COURT OF APPEALS
STATE OF NEW YORK

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

May 31, 2018

Plaintiffs-Appellants,

Moving Affidavit

-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.

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> "After so plain a prohibition [Judiciary Law §14], can anything more be necessary to prevent a judge from retaining his seat in the cases specified?... The exclusion wrought by it is as complete as is in the nature of the case possible. The judge is removed from the cause and from the bench; or if he will occupy the latter, it must be only as an idle spectator and not as a judge. He can not sit as such. The spirit and language of the law are against it. Having disqualified him from sitting as a judge, the statute further declares that he can neither decide nor take part in the decision of the cause, as to which he is divested of the judicial function. Nor ought he to wait to be put in mind of his disability, but should himself suggest it and withdraw, as the judge with great propriety attempted to do in the present case. He can not sit, says the statute. It is a legal impossibility, and so the courts have held it. (*Edwards* v. *Russell,* 21*Wend.* 63; *Foot* v. *Morgan,* 1 *Hill,* 654.)
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> The law applies as well to the members of this court as to any other; or if there be any difference it is rather in favor of its more stringent application to the judges of a court of last resort, as well, because of its greater dignity and importance as a tribunal of justice, as that there is no mode of redress appointed for the injuries which its biased decisions may occasion. The law and the reasons which uphold it apply to the judges of every court in the state, from the lowest to the highest." ***Oakley v. Aspinwall*, 3 NY 547, 551-2 (1850).**

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.:

ELENA RUTH SASSOWER, being duly sworn deposes and says:

1. I am the unrepresented individual plaintiff-appellant in the appeal of this citizen-taxpayer action brought pursuant to State Finance Law Article 7-A (§123 *et seq.*) for declarations that the state budget is unconstitutional and unlawful – including the Judiciary budget and the commission-based judicial salary increases it embeds that have raised the salaries of each of this Court's associate judges by $82,200 a year.

2. I am fully familiar with all the facts, papers, and proceedings heretofore had and submit this affidavit in support of plaintiff-appellants' accompanying notice of motion for reargument/renewal and vacatur of the Court's May 2, 2019 Order, determination/certification of threshold issues, disclosure/disqualification, and other relief.[1]

3. This reargument/renewal motion is timely, as it is being served within 30 days of the May 2, 2019 Order (Exhibit A-1). It is also being made returnable on July

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[1] This motion and the prior proceedings on which it rests are accessible from CJA's website, www.judgewatch.org, *via* the prominent homepage link "CJA's Citizen-Taxpayer Actions to End NYS' Corrupt Budget 'Process' & Unconstitutional 'Three Men in a Room' Governance". The direct link for CJA's webpage for this motion is here: http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/ct-appeals/5-31-19-reargument-etc.htm – and from it all referred-to evidence, law, and prior proceedings can be easily accessed.

8, 2019 so as to coincide with the return date of appellants' motion for leave to appeal, which, likewise, will be timely served.

4. On Monday, May 6, 2019, the first business day following my receipt of the May 2, 2019 Order *sua sponte* dismissing appellants' appeal of right, I spoke by phone with Assistant Deputy Clerk Margaret Wood and Chief Motion Clerk Rachel MacVean, stating that the Order was indefensible and, if rendered by the six associate judges, impeachable – and that absent its *sua sponte* withdrawal, to which I would have no objection, I would be moving for reargument and leave to appeal. I also inquired whether the Order was actually the product of the Clerk's Office, rather than a determination by the six associate judges, as no associate judge had signed it and letters in response to the Clerk's *sua sponte* inquiry were only required to be submitted by a single original (addressed to the Clerk), by contrast to the original, plus six copies, required for motions for reargument and leave to appeal (22 NYCRR §500.10 and §500.21(d)(1) & (2)). I also stated that I would have expected Associate Judge Garcia to have joined Chief Judge DiFiore in taking "no part" – and Associate Judge Fahey to have dissented from any dismissal of the appeal.

5. In fact, based on the unequivocal bar of Judiciary Law §14 that a judge "shall not sit as such in, or take any part in the decision of, an action, claim, matter, motion or proceeding to which…he is interested" and this Court's interpretive decision in *Oakley v. Aspinwall*, 3 NY 547 (1850), that the statute divests an interested judge of

jurisdiction – both prominently before the Court – I would have expected all six associate judges to have recognized that they had no jurisdiction to dismiss the appeal in which they themselves are directly interested, unless they could invoke "Rule of Necessity" to give themselves the jurisdiction the statute removes from them – a question threshold on the appeal.

6. Indeed, rather than *sua sponte* dismissing the appeal, as the May 2, 2019 Order purports (Exhibit A-1), the duty of the six associate judges was to *sua sponte* address whether they could invoke "Rule of Necessity" – and to explicate same by a reasoned decision comparable to the Court's decision in *New York State Criminal Defense Lawyers v. Kaye*, 95 NY2d 556 (2000). There, in response to a disqualification motion accompanying a motion for leave to appeal,[2] based on "Judiciary Law §14 and a parallel provision of the New York Code of Judicial Conduct (Canon 3[C][1][d][i])", the Court denied the disqualification motion, stating (at p. 561) that its judges had "no pecuniary or personal interest" and that "petitioners ha[d] alleged none".

7. The May 2, 2019 Order makes no disclosure of what the associate judges know to be their pecuniary and personal interests in appellants' appeal, proscribed by Judiciary Law §14 and "parallel provision[s]" of the Chief Administrator's Rules

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[2] The Court, thereafter, granted Criminal Defense Lawyers' motion for leave to appeal and, on the appeal, affirmed against them, 96 N.Y.2d 512 (2001).

Governing Judicial Conduct (§100.3E). Consequently, by this motion and in conjunction with appellants' motion for leave to appeal, I now allege and particularize those interests and relationships so that the Court may render a reasoned decision on the judicial disqualification issues comparable to its decision in *Criminal Defense Lawyers v. Kaye*[3] – one additionally addressed to the fact that the Court could not constitutionally dismiss appellants' appeal without invoking "Rule of Necessity", as it is the "narrow exception", *General Motors Corp. v. Rosa*, 82 N.Y.2d 183, 188 (1993), *Maron v. Silver*, 14 N.Y.3d 230, 249 (2010),[4] to the unconstitutionality that exists when judges have "direct, personal, substantial pecuniary interest[s]", *Caperton v. Massey Coal*, 556 U.S. 868 (2009), quoting *Tumey* v. *Ohio*, 273 U.S. 510, 523 (1927) – as at bar.

