the appeal – even the fact that oral argument was held on that "Calendar Date".

The November 13, 2018 oral argument – of which there are VIDEOS[4] – suffices to establish that the December 27, 2018 Memorandum must be voided – and that the threshold reason is because the four justices of the appeal panel were without jurisdiction to render it, pursuant to Judiciary Law §14, by reason of their direct financial and other interests in the lawsuit.

Indeed, based on what transpired at the oral argument, appellants filed a November 27, 2018 order to show cause to disqualify the appeal panel for demonstrated actual bias and for certification of Questions to the Court of Appeals. This is also omitted by the Memorandum – as are appellants' three prior appellate motions, similarly designed to safeguard the integrity of the appellate proceedings. All four motions were denied by Appellate Division decisions improper *on their face* – without ANY facts, without ANY law, and without ANY reasons.

Appellants' November 27, 2018 order to show cause is annexed, without exhibits, to this "legal autopsy"/analysis as Exhibit B and incorporated herein by reference. The Questions of constitutional magnitude it sought to have the appeal panel certify to the Court of Appeals, pursuant to Article VI, §3b(4) of the New York State Constitution – threshold to its determination of the constitutional questions that are the substantive content of the appeal – were as follows:

(a) Inasmuch as Judiciary Law §14 bars judges from adjudicating matters in which they are "interested", are there any state judges who, pursuant to Judiciary Law §14, would not be barred by HUGE financial interest from adjudicating this citizen-taxpayer action, challenging the constitutionality and lawfulness of commission-based judicial salary increases, the judiciary budget, and the state budget "process"?

(b) Can retired judges, not benefiting from the commission-based judicial salary increases, be vouched in? Or can the case be transferred/removed to the federal

---

[4] CJA's website, www.judgewatch.org, posts the full record of this citizen-taxpayer action, in Supreme Court/Albany County, in the Appellate Division, Third Department, and now, at the Court of Appeals, accessible *via* the prominent link "CJA's Citizen-Taxpayer Actions to End NYS's Corrupt Budget 'Process' and Unconstitutional 'Three-Men-in-a-Room' Governance". This includes the VIDEOS of the November 13, 2018 oral argument of the appeal. The direct link to the webpage with the VIDEOS is here: http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/appeal/11-13-18-oral-argument.htm.

courts, including pursuant to Article IV, §4 of the United States Constitution: "The United States shall guarantee to every State in this Union a Republican Form of Government…"?

(c) Can "interested" judges who Judiciary Law §14 divests of jurisdiction nonetheless invoke the judge-made "rule of necessity" to give themselves the jurisdiction the statute removes from them?

(d) What are the safeguarding prerequisites to ensure that a judge invoking the "rule of necessity" will not use it for purposes of acting on bias born of interest? Would the "remittal of disqualification" procedures specified by §100.3F of the Chief Administrator's Rules Governing Judicial Conduct be applicable – starting with a statement by the judge that he believes he can be fair and impartial notwithstanding the existence of grounds for his disqualification pursuant to §100.3E.

(e) As Executive Law §63.1 predicates the attorney general's litigation posture on "the interest of the state", does his representation of defendants-respondents by litigation fraud, because he has no legitimate defense, establish that his representation of them is unlawful and that his duty is to be representing plaintiffs-appellants, or intervening on their behalf, in upholding public rights?

In support of these certified Questions, appellant Sassower's November 27, 2018 moving affidavit had stated:

> "it appears that the appeal panel is intending to render a decision on the appeal, without ruling on its jurisdiction to do so, because – as is clear from Judiciary Law §14, caselaw, and treatise authority – it has NO jurisdiction by reason of the HUGE financial interest of each of its four justices – a state of affairs whose acknowledgment would prevent it from 'throwing' the appeal by a fraudulent judicial decision, which is the ONLY way it can uphold the unconstitutional, statutorily-violative, and fraudulent judicial salary increases that are the subject of appellants' sixth, seventh, and eighth causes of action, to which, as appellants' brief and reply brief establish, respondents have NO defense, as, likewise, NO defense to appellants' seven other causes of action." (at ¶9, underlining and capitalization in the original).

This is precisely what happened. Not only did the appeal panel not certify the Questions nor itself answer them, when, by its December 19, 2018 decision, it denied the order to show cause, without reasons, but, eight days later, its December 27, 2018 Memorandum, "throwing" the appeal", did not identify the panel's financial and other interests in the appeal, did not invoke the "rule of necessity" to decide it, and did not make any statement that its four justices believed themselves to be fair and impartial.

For the convenience of all, a Table of Contents follows:

TABLE OF CONTENTS

* * *

The First Page of the Appellate Division's Memorandum

The Memorandum begins by modifying the actual case caption. It removes the corporate plaintiff, Center for Judicial Accountability, Inc. (CJA), as appellant. It also removes, from the caption, the identifying clause that both CJA and the individual plaintiff, Elena Sassower, are "acting on their own behalf and on behalf of the People of the State of New York & the Public Interest".

No asterisk explains this two-fold caption change. However, the removal of CJA is explained by the first footnote, on page 4, which reads:

> "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])."

This is materially misleading. An appeal was "asserted on behalf of the CJA", but it was by individual plaintiff-appellant Sassower, who was NOT, as the first page of the Memorandum purports, an "appellant pro se". Rather, she and CJA were both unrepresented appellants, who, "on behalf of the People of the State of New York & the Public Interest", had asserted their entitlement to the Attorney General's representation and/or intervention, either directly or through independent counsel. They did this by their January 10, 2018 "pre-calendar statement" [R.3-8], filed with their notice of appeal – and took steps to secure such representation/intervention by an order to show cause, filed on July 25, 2018, simultaneous with their filing of their appeal brief. The second branch of the order to show cause sought an order:

> "directing that Attorney General Barbara D. Underwood identify who has determined 'the interest of the state' on this appeal – and plaintiffs-appellants' entitlement to the Attorney General's representation/intervention pursuant to Executive Law §63.1 and State Finance Law, §123 *et seq.*, including *via* independent counsel, and how, if at all, she has addressed her own conflicts of interest with respect thereto". (underlining added).

The Memorandum's first page also identifies "Barbara D. Underwood, Attorney General" as having represented respondents on the appeal – with "Frederick A. Brodie of counsel". The unlawfulness of this was embraced by the second branch, as well.

As for the first branch of appellants' July 25, 2018 order to show cause, it sought an order:

> "pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct, disclosing, on the record, the financial interests of this Court's justices in this appeal and in the TRO and preliminary injunction herein sought, as well as their personal, professional, and political relationships impacting upon their fairness and impartiality; and, pursuant to §100.3E of the Chief Administrator's Rules, disqualifying Associate Justice Michael Lynch for demonstrated actual bias".

The Memorandum makes no mention of the July 25, 2018 order to show cause – or of appellants' subsequent three orders to show cause, dated September 10, 2018, October 18, 2018, and November 27, 2018[5] – all four raising comparable threshold integrity issues pertaining to the Attorney General and Appellate Division justices, each denied, *without* facts, *without* law, and *without* reasons by four-judge panels.

Of the ten justices of the Appellate Division, Third Department, nine participated in these four orders to show cause. The only justice who did not was Justice Lynch who, on the November 13, 2018 "Calendar Date" indicated by the Memorandum's first page, sat with "McCarthy, J.P., Clark, Mulvey and Rumsey, JJ", hearing oral argument of eight appeals on that day's calendar, excepting one – this one – as to which, without any stated reason, he did not sit.

The Memorandum's first page identifies "McCarthy, J.P., Clark, Mulvey and Rumsey, JJ", as being the four justices on this appeal, without referencing that Justice Lynch had recused himself, or the reason, or that the appeal was argued before them on the November 13, 2018 "Calendar Date", rather than, as might be inferred, submitted.