8. As the May 2, 2019 Order does not invoke "Rule of Necessity", it is unconstitutional, pursuant to all U.S. Supreme Court caselaw, as may be discerned from Chief Justice Roberts' dissent in *Caperton*[5] because the six associate judges each

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[3] As the Court there noted, citing *Schulz v New York State Legislature*, 92 NY2d 917 (1998), a "statutorily based" disqualification motion raises "an issue of law for decision by the Court".

[4] The Appellate Division's December 27, 2018 Memorandum and Order (at p. 3) also refers to the "narrow exception" that is "Rule of Necessity", attributing it to "*Pines v. State of New York*, 115 AD3d 80, 90 [2014] [internal quotation marks, brackets and citations omitted], appeal dismissed 23 NY3d 982 [2014]". The citations it has omitted from *Pines* are to *General Motors Corp. v. Rosa* and *Maron v. Silver*.

[5] As stated in Chief Judge Roberts' dissent, to which Judges Scalia, Thomas, and Alito joined:

have "direct, personal, substantial pecuniary interest[s]". This, quite apart from their other interests and relationships contributing to the "probability" of bias, viewed by the *Caperton* majority to also be unconstitutional.

9. The May 2, 2019 Order is additionally unconstitutional because its ground for *sua sponte* dismissal, "no substantial constitutional question is directly involved", is an unconstitutional rewrite of Article VI, §3(b)(1) of the New York State Constitution, and CPLR §5601(b)(1) tracking it, guaranteeing an appeal of right "wherein is directly involved the construction of the constitution of the state or of the United States".

10. Moreover, even were the Court's *sua sponte* ground "no substantial constitutional question...directly involved" constitutional, the May 2, 2019 Order is "so totally devoid of evidentiary support" as to be unconstitutional, *Garner v. State of Louisiana*, 368 U.S. 157, 163 (1961), *Thompson v. City of Louisville*, 362 U.S. 199 (1960).

11. For the convenience of the Court, a table of contents follows.

> "We have thus identified only *two* situations in which the Due Process Clause requires disqualification of a judge: when the judge has a financial interest in the outcome of the case, and when the judge is presiding over certain types of criminal contempt proceedings.
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> It is well established that a judge may not preside over a case in which he has a 'direct, personal, substantial pecuniary interest.' *Tumey* v. *Ohio*, 273 U.S. 510, 523 (1927). This principle is relatively straightforward, and largely tracks the longstanding common-law rule regarding judicial recusal. See Frank, Disqualification of Judges, 56 Yale L. J. 605, 609 (1947) ('The common law of disqualification ... was clear and simple: a judge was disqualified for direct pecuniary interest and for nothing else'). ... " (italics in the original).

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Appellants' Entitlement to the Granting of Reargument/Renewal & Vacatur of the Court's May 2, 2019 Order

12. None of the Court' six associate judges signed the May 2, 2019 Order, in which "Chief Judge DiFiore took no part" (Exhibit A-1). Nor is it signed by Court Clerk John Asiello. Rather, it is signed by Deputy Clerk Heather Davis[6] – who, at the outset of this citizen-taxpayer action, on September 2, 2016, accepted service of the summons and verified complaint (Exhibit B) for defendant "JANET DiFIORE, in her official capacity as Chief Judge of the State of New York and chief judicial officer of the Unified Court System".

13. It was Deputy Clerk Davis who also signed the Court's March 4, 2019 letter (Exhibit C), which, without citing the authority pursuant to which it was issued,[7] advised of a *sua sponte* inquiry as to the Court's subject matter jurisdiction.

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6 A copy of my May 31, 2019 records request, pursuant to §124 of the Chief Administrator's Rules and FOIL, inquiring on the subject, is annexed (Exhibit A-2).

7 22 NYCRR §500.10 states:

> "On its own motion, the Court may examine its subject matter jurisdiction over an appeal based on the papers submitted in accordance with section 500.9 of this Part. The Clerk of the Court shall notify all parties by letter when an appeal has been selected for examination pursuant to this section, stating the jurisdictional concerns identified in reviewing the preliminary appeal statement and setting a due date for filing and service of comments in letter form from all parties. Such examination shall result in dismissal or transfer of the appeal by the Court or in notification to the parties that the appeal shall proceed…This examination of jurisdiction shall not preclude the Court from addressing any jurisdictional concerns at any time." (underlining added).

14. According to the Court's "Civil Jurisdiction and Practice Outline" (at p. 8), "Under the authority of Rule 500.10, the Clerk of the Court screens all appeals taken as of right pursuant to CPLR 5601".[8] In other words, the March 4, 2019 letter was supposed to have emanated from Clerk Asiello, who, as reflected by the letterhead, is also "Legal Counsel to the Court" (Exhibit C). Surely, he recognized what his seasoned Deputy Clerk Davis presumably also knew: that appellants' February 26, 2019 Preliminary Appeal Statement reinforced what was EVIDENT from the very face of the Appellate Division's December 27, 2018 Memorandum and Order, namely, that it directly involves substantial constitutional questions, *inter alia*, by its determination of appellants' sixth, fifth, and ninth causes of action – and that with respect to the Appellate Division's December 19, 2018, November 13, 2018, October 23, 2018, and August 7, 2018 orders, finality is NOT an issue because, pursuant to CPLR §5501(a), identified by the Court's "Civil Jurisdiction & Practice Outline" (at pp. 24, 38-39), the issue is whether these four orders necessarily affect the Memorandum and Order –

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[8] The Court's 2018 Annual Report also includes a relevant description:

> "Pursuant to Rule 500.10, the Clerk examines all filed preliminary appeal statements for issues related to subject matter jurisdiction. Written notice to counsel of any potential jurisdictional impediment follows immediately, giving the parties an opportunity to address the jurisdictional issues identified. After the parties respond to the Clerk's inquiry, the Clerk may direct the parties to proceed to argue the merits of the appeal or refer the matter to the Central Legal Research Staff to prepare a report on jurisdiction for review and disposition by the full Court. The Rule 500.10 screening process is valuable to the Court, the bar, and the parties because it identifies at the earliest possible stage of the appeal process jurisdictionally defective appeals destined for dismissal or transfer by the Court." (at p. 3, underlining added).

which all four do, three, on their face, in denying appellants' motions to disqualify the Appellate Division justices, to disqualify the Attorney General, and to strike the Attorney General's respondents' brief.

15. Notwithstanding the palpable frivolousness of Deputy Clerk Davis' essentially boiler-plate March 4, 2019 letter (Exhibit C), appellants expended the time, energy, and money to respond by a serious and substantial March 26, 2019 letter of 22 pages, substantiated by exhibits, annexed and free-standing, a full copy of the record before the Appellate Division, including of appellants' four appellate motions to safeguard the integrity of the appellate proceedings, and a 33-page "legal autopsy"/analysis of the appealed-from December 27, 2018 Memorandum and Order. Thereafter, by a 16-page April 11, 2019 letter, supported by further exhibits and bearing the title "Aiding the Court in Protecting Itself & Appellants' Appeal of Right from the Litigation Fraud of the New York State Attorney General", appellants reinforced their March 26, 2019 letter in support of their appeal of right by demonstrating the fraudulence of the Attorney General's own March 26, 2019 letter urging the Court to dismiss the appeal, *sua sponte*.