The Memorandum's author, according to the first page, is "Rumsey, J." and, according to the last page, "McCarthy, J.P., Clark and Mulvey, JJ., concur" in what he wrote.

The Memorandum's Opening Recitation (at pp. 1-2)

The first sentence of the Memorandum, starting on page 1, is a one-sentence paragraph reading:

> "Appeal from a judgment of the Supreme Court (Hartman, J.), entered December 8, 2017 in Albany County, which, among other things, granted defendants' cross motion for summary judgment."

This is followed by a lengthy paragraph, spanning the whole of the second page, purporting to summarize the case before Judge Hartman, leading up to her appealed-from November 28, 2017 decision and judgment [R.31-41]. Its skeletal recitation, failing to identify that appellants' "action" is a citizen-taxpayer action pursuant to State Finance Law Article 7-A, is particularly noteworthy in two further respects:

- It conceals that appellants are challenging the constitutionality of the whole of the executive budget [R.87-392; R.671-746], not just Legislative/Judiciary Budget Bill #S.6401/A.9001 and Chapter 60, Part E, of the Laws of 2015, establishing the Commission on Legislative, Judicial and Executive Compensation. This is significant because six pages later (at p. 8), when the Memorandum "affirms", in two sentences, Judge Hartman's dismissal of the fifth cause of action by *sub silentio* substituting its own *sua sponte* grounds, it conceals that the

[5] These are the dates on which the orders to show cause were served on the Attorney General and sent to the Appellate Division.

fifth cause of action [R.108-109 (R.177-186, R.214-219) and R.737] is a challenge to the whole of the executive budget, as is the fourth cause of action [R.106-108 (R.170-187; R.264-268; R.302-310) and R.735-736] and the ninth cause of action [R.115 (R.214-219) and R.740];

- It identifies that Judge Hartman dismissed "9 of the 10 causes of action" of appellants' complaint – by her December 21, 2016 decision [R.527-535] – "den[ying] defendants' motion to dismiss the sixth cause of action, which challenged the law that created the Commission on Legislative, Judicial and Executive Compensation...(see L 2015, ch 60, part E) on various constitutional and procedural grounds". It does not purport that the undismissed sixth cause of action was not fully preserved by the December 21, 2016 decision. This is significant because five pages later (at p. 7), in a footnote (fn. 3), the Memorandum affirms, in one sentence, Judge Hartman's dismissal of section E of the sixth cause of action on grounds it does not specify – a dismissal which is a LIE, as it was NOT made by her December 21, 2016 decision [R.528, 532-533, R.534], contrary to her June 26, 2017 decision [R.68-79] and November 28, 2017 decision [R.31-41] purporting that it was [at R.77, R.34].

The Memorandum's Disposition of "Several Threshold Issues" (at pp. 3-4)

Pages 3-4 of the Memorandum purports to "first consider several threshold issues" relating to Judge Hartman and the Attorney General. This consideration consists of four paragraphs, concealing ALL the facts, law, and legal argument relating to appellants' presentation of threshold integrity issues, set forth by their brief and reply brief – and reiterated by their appellate motions. These threshold integrity issues, pertaining to Judge Hartman and the Attorney General, were the subject of appellants' first, second, and third subquestions of their brief (at pp. iv-v), whose single, overarching "Question" was:

> "Is the lower court's appealed-from November 28, 2017 decision and judgment defensible – indeed constitutional" (at pp. iv).

The Memorandum conceals this overarching "Question" and the first three subquestions, either totally or materially,

In full, the first of the Memorandum's four paragraphs pertaining to "threshold issues" (at p. 3) reads:

> "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 Harman to decide this action on the merits (see Pines v State of New York, 115 AD3d at 90-91)."

This paragraph starts and ends with LIES.

Appellant Sassower did NOT contend that Judge Hartman "erred by denying her motion for recusal" – as if Judge Hartman had mistakenly decided a single such motion. To the contrary, appellant Sassower contended that Judge Hartman's denials of appellants' motions for her disqualification were by decisions that were "criminal frauds", obliterating ALL ethical, adjudicative, and evidentiary standards – and she substantiated that contention by evidence: "legal autopsy"/analyses of each decision.

As for "Rule of Necessity", this paragraph conceals, *in toto*, what appellants had to say about it:

> (1) that Judiciary Law §14 – to which the Memorandum does not here refer – divests interested judges of jurisdiction to sit – with the consequence that the judge-made "Rule of Necessity" cannot be invoked to confer jurisdiction that the statute removes. This was highlighted by appellant Sassower's November 13, 2018 oral argument, by appellants' motion papers prior thereto, and by their culminating November 27, 2018 order to show cause. As for the cited decisions in *Maron v. Silver* and *Pines v. New York State*, neither are applicable as neither cite Judiciary Law §14 – and this was pointed out, by appellants as to *Maron v. Silver*, including by their November 27, 2018 order to show cause (Exhibit B, ¶12).
>
> (2) that Judge Hartman did NOT herself invoke "Rule of Necessity" – nor could she, as she had LIED that she had "no interest" when, by her May 5, 2017 decision [R.49-51], she denied appellants' first recusal motion. This was identified by appellants' brief (at pp. 30, 49-50) and by appellant Sassower at the November 13, 2018 oral argument in stating:
>
> > "The judge, on the issue of interest, the judge purported she had no interest. She didn't invoke the rule of necessity, even in her final decision that passingly referred to it."[6]

---

[6] The referred-to "final decision that passingly referred to ['Rule of Necessity']" was Judge Hartman's appealed-from November 28, 2017 decision [at R.32-33].

(3) that "Rule of Necessity" has NO applicability to Judge Hartman's disqualification for "demonstrated actual bias" which was the explicit and first ground upon which appellants' motions for her disqualification were based [R.536-609; R.997-1066]. This, too, was identified by their brief (at pp. 49-50).

(4) that "Rule of Necessity" also has NO applicability to Judge Hartman' bias arising from her employment in the Attorney General's office and her personal and professional relationships arising therefrom. Appellants' brief had also identified this (at pp. 49-50).

The second paragraph (at p. 3) reads:

> "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 question 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])."

By "any other reason", the appeal panel is here referring to reasons other than the "pecuniary interest" identified in the prior paragraph without reference to Judiciary Law §14. The appeal panel then falsely implies, by its quote from *Kampfer v Rase*, that "legal disqualification under Judiciary Law §14" is not here at issue – replicating the deceit of respondents' brief (at p. 58), objected to by appellants' reply brief (at p. 5).

The appeal panel's pretense – by inference – that "legal disqualification under Judiciary Law §14" is not involved herein relieves it of having to confront the issue – allowing it to shift to boilerplate deference to "the personal conscience of the court", in the absence of "abuse of discretion". The appeal panel purports to "perceive" no "abuse of discretion" – referencing, in conclusory fashion, Judge Hartman's "prior employment by the Attorney General's office" as not "mandat[ing] recusal". In so doing, it identifies NONE of the facts summarized by appellants' brief and established by the underlying record as to how Judge Hartman's "prior employment by the Attorney General's office" impacted on her conduct. This includes her willful and deliberate failure to disclose, let alone herself address, the issue of her "prior employment by the Attorney General's office", in violation of §100.3F of the Chief Administrator's Rules Governing Judicial Conduct – simultaneously concealing appellants' repeated requests for this and other disclosure – of which she made NONE.

The disclosure issue was the subject of appellants' second subquestion, which, with their appended comment was as follows:

"2. Is the lower court's concealment of appellants' requests that it disclose its financial interests and relationships with defendants – and its failure to make any disclosure – sufficient, in and of itself, to mandate vacatur of its November 28, 2017 decision and judgment – and of its underlying prior decisions – *as a matter of law*?