16. The Court's May 2, 2019 Order (Exhibit A-1) makes no specific mention of any of this – nor findings with respect thereto. Instead, it generically purports that "upon the papers filed and due deliberation", it has *sua sponte* dismissed my appeal of right – giving, as its reason, the same boilerplate grounds advanced by Deputy Clerk

Davis' March 4, 2019 letter (Exhibit C), as if they had not been rebutted, resoundingly, by appellants – with an added dismissal of the Center for Judicial Accountability's appeal of right on grounds rebutted by appellants' February 26, 2019 Preliminary Appeal Statement (#10) and April 11, 2019 letter germane thereto (at p. 10). In other words, and as further demonstrated by the annexed "legal autopsy"/analysis of the May 2, 2019 Order (Exhibit D), the Order is devoid of evidentiary support, totally.

17. As the purpose of reargument is to bring to the Court's attention what it "overlooked" (CPLR §2221(d)), the May 2, 2019 Order constitutes grounds for reargument, as it "overlooks" ALL the facts, law, and argument which appellants' March 26, 2019 and April 11, 2019 letters furnished to establish that their entitlement to an appeal of right is absolute.

18. No purpose would be served by repeating what appellants' March 26, 2019 and April 11, 2019 letters particularized twice. In the interest of economy, appellants rest on those two letters,[9] as they are just as dispositive of appellants' entitlement to reargument and vacatur, as of their entitlement to an appeal of right.

19. That being said, appellants' March 26, 2019 letter did not go far enough in stating:

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[9] According to Motion Clerk MacVean, the Court used its copier to duplicate, for the six associate judges, appellants' March 26, 2019 and April 11, 2019 letters, submitted by a single original. Under such circumstances, these two letters, already in the possession of each associate judge, have not been additionally duplicated and annexed hereto.

> "appellants have an appeal of right, which they here seek to enforce. And relevant thereto is the dissent of former Court of Appeals Associate Judge Robert Smith in *Kachalsky v. Cacace*, 14 N.Y.3d 743 (2010), candidly confessing that the Court's addition of the word 'substantial', such as appears in Deputy Clerk Davis' March 4, 2019 letter, is without constitutional or statutory warrant and that its effect is to *sub silentio* convert the Court's mandatory jurisdiction to one that is discretionary. Consequently, if the largely boilerplate March 4, 2019 letter is a prelude to the Court's completely boilerplate second letter 'Appeal dismissed, without costs, by the Court of Appeals, sua sponte, upon the ground that no substantial constitutional question is directly involved', that is itself a further 'substantial constitutional question...directly involved' – and appellants are here asserting it.[fn3]" (at p. 9, italics and underlining in the original).

Indeed, not only is there no "constitutional or statutory warrant" for the Court's *sua sponte* ground "no substantial constitutional question...directly involved", but the Court has not set it forth in any rule provision: 22 NYCRR Part 500.

20. To cover up that there is no constitutional, statutory, or rule authority for what it is doing, the Court has created a 41-page "Civil Jurisdiction and Practice Outline", from which it has all but vanquished the New York State Constitution, citing it only at pages 19 and 28, as if it is were quite subsidiary to the plenteously-cited CPLR, rather than the other way around. Neither those two pages nor any others quote the language of Article VI, §3(b)(1) or CPLR §5601(b)(1) for appeals of right

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"fn3 See, *inter alia*, '*An Illusionary Right of Appeal: Substantial Constitutional Questions at the New York Court of Appeals*', 31 Pace Law Review 583 (2011) (Meredith R. Miller); '*What Does It Mean If Your Appeal of Right Lacks A 'Substantial' Constitutional Question in the New York Court of Appeals?*', 75 Albany Law Review 899 (2012) (Alan J. Pierce)."

"wherein is directly involved the construction of the state or of the United States". In a section entitled "Constitutional Question – CPLR 5601(b)(1) – Appeal from Final Appellate Division Order" (at pp. 4-5) is a subsection on "Substantiality" whose single paragraph is prefaced by "see Karger, §7:5, at 226-228". The paragraph offers up no justification for the Court's "substantiality" requirement – and the justification in the cited "Powers of the New York Court of Appeals...[3d ed rev 2005]" by Arthur Karger, is Karger's own:

> "It is an obviously necessary safeguard against abuse of the right to appeal on constitutional questions, for otherwise the right to appeal would turn on the ingenuity of counsel in advancing arguments on constitutional issues however fanciful they might be. A similar requirement is applied by the United States Supreme Court on certiorari petitions to review State court decisions." (at p. 226).

21. Surely this Court knows that Article III of the U.S. Constitution does not confer a right of appeal to the U.S. Supreme Court – just as none is conferred by the federal statute governing U.S. Supreme Court review, 28 U.S.C.S. §1257, providing for discretionary review by certiorari. For this reason, the U.S. Supreme Court's "substantiality" add-on does not violate the U.S. Constitution nor the federal statute. By contrast, this Court's "substantiality" add-on violates the appeal of right conferred by Article VI, §3(b)(1) of the New York State Constitution and reiterated by CPLR §5601(b)(1).

22. As for "substantiality" being "an obviously necessary safeguard against abuse of the right to appeal on constitutional questions", what the Court has been doing, in fact, is using it, in tandem with burying the Court's pre-eminent function to safeguard and interpret the state and federal constitutions – embodied in Article VI, §§3(b)(1) and 3(b)(2) – to destroy "the right to appeal on constitutional questions". And epitomizing this is the Court's own 2018 Annual Report, whose third sentence, under the heading "The Work of the Court" states:

> "The State Constitution and applicable jurisdictional statutes provide few grounds for appeals as of right; thus, the Court hears most appeals by its own permission, granted upon civil motion or criminal leave application." (at p. 2, underlining added).

In other words, the Court blames the paucity of its mandatory docket on the "State Constitution and applicable jurisdictional statutes", concealing what it has done to them.

23. As the May 2, 2019 Order (Exhibit A-1) implicitly found "no substantial constitutional question...directly involved" in using such objected-to *sua sponte* ground to dismiss what is doubtless among the most monumental appeals of right to come before the Court, ever – appellants are, by this motion, directly challenging its constitutionality, framing the issue, as follows:

> "Is this Court's substitution of the language of Article VI, §3(b)(1) of the New York State Constitution and CPLR §5601(b)(1), granting appeals of right "wherein is directly involved the construction of the constitution of the state or of the United States", with a *sua sponte* ground to dismiss

because "no substantial constitutional question is directly involved" unconstitutional, *as written, as unwritten, and as applied*?" (appellants' notice of motion (at ¶c)).

24. As this motion additionally seeks renewal pursuant to CPLR §2221(e), such is based on the actual bias of the six associate judges, born of the interests and relationships they concealed. Based on appellants' March 26, 2019 and April 11, 2019 letters, no competent, fair and impartial judge – let alone six such judges, "merit-selected" for service on our state's highest court – could have rendered the May 2, 2019 Order, as it is insupportable, constitutionally, statutorily, factually, and ethically.

25. The reasonable justification for appellants not having originally presented the issue of actual bias is that such is a supervening occurrence, which they reasonably believed the associate judges, with "a proper sense of duty", would avoid, based on Judiciary Law §14, §§100.3E and F of the Chief Administrator's Rules Governing Judicial Conduct, and *Oakley v. Aspinwall* – all prominently featured by appellants' appeal. This includes in connection with four of the five Questions appellants sought to have the Appellate Division certify to this Court, quoted at pages 2-3 of their "legal autopsy"/analysis of the Appellate Division's December 27, 2018 Memorandum, *to wit*:

> (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 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.

26. To enable the associate judges to now confront these Questions, they are embodied in the second branch of appellants' notice of motion (¶¶a and b). The substantiating law and argument is already before the Court, most conveniently, by appellants' "legal autopsy"/analysis of the Appellate Division's December 27, 2018 Memorandum. For the Court's further convenience, annexed are the pertinent pages of

the law and argument from its Exhibit B[11], whose description of the Questions is of "unchartered territory" and "first impression" (Exhibit E).

27. Additionally, appellants seek renewal based on the further supervening fact that in the *Delgado* and *Barclay* litigations in Supreme Court/Albany County, discussed in appellants' March 26, 2019 letter (at pp. 15-19) and April 11, 2019 letter (at pp. 14-15), Attorney General James is now relying on this Court's May 2, 2019 Order to secure dismissal of both lawsuits. Thus, on May 6, 2019, in *Delgado*, and, on May 22, 2019, in *Barclay*, she made motions to dismiss – and in words that are *verbatim* identical stated:

> "The Third Department's affirmance of the 2015 Commission's enabling statute is fatal to any claim that Part HHH is an unconstitutional delegation of legislative authority. And, notably, the New York Court of Appeals recently dismissed the plaintiffs' appeal, in relevant part, 'upon the ground that no substantial constitutional question is directly involved,' Ctr. for Judicial Accountability, Inc., 2019 WL 1950241, at *1, thereby affirming the settled nature of the controlling constitutional principles." (underlining added).[13]

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11 Exhibit B is appellants' 4th motion/osc to the Appellate Division for certification of the Questions, with my November 27, 2018 moving affidavit.

13 Both dismissal motions are by Assistant Attorney General Helena Lynch – whose litigation fraud in this citizen-taxpayer action is fully documented in the record herein in support of appellants' requests for sanctions and disciplinary and criminal referrals against her [Br. 25-36]. In *Delgado*, *see* her May 6, 2019 memorandum of law to dismiss the amended complaint (at p. 16), and, additionally, her May 22, 2019 reply memorandum of law wherein she repeats:

> "And, notably, in Center for Judicial Accountability, Inc., which involved a constitutional challenge to a nearly identical statute, the New York Court of Appeals recently dismissed the plaintiffs' appeal, in relevant part, 'upon the ground that no substantial constitutional question is directly involved,' 2019 WL 1950241, at *1,

28. This is utter fraud – and especially in view of appellants' March 26, 2019 letter (at pp. 9-19), with its accompanying "legal autopsy"/analysis of the Appellate Division's December 27, 2018 Memorandum, demonstrating (at pp. 13-17) that its dismissal of appellants' sixth cause of action (sections A & B) is sham and that the "force of law" delegation of legislative power of Part E, Chapter 60 of the Laws of 2015, repeated in Part HHH, Chapter 59 of the Laws of 2018, does NOT reflect "controlling constitutional principles" and is unsupported by precedent, including Part E, Chapter 63 of the Laws of 2005, challenged by *McKinney* and *St. Joseph Hospital*.

The Associate Judges' "Direct, Personal, Substantial Pecuniary Interest[s]", from which their Bias is Presumed, *as a Matter of Law*

29. Undisclosed by the Court's May 2, 2019 Order (Exhibit A-1) – and itself demonstrative of the disqualifying facts – is that each associate judge has, at present, a $82,200 a year salary interest in the commission-based judicial salary increases challenged by appellants' sixth, seventh, and eighth causes of action as unconstitutional, unlawful, and fraudulent [R.109-114 (R.187-213)]. Such

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thereby affirming the settled nature of the controlling constitutional principles." (at pp. 4-5, underlining added).

In *Barclay*, *see* her May 20, 2019 memorandum of law to dismiss the petition/complaint (at p. 34).

declarations, to which appellants have a summary judgment entitlement,[14] bring down the salary of each associate judge from the commission-based $233,400 it presently is to the $151,200 fixed by Judiciary Law §221.[15]

30. On top of this are the "claw-backs" that each associate judge will be liable for, whose amounts vary. In the case of Senior Associate Judge Rivera, the sole associate judge whose name appears on the May 2, 2019 Order (Exhibit A-1) and who first became a judge on February 11, 2013, when she was confirmed to the Court, the "claw-back" is well over $300,000 as of this date and will top $400,000 by the April 1, 2020 start of the next fiscal year.

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[14] See appellants' "legal autopsy"/analysis of the Appellate Division December 27, 2018 Memorandum (at pp. 13-20, 24-27).

[15] The climb in the yearly salaries of the Court's associate judges, as a result of Chapter 567 of the Laws of 2010 and the August 29, 2011 report of the Commission on Judicial Compensation, from the $151,200 it was on March 31, 2012 has been as follows: April 1, 2012: $177,000; April 1, 2013: $184,800; April 1, 2014: $192,500; April 1, 2015: $192,500.

The further climb, as a result of Chapter 60, Part E, of the Laws of 2015 and the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation has been as follows: April 1, 2016: $213,600; April 1, 2017: $215,700; April 1, 2018: $230,200; April 1, 2019: $233,400

The $84,800 climb in the yearly judicial salary for the Court's chief judge as a result of Chapter 567 of the Laws of 2010 and the August 29, 2011 report of the Commission on Judicial Compensation since March 31, 2012, when it was $156,000 is, as follows: April 1, 2012: $182,600; April 1, 2013: $190,600; April 1, 2014: $198,600; April 1, 2015: $198,600. The further climb, as a result of Chapter 60, Part E, of the Laws of 2015 and the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation, is, as follows; April 1, 2016: $220,300; April 1, 2017: $222,500; April 1, 2018: $237,500; April 1, 2019: $240,800.