The lower court concealed plaintiffs' requests for disclosure – of which it made none."

The appellate panel totally conceals this second subquestion, apparently unable to otherwise uphold Judge Hartman's "personal conscience" and "discretion".

The third paragraph (at pp. 3-4) then opens:

"Moreover, Supreme Court's decisions do not evince any instance of fraudulent conduct, concealment or misrepresentation. In that regard, Sassower argues that the court acted fraudulently by failing to specifically address each of her 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]. ..."

The first sentence – "Supreme Court's decisions do not evince any instance of fraudulent conduct, concealment or misrepresentation" – is the closest the appeal panel comes to identifying that "demonstrated actual bias" was the basis for appellants' motions for Judge Hartman's disqualification [R.536-609; R.997-1066] – and the basis for the first subquestion of their brief:

"1. Was the lower court duty-bound to have disqualified itself for demonstrated actual bias – and is its November 28, 2017 decision and judgment [R.31-41] and all prior decisions void by reason thereof?"

However, the appeal panel does not reveal ANY of the evidence appellants furnished in substantiation, as, for instance, their "legal autopsy"/analyses of Judge Hartman's decisions, *to wit*,

- appellants' "legal autopsy"/analysis of Judge Hartman's December 21, 2016 decision [R.554-577], annexed as Exhibit U to their February 15, 2017 order to show cause for her disqualification for the actual bias manifested by her December 21, 2016 decision [R.527-535] – relief her May 5, 2017 decision denied [R.49-51];

- appellants' analysis of Judge Hartman's May 5, 2017 decision and May 5, 2017 amended decision [R.1002-1007], furnished at ¶¶5-8, 10-11 of their June 12, 2017 order to show cause for reargument/renewal/vacatur thereof –

relief her November 28, 2017 decision and judgment denied [R.31-41];

- appellants' "legal autopsy"/analysis of Judge Hartman's June 26, 2017 decision [R.1293-1319], annexed as Exhibit I to appellant Sassower's August 25, 2017 reply affidavit in further support of their June 12, 2017 order to show cause – which her November 28, 2017 decision and judgment denied [R.31-41];

- appellants' "legal autopsy"/analysis of Judge Hartman's November 28, 2017 decision and judgment [R.9-30], annexed to their January 10, 2018 notice of appeal therefrom [R.1], as part of their pre-calendar statement [R.3-8] – and embodied in the "Argument" of their appeal brief (at pp. 46-69).

Nor does the appeal panel reveal the state of the record with respect to these "legal autopsy"/analyses, namely, that the Attorney General did not contest the accuracy of a single one, either before Judge Hartman or before the Appellate Division, instead concealing them, just as Judge Hartman had, in her decisions. It is this concealment that enables the appeal panel to make the conclusory first sentence that Judge Hartman's decisions "do not evince any instance of fraudulent conduct, concealment or representation", followed by two sentences besmirchingly characterizing what "Sassower argues" and that she doesn't know the difference between a ruling not to her liking and bias or misconduct. All three sentences are brazen LIES, having NO basis in the record, other than the fraudulent appellate advocacy of Assistant Solicitor General Brodie, including by his respondents' brief (at pp. 59-60) – to which appellants objected by their reply brief (at p. 3) and then embodied in their October 18, 2018 order to show cause to strike it, for a declaration that the Attorney General's appellate representation of respondents was unlawful, and for sanctions and other relief.

The third paragraph then shifts, with a single sentence, from Judge Hartman to the Attorney General, stating (at p. 4):

> "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."

In such conclusory fashion – and not using the word "misconduct" – the appeal panel disposes of the issue of the Attorney General's litigation fraud before Judge Hartman, adopting the identical conclusory deceits of respondents' brief (at p. 56-58), repeated by Assistant Solicitor General Brodie at oral argument – as to which appellants objected by their reply brief (at pp. 8-10), thereafter seeking sanctions and to strike it, by their October 18, 2018 order to show cause and by their November 27, 2018 order to show cause (Exhibit B).

The appeal panel then follows with two more sentences, similarly devoid of facts, and now misrepresenting the law, stating (at p. 4):

> "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]).

Such conclusory falsehoods are rebutted by appellants' supposedly "unavailing...argument" – all particulars of which are here concealed – argument highlighted, in particular, by their appellate motions, over and beyond by their appeal briefs and the record below.

The final fourth paragraph (at p. 4) is, as follows:

> "Supreme Court properly dismissed the claims asserted by the CJA because it was not represented by counsel.[fn1] 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 [2002], appeal dismissed 96 NY2d 813 [2001]. We further find unavailing Sassower's argument that Executive Law §63(1) and State Finance Law 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."

This conclusory paragraph is also fashioned on concealment:

> – concealing that appellants even had "arguments" as to why Judge Hartman's dismissal of CJA's claims was wrongful;
>
> – concealing what Sassower's "unavailing...arguments" were as to why she was entitled to the Attorney General's representation and/or intervention.

And, of course, the appeal panel conceals that Judge Hartman neither adjudicated nor identified, ANY of the threshold issues appellants had presented relating to:

> (1) the Attorney General's duty, pursuant to Executive Law §63.1 and State Finance Law Article 7-A, to be representing or intervening on appellants' behalf:

(2) the Attorney General's litigation fraud;

(3) the Attorney General's conflict-of-interest.

The appeal panel's adjudication of these – which is not an "affirmance" of either facts or law by Judge Hartman – was the subject of appellants' third subquestion of their brief:

> "3. Is the lower court's concealment of appellants' three threshold issues pertaining to the Attorney General – and its failure to adjudicate same – sufficient, in and of itself, to mandate vacatur of its November 28, 2017 decision and judgment – and of its underlying prior decisions – *as a matter of law*?"

The Memorandum "Turn[s] to the Merits" –
Beginning with Appellants' Sixth Cause of Action (at pp. 5-7)

Having disposed of the "several threshold issues" by substituting, *in toto*, conclusory assertions, mischaracterizations, and falsehoods for the particularized facts and law of appellants' brief and reply brief, the Memorandum "[t]urn[s] to the merits" (at p. 5), stating:

> "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 from 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."

This conclusory first paragraph (at p. 5) and the four paragraphs that follow pertaining to appellants' sixth causes of action conceal the ENTIRE content of the 19-pages of appellants' brief (at pp. 50-69) under the title heading:

> "Judge Hartman's Indefensible and Fraudulent Grant of Summary Judgment to Defendants on Plaintiffs' Sixth Cause of Action".

The accuracy of these 19 pages was uncontested by respondents' brief, but the appeal panel conceals this, as well. So, too, the adjudicative standard governing summary judgment, recited by appellants' brief (at pp. 53-54):

> "The party moving for summary judgment bears the burden of submitting evidence in admissible form demonstrating entitlement to judgment as a matter of law. Once the moving party has met its burden, the burden shifts to the party opposing summary judgment to submit evidence in admissible form that establishes that a material issue of fact exists (*Nomura Asset Capital Corp. v. Cadwalader, Wickersham & Taft LLP*, 26 NY3d 40, 49 [2015]; *Staunton v. Brooks*, 129 AD3d 1371, 1372 [3d Dept 2015])."

This standard, which Judge Hartman had recited in her June 26, 2017 decision denying appellants summary judgment on their sixth cause of action [R.72] – violating that standard in doing so and then violating it again in her November 28, 2017 judgment granting summary judgment to defendants – is just as brazenly violated here by the appeal panel, which does not cite to it.

The second paragraph pertaining to the sixth cause of action (at p. 5) reads:

> "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])."

The appeal panel here furnishes not a single specific of the factual and legal basis upon which appellants' sections A and B of their sixth cause of action [R.109-111 (R.187-193)] asserted that the delegation of legislative authority to the Commission "was in contravention of the separation of powers and without reasonable standards and safeguards".

So too the third paragraph (at pp. 5-6), devoid of a single specific of what the prefatory paragraphs to sections A and B allege as to the predecessor Commission on Judicial Compensation [R.187 (¶386)] – or the "legal autopsy"/analysis of the Court of Appeals' February 23, 2010 *Maron v. Silver* decision that is part of the record[7]:

> "A predecessor to the Commission – the Commission on Judicial Compensation – was created in 2010 in response to the Court of Appeals decision in

---

[7] Appellants' "legal autopsy"/analysis of the February 23, 2010 Court of Appeals decision in *Maron v. Silver* appears at pages 3-10 of their July 19, 2011 letter to then Attorney General Schneiderman. The letter is Exhibit E-1 to their October 27, 2011 opposition report to the Commission on Judicial Compensation's August 29, 2011 report. It is also Exhibit J to their March 30, 2012 verified complaint in their declaratory judgement action, *CJA v. Cuomo, et al.*, challenging the constitutionality and lawfulness of the Commission on Judicial Compensation and its report – beginning with the enabling statute, Chapter 567 of the Laws of 2010.

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). [Fn2] As relevant here, the 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, 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)."

As for the fourth paragraph (at p. 6), also pertaining to sections A and B, it ends with the sentence "Thus, we conclude that the statute does not unconstitutionally delegate legislative power to the Commission." The predecessor sentences up to and including this final sentence read:

> "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."

In other words, the appeal panel's three paragraphs pertaining to sections A and B of appellants' sixth cause of action (at pp. 5-6) achieve their concluding determination of constitutionality by not revealing ANY of the facts, law, and legal argument presented by those two sections as to unconstitutionality [R.109-111 (R.187-193)] and the record pertaining thereto – replicating precisely what appellants' brief highlighted (at pp. 54-57) that Judge Hartman had done to achieve such determinations under her title heading "Sub-Causes A & B – Improper Delegation of Authority

Claims" [R.35-36].

Tellingly, the appeal panel includes only one of the decisions cited by Judge Hartman in support of the constitutionality of sections A and B [R.35-36]: "Matter of Retired Pub. Empls. Assn., Inc. v. Cuomo, 123 AD3d, 92, 97 [2014]" – a Third Department decision in which appeal panel Justice Clark participated. Yet that decision has nothing to do with whether the Legislature may constitutionally delegate its legislative power to a temporary commission for purposes of raising the salaries of legislative, judicial, and executive constitutional officers, let alone where, as at bar, its configuration and the statutory factors it is required to "take into account" are constitutionally deficient in the respects specified by appellants' section B.

As for the two other decisions on which the appeal panel's three paragraphs pertaining to sections A & B rely, neither pertain to delegation of legislative power, period. They are "Matter of Maron v. Silver (14 NY3d 230)", the Court of Appeals' 2010 decision on the three judicial pay raise cases brought by judges and the judiciary; and "Larabee v. Governor of the State of N.Y., 27 NY3d 469, 472 [2016]", the Court of Appeals subsequent decision in one of those three judicial pay raise cases. In other words, the appeal panel has NO legal precedent for what appellants' section A had explicitly asserted to be without legal precedent, stating:

> "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).[fn]"

Appellants quoted this, in their reply brief (at pp. 31-33), in the context of rebutting Assistant Solicitor General Brodie's false claim, in his respondents' brief (at pp. 36-37), that "Similarly-structured commissions have been held constitutional" (bold and underlining added) – which he then repeated at the November 13, 2018 oral argument, without challenge from the appeal panel – and so-particularized by appellants' November 27, 2018 order to show cause. All of this the appeal panel conceals in making it appear that there is nothing unprecedented in the legislative delegation of power it is upholding, when there is – and on a monumental scale.

In a similar fashion – and by a lengthy fifth paragraph (at pp. 6-7) – the Memorandum disposes of appellants' sections C, D, and E of their sixth cause of action. It, too, does not identify any of the facts, law, and legal argument asserted by those three sections [R.111-112 (R.193-201)] – or in the record with respect to them, highlighted by appellants' brief (at pp. 50-54, 57-69) and reply brief (at pp. 33-37). The paragraph reads:

"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.)[fn3] . Based on the foregoing, Supreme Court properly determined that defendants were entitled to summary judgment dismissing the sixth cause of action."

The annotating footnote 3 (at p. 7) reads:

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

Starting first with the annotating footnote 3, so total is its concealment of the facts, law, and legal argument presented by section E [R.112 (R.197-201)] that it does not even reveal what section E concerns, identified in Judge Hartman's appealed-from decision as "the budget bill that created the Commission was procured by fraud and violation of due process" [R.34]. This black-out of even the general subject of section E is because such content precludes the so-called "effective consent" that the Memorandum here adopts from Judge Hartman's November 28, 2017 decision to justify why the March 31, 2015 introduction of budget bill #S.4610/A.6721 is not an Article VII, §3 violation. Indeed, appellants' brief (at p. 59) explicitly identified that section E precluded any claim of "effective consent", stating:

> "Judge Hartman states [R.38] that the record before her contains 'no formal consent'. Yet, rather than acknowledging that such PRECLUDES summary judgment to defendants, she purports – *unsupported by any law* – that 'consideration and passage of the bill is effective consent' – completely ignoring that the facts in the record PRECLUDE 'effective consent', *as a matter of law*. These are the facts detailed by sub-cause E [R.197-201] as to the fraud by which Budget Bill #S4610-A/A.6721-A was introduced and enacted – facts unrefuted by defendants – and which, by the particulars and evidence recited, are clearly irrefutable and dispositive of plaintiffs'

> entitlement to summary judgment on sub-cause E,[fn6] as well as on sub-cause D pertaining to the Article VII, §3 violation [R.193-196]." (capitalization and italics in the original).

As for the footnote's bald assertion that there was "no error" in Judge Hartman's "prior dismissal of section E", this is a LIE, revealed as such by the absence of any detail about the "prior dismissal". Such "prior dismissal" does NOT exist – and this was chronicled by appellants' brief (at pp. 50-53), showing that the fictional dismissal of section E originated with Assistant Attorney General Helena Lynch, who, having no defense to section E upon appellants' March 29, 2017 order to show cause for summary judgment on their sixth cause of action [R.636, 639-640], purported, by her April 21, 2017 opposition memorandum of law [R.772, 774] that Judge Hartman's December 21, 2016 decision had dismissed it [R.527-535], which Judge Hartman then adopted in her June 26, 2017 decision denying summary judgment to appellants on their sixth cause of action [R.77]. Assistant Attorney General Adrienne Kerwin then used the June 26, 2017 decision in her July 21, 2017 cross-motion for summary judgment for defendants on the sixth cause of action [R.1257-1258, 1263, 1105a] – which Judge Hartman accommodated by her November 28, 2017 decision [R.34], reiterating a non-existent prior dismissal of section E. This was not denied by respondents' brief.[8]

Nor would there be any basis for Judge Hartman's December 21, 2016 decision to have dismissed section E – let alone for failure to state a cause of action. For such dismissal, if it actually existed, to not have been "error", it would have had to identify all the presumed-true allegations of section E [R.112 (R.197-201)] which, nonetheless, failed to state a cause of action. Judge Hartman's December 21, 2016 decision did not do this [R.527-535] – just as Assistant Attorney General Kerwin had not done this by her initial September 15, 2016 dismissal cross-motion [R.421-422].