31. Such "direct, personal, substantial pecuniary interest[s]" are presumptive of partiality and bias, *as a matter of law*. The "presumption is conclusive and disqualifies the judge", *Oakley v. Aspinwall*, at p. 550.

The Associate Judges' Actual Bias,
Arising from their Reputational Interest in the Judiciary Budget

32. As recognized by this Court in *Wilcox v. Royal Arcanum*, 210 N.Y. 370 (1914), the interest proscribed by Judiciary Law §14 extends to "the subject-matter of the controversy": reputational interest being no less direct, personal and substantial than a pecuniary one.[16] In any event, §100.3E(1)(c) of the Chief Administrator's Rules Governing Judicial Conduct is broader than Judiciary Law §14, in requiring judicial disqualification where "the judge knows that he or she, individually...has an economic interest in the subject matter in controversy...or has any other interest that could be substantially affected by the proceeding" (underlining added).

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16 As stated by the Court in *Wilcox v. Royal Arcanum* (*supra*, at 379-380):

> "It would seem plain that the trial committee had a direct interest in the determination of the question whether they themselves were grafters, unless the law places property above reputation. It is as though a judge defamed were to try the defamer for a criminal libel. While there is authority to support the view that he would not be disqualified in such a case (*State* v. *Sutton,* 74 Vt. 12;*Clyma* v. *Kennedy,* 64 Conn. 310), those cases appear to us to have been decided upon a too technical and narrow view of a rule, adopted by the common consent of mankind to insure impartiality and fair play....
>
> ...It is shocking to one's sense of fair play that persons defamed should be selected to try the defamatory charge, and it is sufficient for the purposes of this case to hold that they are disqualified by a direct interest in the subject-matter of the controversy."

33. At bar, each associate judge has, at very least, a reputational interest in the Judiciary's budget, whose certifications by the chief judge they approve as "itemized estimates of the financial needs of the Judiciary", pursuant to Article VII, §1 of the New York State Constitution [R.763-764]. The unconstitutionality and fraudulence of the Judiciary's proposed budget is challenged by appellants' second cause of action [R.103-104 (R.162-167), (R.260-262), (R.294-300)] – and the record before the Court establishes their entitlement to summary judgment, with declarations that would require the associate judges to pass judgment adversely to what they have approved. The declarations specified by appellants' September 2, 2016 verified complaint [at R.124] are:

> "that the Judiciary's proposed budget for fiscal year 2016-2017, embodied in Legislative/Judiciary Budget Bill #S.6401-a/A.9001-a, is a wrongful expenditure, misappropriation, illegal and unconstitutional – and fraudulent – because: **(1)** the Judiciary budget is so incomprehensible that the Governor, the Senate majority and Senate minority, and Assembly majority and Assembly minority cannot agree on its cumulative cost and percentage increase; **(2)** its §3 reappropriations were not certified, including as to their suitability for that purpose, and violate Article VII, §7 and Article III, §16 of the New York State Constitution and State Finance Law §25; and **(3)** the transfer/interchange provision in its §2 appropriations, embracing its §3 reappropriations, undermines the constitutionally-required itemization and violates Judiciary Law §215(1), creating a 'slush fund' and concealing relevant costs; **(4)** it has *sub silentio* enabled the funding of judicial salary increases that are statutorily-violative, fraudulent, and unconstitutional".

34. Appellants' March 29, 2017 verified supplemental complaint [at R.734] seeks near identical declarations pertaining to the Judiciary's proposed budget for

fiscal year 2017-2018, the first Judiciary budget that defendant DiFiore certified after becoming chief judge – repeating the same constitutional, statutory, and rule violations, to which she had been alerted 11 months earlier and which were her duty to apprise the associate judges of so that they could evaluate whether a budget so-fashioned should be approved by them.

35. These identical declarations are the same as would apply to the Judiciary's proposed budgets for fiscal years 2018-2019 and 2019-2020, each also repeating the same constitutional, statutory, and rule violations of the prior years.

36. For three of these four fiscal years, in a futile effort to secure some modicum of legislative oversight, I furnished the Legislature with "Questions for Chief Administrative Judge Marks" about the Judiciary's proposed budgets[17] – Questions largely identical from one year to the next. Annexed are this year's Questions (Exhibit F-1)[18] – from which the applicability of the above-quoted declaration to this fiscal year's Judiciary budget can be discerned, readily.

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[17] In 2016 and 2018, I simultaneously e-mailed the Questions to Chief Administrative Judge Marks and defendant DiFiore, in addition to the Legislature. The 2016 Questions are identified by appellants' March 23, 2016 verified second supplemental complaint in their prior citizen-taxpayer action [R.152-157], where they were Exhibit 44. The 2018 Questions are part of the record before this Court (contained in Free-Standing (File Folder) Exhibit I (eye) to appellants' 1st motion to the Appellate Division (July 25, 2018), where it is Exhibit A to their March 6, 2018 corruption complaint to Albany District Attorney Soares).

[18] These Questions pertaining to the Judiciary's proposed fiscal year 2019-2020 budget were furnished to the Legislature on February 19, 2019 and repeatedly, thereafter, as part of written testimony (Exhibit F-2) that additionally included "Questions for Former Temporary Senate President John Flanagan, & Assembly Speaker Carl Heastie, & for Temporary Senate President

The Associate Judges' Actual Bias,
Arising from their Relationships with the Defendant-Respondents,
the Closest Being Defendant-Respondent Chief Judge DiFiore

37. §100.3E(1) of the Chief Administrator's Rules Governing Judicial Conduct requires that a judge "disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned". This reasonably includes professional and personal relationships with parties and their attorneys, such as the associate judges have with the respondent-defendants, all of whom have constitutional checks-and-balance oversight responsibilities over the Judiciary – budgetary and otherwise – none being discharged in any genuine fashion.

38. That respondent-defendants have been collusively corrupting their separation-of-powers, checks-and-balances function and misappropriating public monies on a massive scale is established by appellants' verified pleadings [R.87-134; R.135-225; R.226-271; R273-314; R.671-742] and the record thereon. This evidence mandates referrals to prosecutorial authorities "so that the culpable public officers and their agents be criminally prosecuted and removed from office, without further delay" – relief expressly sought by appellants' brief (at p. v, #6), reiterating requests from their September 2, 2016 verified complaint [R.131, at ¶4] and March 29, 2017 verified supplemental complaint [R.742, at ¶4].