Thus, the appeal panel's footnote affirmance of Judge Hartman's dismissal of section E is not only a fraud as to section E, but undergirds the fraud of this paragraph in affirming her dismissal of section D with respect to the Article VII, §3 violation based on supposed "effective consent".[9]

As for the affirmance of Judge Hartman's dismissal of the Article VII, §6 violation presented by section D, it is also a fraud – and evidencing this is this paragraph's failure to identify and confront

---

> "fn6 McKinney's Consolidated Laws of New York Annotated, Book 1: Statutes – Chapter 2, §11: 'Legislative procedure generally': '...the Constitution not only permits, but it requires an examination into the procedure followed in the consideration of a bill.', citing *Franklin Nat. Bank of Long Island v Clark*, 1961, 26 Misc.2d 724, 212 N.YS.2d 942, motion denied 217 N.Y.S.2d 615."

8 With respect to section E, see appellants' brief (at pp. 50-53); respondents' brief (at pp. 42-44); and appellants' reply brief (at pp. 35-37).

9 With respect to the Article VII, §3 violation, presented by section D, see appellants' brief (at pp. 59-63), respondents' brief (at pp. 41-42), and appellants' reply brief (at pp. 34-35).

what appellants' brief recited as to that dismissal (at pp. 63-64). It was, as follows:

> "...Judge Hartman disposes of [the Article VII, §6 violation] in two conclusory sentences [R.39]: the first simply declaring no violation, with the second purporting, without specificity, that 'The creation of the Commission relates specifically to items of appropriation in the 2015 budget for judicial and legislative pay'. This is false – and Judge Hartman conspicuously does not identify where in the budget the purported 'items of appropriation' might be found. There are no such 'items of appropriation', none were alleged by defendants, and sub-cause D, by its ¶407 [R-194], contains the admission of the six legislative defendants who sponsored A.7997 that there was 'no appropriation in the budget bill relating to the salary commission' – quoting their introducers' memorandum to A.7997, as follows:
>
> > '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.'
>
> Judge Hartman's citations to *Pataki*, 4 NY3d at 98-99, and *Schuyler v S. Mall Constructors*, 32 AD2d 454 [3d Dept 1969], reinforce the violation of Article VII, §6, which the six legislative sponsors of A.7997 themselves revealed." (underlining and italics in the original).

Tellingly, the appeal panel does not identify the unspecific "items of appropriation in the budget" that it is purporting make Part E not violative of Article VII, §6 – and, as highlighted by appellants' reply brief (at p. 35), in rebutting respondents' brief (at p. 42), "The Commission's earliest salary increases would NOT take effect until April 1, 2016 and, therefore, would be part of the budget for fiscal year 2016-2017, not fiscal year 2015-2016". In other words, the appeal panel's affirmance that there was no Article VII, §6 violation is a LIE.

The Memorandum's "Affirmance" of Judge Hartman's December 21, 2016 Decision Dismissing Appellants' Nine Causes of Action (at pp. 7-9)

Having affirmed, in the face of a contrary record, Judge Hartman's dismissal of section E of appellants' sixth cause of action and grant of summary judgment to defendants on Sections A-D (at pp. 5-7), the Memorandum states (at p. 7):

> "Supreme Court's dismissal of Sassower's remaining claims do not require extended discussion."

By "remaining claims", the appeal panel means the nine causes of action dismissed by Judge Hartman's December 21, 2016 decision [R.527-535] granting Assistant Attorney General Kerwin's September 15, 2016 cross-motion to dismiss appellants' verified complaint, made pursuant to CPLR §3211(a)(7) ("the pleading fails to state a cause of action") and CPLR §3211(a)(8) ("the court has not jurisdiction of the person of the defendant") [R.403-428].

The Memorandum does not identify that respondents' cross-motion had been made pursuant to CPLR §3211(a)(7) and (8) – or recite the adjudicative standard governing CPLR §3211(a)(7), relevant to the dismissal it is "affirming". This, notwithstanding the standard is quoted – from Judge Hartman' December 21, 2016 decision – in appellants' "legal autopsy"/analysis thereof, reprinted by their brief (at p. 7) in the context of contesting the lawfulness of her dismissal of their first four causes of action. The appeal panel's violation of that standard is just as brazen as Judge Hartman's.

As hereinbelow shown, the appeal panel's "discussion" of the nine causes of action is a LIE as to each.

As to appellants' first, second, third, and fourth causes of action [R.99-107 (R.159-187)],[10] the Memorandum purports (at pp. 7-8):

> "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 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 were identical to the four proposed causes of action that were dismissed as meritless (see Biggs v. O'Neill, 41 AD3d 1067, 1068 [2007])."

The assertion that Judge Hartman "properly dismissed" the first through fourth causes of action because they were "identical" to those asserted in the first citizen-taxpayer action is a LIE. As stated by appellants' brief (at pp. 5-7) – without contest by Mr. Brodie:

> "...Justice Hartman's [December 21, 2016 decision]...proclaims the first four causes of action herein as 'identical' to 9-12 [dismissed by Judge McDonough in the prior citizen-taxpayer action].
>
> This is false. A total of 16 paragraphs – four paragraphs at the outset of each of the first four causes of action of the September 2, 2016 verified complaint (¶¶24-27

---

10 Discussed in the briefs, as follows: appellants' brief (at pp. 5-7, 43); respondents' brief (at pp. 24-31), appellants' reply brief (at pp. 19, 20-28).

[R.100], ¶¶35-38 [R.103], ¶¶41-44 [R.104], ¶¶49-52 [R.106]) identify that each is not barred by Justice McDonough's August 1, 2016 decision [R.315-325] – and furnish the reason and substantiating proof, *to wit*, plaintiffs' Exhibit G analysis [R.338-373] showing the August 1, 2016 decision to be a 'judicial fraud' by a judge duty-bound to have disqualified himself for actual bias born of financial interest, who dismissed plaintiffs' causes of action:

> '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." (¶¶26, 37, 43, 51 of plaintiffs' September 2, 2016 verified complaint, underlining in original).

Justice Hartman's concealment of these prominent, material, and fully-documented allegations of the September 2, 2016 verified complaint (¶¶24-27 [R.100], ¶¶35-38 [R.103], ¶¶41-44 [R.104-5], ¶¶49-52 [R.106-7]) reflects her knowledge that they preclude dismissal of the first four causes of action as failing to state a cause of action based on the August 1, 2016 decision [R.315-325]. Indeed, her single cited case, the Appellate Division, Third Department decision in *Maki v. Bassett Healthcare*, 141 AD3d 979, 981 [3d Dept 2016], is not to the contrary. Rather, it recites the governing principal she has ignored:

> ''we proceed to determine the motion 'in accordance with the requirements of CPLR 3211' (*Lockheed Martin Corp. v Atlas Commerce, Inc.*, 283 AD2d at 803), and, in so doing, we ''afford the pleadings a liberal construction, take the allegations of the complaint as true and provide plaintiff the benefit of every possible inference'' (*Stainless Broadcasting Co. v Clear Channel Broadcasting Licenses, L.P.*, 58 A.D.3d 1010, 1012 [2009], quoting *EBC I, Inc. v Goldman, Sachs & Co.*, 5 N.Y.3d 11, 19 [2005]).' (at 980-981).

Justice Hartman's concealment of the allegations of the first four causes of action replicates AAG Kerwin's identical concealment by her dismissal cross-motion, objected to by plaintiffs. And, tellingly, Justice Hartman does not reveal either the grounds upon which AAG Kerwin had cross-moved to dismiss the first four causes of action [R.415] – nor plaintiffs' response by their September 30, 2016 memorandum of law (at pp. 15-16) [R.488-489]." (underlining and italics in the original).