Andrea Stewart-Cousins" (Exhibit F-3). Appellants' extensive correspondence with Senate and Assembly members and leadership is accessible from CJA's webpage for this motion (fn. 1 *supra*).

39. Obviously, it is with defendant DiFiore that the associate judges have the closest, most sustained and intimate of professional and personal relationships. Like her fellow defendants, defendant DiFiore is being sued not simply because she occupies a relevant constitutional office, but because she has knowingly and deliberately participated with them in the public corruption and larceny at issue, beginning with the "force of law" commission-based judicial salary increases and the "slush-fund" Judiciary budget – as to which I hand-delivered the *prima facie* evidence to her Westchester district attorney's office, on December 31, 2015, following her nomination by defendant Cuomo to be New York's Chief Judge.

40. That defendant DiFiore and her fellow constitutional-officer defendants must ALL be indicted because they willfully and deliberately violated a succession of penal law provisions that I apprised them of, again and again and again – and that they will be convicted on EVIDENCE that is "open-and-shut", is established by the record, as, for instance, from the following two letters it contains:[19]

(a) my initial December 31, 2015 letter addressed to then Westchester District Attorney/Chief Judge Nominee DiFiore (Exhibit G), entitled:

> "So, You Want to be New York's Chief Judge? – Here's Your Test: Will You Safeguard the People of the State of New York – & the Public Fisc?";

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[19] *See* appellants' March 23, 2016 verified second supplemental complaint in their prior citizen-taxpayer action [R.148-149 (¶¶274-276); R.155-156 (¶289(1), ¶292)], on which the September 2, 2016 verified complaint in this citizen-taxpayer action rests [R.98-99 (¶¶20-21)].

(b) my January 15, 2016 letter addressed to then Temporary Senate President Flanagan and to Assembly Speaker Heastie (Exhibit H), with a copy to her, entitled:

> "IMMEDIATE OVERSIGHT REQUIRED:
> (1) The Commission on Legislative, Judicial and Executive Compensation and its statute-repudiating, fraudulent, and unconstitutional December 24, 2015 Report with 'force of law' judicial salary recommendations;
> (2) The Senate Judiciary Committee's January 20, 2016 public hearing to confirm the nomination of Westchester District Attorney Janet DiFiore as New York's Chief Judge – and the deceptive notice concealing that oral testimony is restricted to the nominee and bar associations" (Exhibit H).

41. Both letters begin with a recitation of the pertinent penal law provisions violated – as, for instance, the December 31, 2015 letter, as follows:

> "Our nonpartisan, nonprofit citizens' organization, Center for Judicial Accountability, Inc. (CJA), congratulates you on your nomination as Chief Judge of the New York Court of Appeals and of the New York court system. We consider it most fortunate that Governor Cuomo has selected a district attorney as it means our new top judge will have an expertise in New York's penal law, including such felonies as 'offering a false instrument for filing in the first degree' (§175.35), 'grand larceny in the first degree' (§155.42), 'scheme to defraud in the first degree' (§190.65), 'defrauding the government' (§195.20), and the class A misdemeanor 'official misconduct' (§195).
>
> Then, too, there is the 'Public Trust Act', whose passage, as part of Governor Cuomo's behind-closed-doors, three-men-in-a-room budget deal in March 2014 with then Temporary Senate President Skelos and then Assembly Speaker Silver, was the pretext for his shut-down of the Commission to Investigate Public Corruption. It created the felony crime 'Corrupting the Government' – Penal Law §496 – especially relevant to the judicial salary increases recommended by the August 29, 2011 Report of the Commission on Judicial Compensation and the further judicial salary increases recommended by the December 24, 2015 Report of the

Commission on Legislative, Judicial and Executive Compensation, and to the Judiciary budget – all subjects of this letter.

Because district attorney salaries are statutorily-linked to judicial salaries (Judiciary Law §1[83]-a), you have been a beneficiary of the judicial salary increases recommended by the Commission on Judicial Compensation's August 29, 2011 Report. That is why, in 2012, your $136,700 salary was increased to $160,000 and then, in 2013, increased to $167,000 and then, in 2014, increased again to $174,000. It is also why, upon becoming Chief Judge, you again will be a beneficiary of the August 29, 2011 Report: your salary as Chief Judge will be $198,600, not the $156,000 it was in 2011.

In the event you are unaware, the judicial salary increases recommended by the Commission on Judicial Compensation's August 29, 2011 Report – and all the related costs, including the increases in district attorney salaries – are "ill-gotten gains', stolen from the taxpayers'. And proving this, resoundingly, is CJA's October 27, 2011 Opposition Report, detailing the fraudulence, statutory-violations, and unconstitutionality of the August 29, 2011 Report. ..." (Exhibit G, at pp. 1-2, underlining in the original).

42. A copy of the October 27, 2011 Opposition Report is already in the Court's possession, albeit without the substantiating evidence I hand-delivered for defendant DiFiore with the December 31, 2015 letter.[20] It was part of the first appellate motion before the Appellate Division that I duplicated for the Court in conjunction with appellants' March 26, 2019 letter.[21] The 38-page October 27, 2011

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[20] All the voluminous substantiating evidence which the December 31, 2015 letter itself identifies as being furnished – including the full copy of the October 27, 2011 Opposition Report – is part of this citizen-taxpayer action, in the record below [R.148, ¶276 & fns. 4, 5].

[21] *See* Free-Standing (file folder) Exhibit I (eye) to appellants' 1st motion to the Appellate Division (July 25, 2018).

Opposition Report suffices to establish that both the Commission on Judicial Compensation's August 29, 2011 Report – and the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation materially resting on, and replicating it – are statutorily-violative, fraudulent, and false instruments, quite apart from being unconstitutional. This is what defendant DiFiore would have speedily concluded, following her receipt of the December 31, 2015 letter (Exhibit G) – and, again, two weeks later, following her receipt of the January 15, 2016 letter (Exhibit H), with its further substantiating evidence, most importantly its 12-page "Statement of Particulars in Further Support of Legislative Override of the 'Force of Law' Judicial Increase Recommendations, Repeal of the Commission Statute, Etc."[22]

43. From these two fully-documented December 31, 2015 and January 15, 2016 letters this Court's associate judges can know, for a certainty, what defendant DiFiore herself knows, for a certainty: that appellants have summary judgment on their seventh and eighth causes of action – and that the Appellate Division's December 27, 2019 Memorandum outrightly lies in stating, *inter alia*:

> "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." (at p. 8).

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[22] This dispositive document is annexed as Exhibit C to appellants' "legal autopsy"/analysis of the Appellate Division's December 27, 2019 Memorandum – and was before the Appellate Division, annexed as Exhibit EE to my August 6, 2018 reply affidavit in further support of appellants' 1st motion (July 25, 2018).