The accuracy of this recitation was uncontested – and so-highlighted by appellants' reply brief pertaining to the first four causes of action (at pp. 1, 12-13). Nevertheless, the appeal panel conceals and does not address it, while replicating the grounds of Judge Hartman's appealed-from dismissal –

with an addition it does not identify as such, "Sassower did not appeal from the order that dismissed these claims.", whose legal significance, if any, to its "affirmance", it does not identify, nor the significance of the sole case it cites in parenthesis, with an inferential "see",[11] immediately upon asserting that Judge Hartman "properly dismissed" the first four causes of action, "Biggs v. O'Neill, 41 AD3d 1067, 1068 [2007])." These two *sub silentio*, misleading add-ons would appear prompted by frivolous argument pertaining to collateral estoppel/*res judicata* in Assistant Solicitor General Brodie's respondents' brief (at pp. 14-16), rebutted by appellants' reply brief (at pp. 15-17).

As to appellants' fifth cause of action [R.108-109 (R.177-186, R.214-219)],[12] the Memorandum purports (at p. 8):

> "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 inference that Judge Hartman "also properly dismissed" the fifth cause of action for these recited reasons is a LIE. Judge Hartman's dismissal of the fifth cause of action was by a single sentence [R.531] – and appellants' brief (at p. 7) quotes it:

> "...the fifth cause of action, which alleges violations of New York State Constitution Article VII §§4, 5, 6, must be dismissed because it restates arguments and claims already rejected by [Justice McDonough] in [his] prior decisions."

Thus, *sub silentio*, the appeal panel substitutes different grounds for dismissing the fifth cause of action, falsely attributing it to Judge Hartman.

As to these superseding grounds, they are no less a LIE than Judge Hartman's – resting, as they do, on falsifying and concealing, *in toto*, the presumed-true allegations of the fifth cause of action:

> First, the inference that the fifth cause of action was confined to "appropriations for the Judiciary", at least with respect to violations of Article VII, §4, is false. The fifth cause of

---

11 As identified in footnote 4 of appellants' brief (at p. 49), "see" is used "to introduce an authority that clearly supports, but does not directly state, the proposition", The Bluebook: A Uniform System of Citation (at p. 4) (18th ed. 2004).

12 Discussed in the briefs, as follows: appellants' brief (at pp. 7-9, 43-44); respondents' brief (at pp. 31-32), appellants' reply brief (at pp. 19, 28-29).

action [R.108-109 (R.177-186, R.214-219)] alleged Article VII, §§4, 5, and 6 violations with respect to all the Governor's budget bills introduced in January 13, 2016 (#S.6400/A.9000 - #S.6409/A.9009).

Second, it is also false that that "Article VII, §4 does not apply to appropriations for the Judiciary". It simply applies in a different way – and the fifth cause of action not only identified this, but identified that the Senate and Assembly one-house budget resolutions had concealed the difference [R.181-182 (¶¶370-371, 373-374)].

Third, the unspecified "budget bill that contained the enabling legislation" is presumably the Governor's Budget Bill #S.4610/A.6721, whose Part E established the Commission on Legislative, Judicial and Executive Compensation. Such bill, introduced on March 30, 2015, is not embraced by the fifth cause of action [R.108-109 (R.177-186, R.214-219)], but by the sixth cause of action and, specifically, by its sections D and E [R.111-112 (R.194-196, 197-201).

Fourth, the Article VII, §5 violations alleged in the fifth cause of action pertain to the Governor's five "appropriation bills" (#S.6400/A.9000 - #S.6404/A.9004), introduced on January 13, 2016 – and "message of necessity" have NO relevance to the Legislature's failure to amend and pass them, pursuant to §4, so that each bill, other than the Legislative/Judiciary budget bill (#S.6401/A.9001), would become "law immediately without further action by the governor".

Fifth, the purported "no violation of Article VII, §6" that the appeal panel had "already determined" pertained to the Governor's Budget Bill #S.4610/A.6721 – the subject of the sixth cause of action. It had nothing to do with the violations of Article VII, §6 alleged in the fifth cause of action pertaining to the Governor's budget bills introduced on January 13, 2016, *to wit*, his "appropriation bills" (#S.6400/A.9000 - #S.6404/A.9004) and his "non-appropriation bills" (#S.6405/A.9005 - #S.6409/A.9009) [R.175, ¶354].

As to appellants' seventh cause of action [R.112-114 (R.201-212)],[13] the Memorandum purports (at p. 8):

> "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."

This is a LIE. Judge Hartman did not "also…properly dismiss[]" the seventh cause of action on

---

13 Discussed in the briefs as follows: appellants' brief (at pp. 9-10, 44); respondents' brief (at pp. 44-47); appellants' reply brief (at pp. 19, 37-39).

these grounds. Rather, she dismissed it, together with the eighth cause of action, by a two-sentence collective dismissal quoted by appellants' brief (at p. 9):

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

Appellants' brief having highlighted (at pp. 9-10, 44) that this was a LIE, the appeal panel here, *sub silentio*, swaps it out for two substituted grounds that are also LIES. Its bald assertion "the Legislature had no duty to exercise any oversight of the Commission" both conceals and rejects the presumed-true threshold allegation of the seventh cause of action as to the unconstitutionality, *as applied*, of the Commission statute, which was as follows:

> "71.... "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)." [R.112 (R.201) (underlining, capitalization, italics in the original)].

As for the appeal panel's further bald assertion "the complaint failed to plead facts legally sufficient to demonstrate that any Commission members were actually biased", such is an even more brazen LIE. And establishing this are the "plead[ed] facts" concealed, *in toto*, from appellants' seventh cause of action under its first section heading entitled:

> "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" [R.113 (R.202-203)].

On top of this, the appeal panel's *sub silentio* two substituted grounds of "affirmance" cannot and do not support dismissal of the seventh cause of action as it contains three additional sections that not only each set forth a cause of action, but entitle appellants to summary judgment on each. These sections, which the appeal panel conceals, *in toto*, with all their presumed-true pleaded-facts, are entitled:

> "B. *As Applied*, a Commission that Conceals and Does Not Determine Whether Systemic Judicial Corruption is an 'Appropriate Factor' is Unconstitutional" [R.113 (R.203-204)];

> "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" [R.113 (R.204-209)];

"D. *As Applied*, a Commission that Suppresses and Disregards Citizen Input and Opposition is Unconstitutional" [R.114 (R.209-212)].

As to appellants' eighth cause of action [R.114 (R.212-213)],[14] the Memorandum purports (at p. 8):

> "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."

Again, this is a LIE. Judge Hartman did not "also" dismiss the eighth cause of action for this reason, but dismissed it, together with the seventh cause of action, by the two-sentence collective dismissal quoted by appellants' brief (at p. 9):

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

Just as appellants' brief (at pp. 9-10, 44) demonstrated that this was a LIE, so, here, the appeal panel's *sub silentio* substituted ground is an even more flagrant LIE:

> First, its bald assertion that "the record shows that the Commission considered the requisite statutory factors in making its recommendation regarding judicial compensation" is NOT an "affirmance" for failure to state a cause of action, but a *sua sponte* granting of summary judgment to respondents who had not even moved to dismiss pursuant to CPLR §3211(a)(1) "a defense is founded upon documentary evidence".
>
> Second, there is NO EVIDENCE in "the record…that the Commission considered the requisite statutory factors in making its recommendation regarding judicial compensation" – and, tellingly, the appeal panel furnishes not a single example of the "requisite statutory factors" specified by the eighth cause of action as having been ignored by the Commission, which it, in fact, "considered".
>
> Third, the full EVIDENCE in the record was NOT before the appeal panel, as it had refused to subpoena the record, sought by the fifth branch of appellants' July 25, 2018 order to show cause, as follows:

---

14 Discussed in the briefs, as follows: appellants' brief (at pp. 9-10, 44); respondents' brief (at pp. 47-49); appellants' reply brief (at pp. 19, 39-41).

"issuing a subpoena *duces tecum* to the Albany County Clerk directing delivery to this Court of the record of this citizen-taxpayer action and of its incorporated record of the predecessor citizen-taxpayer action for purposes of confirming plaintiffs-appellants' evidentiary entitlement to summary judgment on each of their causes of action, as well as to the granting, in its entirety, of their March 29, 2017 order to show cause with preliminary injunction and TRO";

Fourth, even without the benefit of the full EVIDENCE of the record, appellants had furnished the Appellate Division with their "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)" – the same as is referred to by the eighth cause of action [R.212-213 (at ¶455)] as "Individually and collectively, sufficient to void the judicial salary increase recommendations of [the] December 24, 2015 Report [of the Commission on Legislative, Judicial and Executive Compensation], *as a matter of law*." It was annexed as Exhibit EE to appellant Sassower's August 6, 2018 reply affidavit in further support of appellants' July 25, 2018 order to show cause for a preliminary injunction, with TRO – and a copy of that copy, the same as appellant Sassower had brought to the August 2, 2018 oral argument of the TRO, is annexed hereto as Exhibit C;

Fifth, the eighth cause of action extends beyond the Commission's failure to consider "requisite statutory factors" [R.114, R.212-213], yet the appeal panel neither refers to, nor contests, the presumed-true additional violations the eighth cause of action identifies.

As to appellants' ninth cause of action [R.115 (R.214-219)],[15] the Memorandum purports (at p. 8):

"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])."

This is another LIE – affirming what appellants' brief (at pp. 10-13) already exposed as deceit. As

---

[15] Discussed in the briefs, as follows: appellants' brief (at pp. 10-13; 44-45); respondents' brief (at pp. 50-53); appellants' reply brief (at pp. 19, 41-42).

there stated with regard to Judge Hartman's dismissal [R.531-532] – uncontested by respondents' brief:

> "...plaintiffs' ninth cause of action (¶¶81-84) [R.115, R.214-219] does not challenge budget 'negotiation' by the Governor, Temporary Senate President, and Assembly Speaker. It challenges their budget dealmaking that includes the amending of budget bills – the unconstitutionality of which is compounded by the fact that they do it behind-closed-doors. Both are alleged by plaintiffs' ninth cause of action to unbalance the constitutional design – and, as set forth by the ninth cause of action, citing and quoting from the Court of Appeals' decision in *King v. Cuomo*, 81 N.Y.2d 247 (1993) – on which plaintiffs' ninth cause of action principally relies – and *Campaign for Fiscal Equity, Inc. v. Marino*, 87 N.Y.2d 235 (1995), also cited and quoted by plaintiffs' ninth cause of action – the standard for determining constitutionality of a practice is whether it unbalances the constitutional design. These two cases make plain that because the Constitution does not prohibit a practice does not make it constitutional – contrary to AAG Kerwin's deceit on her cross-motion – adopted by Justice Hartman.
>
> As with AAG Kerwin, Justice Hartman's decision does not address, makes no showing, and does not even baldly claim, that three-men-in-a-room 'budget negotiations and amending of budget bills' – all taking place out of public view – is consistent with the text of Article VII, §§3 and 4 – or Article III, §10 of the New York State Constitution, 'The doors of each house shall be kept open', and Senate and Assembly rules consistent therewith: Senate Rule XI, §1; Assembly Rule II, §1; and Public Officers Law, Article VI. Similarly, the decision does not address, makes no showing, and does not even baldly claim, that three-men-in-a-room governance accords with the constitutional design, including as to size, reflected by Zephyr Teachout's law review article '*The Anti-Corruption Principle*', Cornell Law Review, Vol 94: 341-413 – legal authority to which plaintiffs' ninth cause of action also cites [R.218]. As such, Justice Hartman's dismissal of the ninth cause of action is fraudulent." (underlining in the original).

Thus, repeated, identically, by the appeal panel's "affirmance" is Judge Hartman's already-demonstrated fraud.

As to appellants' tenth cause of action [R.115-123],[16] the Memorandum purports (at p. 9):

> "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

---

16 Discussed in the briefs, as follows: appellants' brief (at pp. 13-14; 45); respondents' brief (at pp. 53-55); appellants' reply brief (at pp. 19, 43).

> appropriation for budget year 2014-2015, rather than 2016-2017, was an obvious typographical error that is insufficient to invalidate 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])."

Here is yet another LIE, revealed as such by appellants' brief (at pp. 13-14), which had stated:

> "...As for Justice Hartman's claim that 'the district attorney salary appropriation plaintiff challenges specifically supersedes any law to the contrary', her decision furnishes no law for the proposition that an appropriation can lawfully or constitutionally do so – and such contradicts plaintiffs' tenth cause of action that it cannot (¶¶92, 96-104) [R.117-120]. As for Justice Hartman's claim that 'reference to fiscal year 2014-2015 rather than 2016-2017 is a typographical error that does not invalidate the challenged legislation', such disposes of the least of the several grounds of the cause of action, indeed, only ¶¶90-91 [R.117], leaving the balance, all concealed, not only stating a cause of action, but establishing an entitlement to summary judgment by its three recited FOIL requests – and so identified by plaintiffs' September 30, 2016 memorandum of law (at pp. 32-35) [R.505-508]."

Likewise, a LIE is the final sentence sentence of this paragraph:

> "Sassower's remaining contentions are either moot or have been considered and found to lack merit."

The appeal panel furnishes no specificity as to what "remaining contentions" are "moot" or "found to lack merit" – and there are no contentions in either category in the tenth cause of action. To the extent this last sentence is not confined to the tenth cause of action,[17] there are, likewise, no contentions in either category in any of the other nine causes of action, or elsewhere in the appeal. Indeed, all the recognized exceptions to mootness are here present – and Judge Hartman did not find to the contrary, even with respect to the only cause of action to which she made any reference to mootness [R.531-532], the ninth cause of action challenging the constitutionality of "three men in a room" budget deal-making, *as unwritten* and *as applied* [R.115 (R.214-219)].

"[T]he Judgement is affirmed" (at p. 9)

The Memorandum concludes with a line reading "McCarthy, J.P., Clark and Mulvey, JJ., concur" – ostensibly concurring in what Justice Rumsey purports to have written.

Then follows what is presumably the Order part of the appeal panel's "Memorandum and Order":

---

17 As reflected by the preceding paragraph (at p. 8), "affirming" Judge Hartman's dismissals of appellants' seventh, eighth, and ninth causes of action, a given paragraph is not necessarily confined to a single cause of action.

"ORDERED that the judgment is affirmed, without costs."

Yet, the Memorandum itself nowhere states "the judgment is affirmed" and the Order purporting the affirmance does not comply with the requirements of CPLR §5712, entitled "Content of order determining appeal":

> "(b) Order of affirmance. Whenever the appellate division, *although affirming a final or interlocutory judgment or order*, reverses or modifies any findings of fact, or makes new findings of fact, its order shall comply with the requirements of subdivision (c)." (italics added).