Indeed, it is why neither defendant DiFiore nor anyone else has come forward with findings of fact and conclusions of law with respect to the October 27, 2011 Opposition Report or the other evidence furnished by the December 31, 2015 and January 15, 2016 letters (Exhibits G, H) – making them all conspirators and accomplices, under the penal law, for the ongoing "grand larceny of the public fisc", here sought to be ended by declarations of unconstitutionality, unlawfulness, and fraud.

The Associate Judges' Actual Bias,
Also Arising from their Relationships with Other Judges
and Accomplices in the Corruption at Issue

44. Each associate judge has professional and personal relationships with the panoply of specific judges, past and present, directly involved in perpetuating – if not also procuring – the larcenous judicial salary increases resulting from the August 29, 2011 Report of the Commission on Judicial Compensation and the December 24, 2015 Report of the Commission on Legislative, Judicial, and Executive Compensation[23] – and who, with the defendants, must be referred for prosecution based on evidence that will ensure convictions.

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[23] Among these judges whose willful and deliberate misconduct is recited and reflected by the record, all beneficiaries of the commission-based judicial salary increases: (1) Chief Administrative Judge Marks; (2) Former Chief Judge Jonathan Lippman; (3) Appellate Division, Third Department Justice Elizabeth Garry and all nine associate justices; (4) Acting Albany County Supreme Court Justice/Court of Claims Judge Denise Hartman; (5) Acting Albany County Supreme Court Justice/Court of Claims Judge Roger McDonough; (6) Third Judicial District Administrative Judge Thomas Breslin; (7) Deputy Chief Administrative Judge Michael Coccoma.

45. The associate judges also have relationships with, and dependencies on, district attorneys, U.S. Attorneys, and other public officers and commissioners who, from 2013 onward, have either been "sitting on" the fully-documented corruption complaints I filed based on the larcenous August 29, 2011 and December 24, 2015 Commission Reports and the budget [R.231-232][24] – or have fraudulently dismissed the complaints, as was done by the Commission to Investigate Public Corruption [R.232], the Commission on Judicial Conduct [R.1320-1327],[25] and the Attorney Grievance Committees.[26]

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[24] This Court has before it the March 6, 2018 corruption complaint that Albany District Attorney Soares has been "sitting on", entitled: "SEEKING ENFORCEMENT OF 'THE PUBLIC TRUST ACT' – Penal Law §496, 'corrupting government'", pertaining to this citizen-taxpayer action and the fiscal year 2018-2019 budget. It is part of appellants' 1st motion to the Appellate Division (July 25, 2018), contained in Free-Standing (File Folder) Exhibit I (eye).

[25] *See*, also, appellants' 2nd motion to the Appellate Division, where my October 9, 2018 reply affidavit in further support annexed as Exhibit C my September 20, 2018 conflict-of-interest/corruption complaint to the Commission on Judicial Conduct against Appellate Division Presiding Justice Garry and her three fellow motion panel justices.

[26] *See* Free-Standing (File Folder) Exhibit I (eye) to appellants' 1st motion to the Appellate Division (July 25, 2018), whose contents include: (1) appellants' September 16, 2017 conflict-of-interest/misconduct complaint against Attorney General Schneiderman and underling attorneys; and (2) appellants' March 6, 2018 conflict-of-interest/misconduct complaint against Albany District Attorney Soares and other district attorneys.

The Further Disqualification of Associate Judge Garcia Arising from his Knowledge of, and Participation in, Events Involving the Commission to Investigate Public Corruption, Underlying this Citizen-Taxpayer Action

46. §100.3E(1) of the Chief Administrator's Rules Governing Judicial Conduct specifies that a judge's impartiality might reasonably be questioned where:

> (a) (i) the judge has a personal bias or prejudice concerning a party or (ii) the judge has personal knowledge of disputed evidentiary facts concerning the proceeding".

47. Pursuant to §100.3F, "remittal of disqualification" is not available for §100.3E(1)(a)(i), but is available for §100.3E (1)(a)(ii). Consequently, if Associate Judge Garcia were going to participate with his fellow associate judges in the May 2, 2019 Order – if, in fact, they, rather than the Clerk's Office, rendered it – he should have discussed with them his personal knowledge of, and participation in, the underlying corruption giving rise to this citizen-taxpayer action, requiring that he disqualify himself, absent "remittal of disqualification" pursuant to §100.3F.

48. The facts are as follows: He and I were adversaries five years ago in a declaratory judgment action against the Commission to Investigate Public Corruption, in which, but for his conflicted representation of the Senate and Temporary Senate President, whose interests were contrary to each other, we would have been on the same side in securing a declaration that the Commission to Investigate Public Corruption was unconstitutional. Indeed, it was to thwart the fraud he was committing

with fellow attorneys, including then Attorney General Schneiderman, who was representing the Commission, that I brought an April 23, 2014 order to show cause to intervene in the declaratory judgment action in which attorneys on both sides had concealed and falsified the true facts as to the Commission's establishment and operation and were colluding to scuttle adjudication of the already-briefed constitutional issues, which New York taxpayers had paid for – and to which they were entitled (Exhibit I).[27]

49. My April 23, 2014 intervention motion furnished then attorney Garcia with the facts and evidence already the subject of appellants' first citizen-taxpayer action, commenced less than a month earlier, on March 28, 2014 [R.226-272], after the Commission to Investigate Public Corruption fraudulently purported that appellants' fully-documented corruption complaints to it fell "outside of [its] mandate" [R.232] – complaints pertaining to the statutorily-violative and fraudulent August 29, 2011 Report of the Commission on Judicial Compensation, as established, *prima facie*, by appellants' October 27, 2011 Opposition Report, the larcenous judicial pay raises resulting therefrom, the Judiciary's slush-fund budget and the Legislature's even

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[27] The attached Exhibit I is the 2-page (unsigned) April 23, 2014 order to show cause to intervene and the first seven pages of my 41-page moving affidavit. The full order to show cause and the record thereon, including my June 17, 2014 motion for reargument/renewal/vacatur & other relief – are accessible from the electronic docket of Supreme Court/New York County – but more readily-accessible from CJA's website. The direct link is here: http://www.judgewatch.org/web-pages/searching-nys/commission-to-investigate-public-corruption/holding-to-account/intervention-declaratory-judgment.htm.

slushier budget, enabled by Governor Cuomo, legislative rules emasculating rank-and-file legislators, "three-men-in-a-room", behind-closed-doors governance, and a *modus operandi* of litigation fraud by the Attorney General to defeat lawsuits against the state and its public officers, to which he had no legitimate defense, rewarded by fraudulent judicial decisions – all of which investigative authorities were "sitting on". This was particularized by the March 28, 2014 verified complaint in the first citizen-taxpayer action [R.226-272] – and it underlies and is embodied by the September 2, 2016 verified complaint in this second citizen-taxpayer action [R.87-392: R.98-99)], now before the Court.