As hereinabove detailed, the Memorandum modified "findings of fact" and made "new findings of fact", with respect to appellants' causes of action (first through fourth, fifth, seventh, eighth, tenth), as well as with respect to the threshold integrity issues pertaining to Judge Hartman and the Attorney General. Yet, its deviation from Judge Hartman's November 28, 2017 judgment is *sub silentio* as to both facts and law, thereby also concealing its wholesale violations of the "requirements of subdivision (c)" of CPLR §5712. Such mandated that the order of affirmance:

> "1. ....state whether or not the findings of fact below have been affirmed", when its "determination is stated to be upon the law alone"; and:
>
> "2. if the determination is stated to be upon the facts, or upon the law and the facts, the order shall also specify the findings of fact which are reversed or modified, and set forth any new findings of fact made by the appellate division with such particularity as was employed for the statement of the findings of fact in the court of original instance; except that the order need not specify the findings of fact which are reversed or modified nor set forth any new findings of fact if the appeal is either from a determination by the court without any statement of the findings of fact or from a judgment entered upon a general verdict without answers to interrogatories."

Nowhere does either the appeal panel state whether its determination is "upon the law alone"; "upon the facts", or "upon the law and the facts", or "whether or not the findings of fact below have been affirmed"; or whether there are "new findings of fact".

The appeal panel may be presumed to know the adverse consequence to appellants of its violations of CPLR §5712, vis-à-vis the Court of Appeals' subject matter jurisdiction – as commentary pertaining to that provision makes it explicit, as, for instance, McKinney's Consolidated Laws of New York Annotated, 7B, pp. 583-4 (1995):[18]

---

18 See, similarly, 2014 edition, at pp. 459-60:

> "CPLR 5712 is largely designed to ensure that an order contains certain information that can affect appealability; and scope of review on appeal.
>
> ...

> One of the rare instances in which the Court of Appeals can review issues of fact is where the appellate division has expressly or impliedly found new facts and has, based on those new findings, made a final disposition of the case. Subdivision (b) and (c) of CPLR 5712 are both designed to require the appellate division to reveal what new findings they had made, if any, to enable the Court of Appeals to determine, among other things, whether the Court of Appeals can now review the facts. Typically, it will be subdivision (c) that's relevant, because ordinarily a finding of new facts by the appellate division will result in reversing or modifying the lower court determination. But sometimes the appellate division, although modifying a fact finding or finding a new fact, will merely affirm the determination as so modified. The latter is the situation covered by subdivision (b). Both (b) and (c) would appear to have reference to the review-of-facts powers contained in CPLR 5501(b). The latter refers to a case in which the appellate division sees an order 'affirming' the judgement as modified, within the intendment of CPLR 5712(b). It may be only a nice case of semantics, but factual activity by the appellate division can be important for the Court of Appeals to know about regardless of the label the appellate division has given to its disposition.
>
> Hence, where there is an affirmance, a reversal, or a modification, underlying findings in respect of the facts, and especially any alterations made by the appellate division in the facts as found at the trial level, should be revealed by the appellate division order." (underlining added).

See, also, *People v. Bleakley*, 69 NY2d 490, 494 (1989), citing to "Cohen and Karger, Powers of the New York Court of Appeals §109, p. 465 [rev ed])" and quoting it, as follows:

> "the linchpin of our constitutional and statutory design [is] intended to afford each litigant at least one appellate review of the facts".

Thus, the appeal panel's violations of its statutory duty to properly identify what it has done – and the respects in which its "affirmance" is actually a modification, are intended to mislead the Court of Appeals as to its jurisdiction with respect to Article VI, §3 of the New York Constitution:

> "The jurisdiction of the court of appeals shall be limited to the review of questions of law except...where the appellate division, on reversing or modifying a final or interlocutory judgment in an action or a final or interlocutory order in a special proceeding, finds new facts and a final judgment or a final order pursuant thereto is entered...."

> Subdivisions (b) and (c) of CPLR 5712 are both designed to require the appellate division to reveal what new findings they have made, if any, to enable the Court of Appeals to determine, among other things, whether the Court of Appeals can now review the facts.
>
> Both (b) and (c) would appear to have reference to the review-of-facts powers contained in CPLR 5501(b). ..."

Moreover, to the extent that the "judgment" being "affirmed" is the single decretal paragraph at the end of Judge Hartman's November 28, 2017 decision and judgment, it does not conform to anything there adjudicated or at issue in this case. It reads:

> "ORDERED AND ADJUDGED AND DECLARED that plaintiff has not demonstrated that the Laws of 2015, ch 60, Part E §3[5], which created the Commission on Legislative, Judicial & Executive Compensation, is facially unconstitutional." [R.40].

This is utterly nonsensical. "Part E §3[5]" was not challenged by appellant as "facially unconstitutional", nor would it be, as such provision states:

> "To the maximum extent feasible, the commission shall be entitled to request and receive and shall utilize and be provided with such facilities, resources and data of any court, department, division, board, bureau, commission, agency or public authority of the state or any political subdivision thereof as it may reasonably request to carry out properly its powers and duties pursuant to this section." [R.1081].

Consequently, the "affirmed" judgment – if "affirming" the single decretal paragraph of the November 28, 2017 decision and judgment – has NOTHING to do with appellants' sixth cause of action, as to which Judge Hartman purports to have granted summary judgment "in favor of defendants" – a grant which ostensibly includes sub-cause E.

The Memorandum and Order is Not Signed by Any of the Four Panel Justices (at p. 9)

The Memorandum and Order is not signed by any of the four panel justices. Rather, it ends with an autopen signature of the clerk, as follows:

> "ENTER:
> s/
> Robert D. Mayberger,
> Clerk of the Court

CPLR §2219(b), entitled "Signature on appellate court order" reads:

> "An order of an appellate court shall be signed by a judge thereof except that, upon written authorization by the presiding judge, it may be signed by the clerk of the court or, in his absence or disability, by a deputy clerk."

Yet, upon appellant Sassower's written FOIL/public access request to Clerk Mayberger for "a copy of such written authorization", the response revealed, without so-stating, no "written authorization" (Exhibits A-1, A-2). Upon further written request to Clerk Mayberger, asking:

"whether your signature is pursuant to CPLR §2219(b). If it is, I request, pursuant to FOIL (Public Officers Law, Article VI) and §124 of the Rules of the Chief Administrative Judge ('Public Access to Records'), a copy of the 'written authorization by the presiding judge' that CPLR §2219(b) expressly requires for you to sign 'An order of the appellate court'." (Exhibit A-4).

The response, this time signed by Clerk Mayberger, again revealed, without so-stating, no such "written authorization".

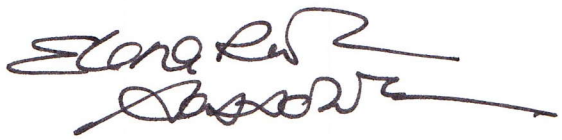
Even more serious, however, was Clerk Mayberger's failure to address whether his role with respect to the "Memorandum and Order" had been confined to signing it, by autopen. The written inquiry was as follows:

"Reference is made to the December 27, 2018 'Memorandum and Order' disposing of the citizen-taxpayer action appeal *Center for Judicial Accountability, Inc., et al. v. Cuomo, et al.* (#527081), whose final sentence reads: 'ORDERED that the judgment is affirmed, without costs.'

Why does this ORDERING sentence follow – and not precede – the line reading 'McCarthy, J.P., Clark and Mulvey, JJ., concur'? Is it because their concurrence is with the Memorandum portion that purports to be written by Justice Rumsey?

Who has written the ORDERING sentence, whose assertion 'the judgment is affirmed' is implied, but not stated in the Memorandum itself. Is it you – or personnel in the Clerk's Office – and is that why your autopen signature is beneath it, rather than the signature of any of the justices?"

He furnished no answer (Exhibit A-5).



Plaintiff-Appellants' "Legal Autopsy"
of Appellate Division, Third Department's December 27, 2018 Memorandum and Order

TABLE OF EXHIBITS