The Financial and Other Interests of Attorney General Letitia James in this Appeal, and her Knowledge of, and Collusion in, the Corruption of the Proceedings Below and before this Court, Requiring her Disqualification & Appointment of Independent/Special Counsel

50. No unbiased tribunal could allow its own proceedings to be corrupted by litigation fraud of a party – and, especially when that party is an attorney, is representing herself and her co-defendants, and is, on top of that, the state's Attorney General, whose constitutional and statutory duty, shared with the courts, is to uphold the rule of law and the state and federal Constitutions.

51. Appellants' April 11, 2019 letter furnished the Court with an immediately verifiable, particularized showing that Attorney General James' March 26, 2019 letter

urging the Court to *sua sponte* dismiss appellants' appeal of right, signed by Assistant Solicitor General Brodie and bearing the names of Solicitor General Underwood and Assistant Solicitor General Paladino, in addition to Attorney General James, was "a fraud on the court".[28] It called upon the Court to issue a show cause order to Attorney General James in the event she did not:

> "promptly withdraw" the letter and "take steps 'to secure independent counsel 'to represent the interest of the state' pursuant to Executive Law §63.1 and to disqualify herself based on her direct financial and other interests in this appeal" (at p. 15, underlining in the original).

52. The Court took no action to maintain the integrity of the proceedings before it, notwithstanding its own Rule 500.1(a), quoted by appellants' April 11, 2019 letter (at p. 16). In fact, by its May 2, 2019 Order, the Court put its imprimatur on the Attorney General's litigation fraud. Consequently, appellants now formalize the order

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[28] This fraud embraced the disqualification and jurisdictional issues facing this Court's Judges, as to which appellants' April 11, 2019 letter stated (at p. 8, fn. 6):

> "In a footnote (#1, at p. 7), the letter also implies that the decision of 'individual judges' of this Court as to whether to 'recuse themselves' would not be compelled by Judiciary Law §14, but would be a 'matter of conscience'. Not only is this false, but it is the most egregious repudiation of *Oakley v. Aspinwall*, 3 N.Y. 547 (1850), cited by appellants' Notice of Appeal, wherein the Court had stated:
>
> > 'The law applies as well to the members of this court as to any other; or if there be any difference it is rather in favor of its more stringent application to the judges of a court of last resort, as well, because of its greater dignity and importance as a tribunal of justice, as that there is no mode of redress appointed for the injuries which its biased decisions may occasion. The law and the reasons which uphold it apply to the judges of every court in the state, from the lowest to the highest.' (at pp. 551-552)."

to show cause relief their April 11, 2019 letter sought by the sixth branch of their notice of motion and additionally by its second branch (at ¶d & ¶e) for the Court's determination/certification of the threshold Questions relevant thereto, *to wit*:

> d) Whether the Attorney General can lawfully and constitutionally represent defendant-respondents before this Court where she has financial and other interests in the outcome of the appeal? – and manifested same by a fraudulent submission opposing plaintiff-appellants' appeal of right, because she had NO legitimate grounds for opposition;
>
> e) Whether, pursuant to Executive Law §63.1 and State Finance Law, Article 7-A, the unrepresented plaintiff-appellants are entitled to the Attorney General's representation and/or intervention before this Court – including *via* appointment of special counsel? – because it is they who are upholding the 'interest of the state' and the Attorney General has NO legitimate opposition to their appeal of right, nor defense of the course of the proceedings below.

53. The law and argument germane to these Questions is already before the Court – and, in the interest of economy, I refer the Court to the record, where appellants presented it over and over again, without responsive adjudication.[29] This

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[29] *See* appellants' brief, whose "QUESTIONS PRESENTED", at #3, reads:

> "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 lower court concealed and did not adjudicate any of the below three threshold issues:*
>
> a) appellants' entitlement to an order imposing sanctions and costs upon respondents' counsel, the attorney general, for litigation fraud – and

includes by the Appellate Division's December 27, 2018 Memorandum – and so-highlighted by appellants' "legal autopsy"/analysis thereof (at pp. 11-12), accompanying their March 26, 2019 letter.

54. For the Court's further convenience, a copy of appellants' first written iteration of law and argument in this citizen-taxpayer action pertaining to Executive Law §63.1, State Finance Law 7-A, and conflict of interest is annexed (Exhibit L: R.517-520). It is from appellants' September 30, 2016 memorandum of law, under the title "The Court's Second Threshold Duty: To Ensure that the Parties are Properly Represented by Counsel". Although the referred-to "Court" is Albany Supreme Court, such is, identically, this Court's "Second Threshold Duty", after first adjudicating the issues pertaining to its own disqualification and jurisdiction. Suffice to here reinforce, with illustrative legal authority, appellants' concluding sentence therein [R.520] that the Attorney General's "preeminent duty of representation is not to his co-defendants who he has heretofore protected, but to the state, to which he has a

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referring him and the culpable attorneys under his supervision to disciplinary and criminal authorities;

b) appellants' entitlement to an order disqualifying respondents' counsel, the attorney general, himself a respondent, from representing his co-respondents for conflict of interest;

c) appellants' entitlement to an order pursuant to Executive Law §63.1 and State Finance Law Article 7-A directing the attorney general to represent appellants and/or to intervene on their behalf – including *via* independent counsel."

diametrically-conflicting interest by reason of his salary interest in the compensation issues":[30]

> "the Attorney General acts *parens patriae,* asserting a 'quasi sovereign' interest for the common good of the people of the State of New York. *Alfred L. Snapp & Son, Inc. v. Puerto Rico,* 458 U.S.492, 600-08, 102 S. Ct. 3260, 3265-69, 73 L. Ed. 2d 995 (1982); *People by Abrams v. 11 Cornwell Co.,* 695 F.2d 34, 38-40 (2d Cir.1982), *vacated in part on other grounds,* 718 F.2d 22 (2d Cir.1983) (en banc).",
>
> USA v. Terry,
> 806 Fed Supp. 490, 494 (SDNY 1992)

> "in case of conflict of duties, the attorney general's primary obligation is to the body politic rather than its officers, departments, commissions, or agencies.",
>
> 7 American Jurisprudence 2d, §12:
> "Attorney general as counsel for,
> or employment of their own counsel by,
> state officers and agencies"

> "In case of a conflict of duties, the primary obligation of the attorney general is to the state rather than to its officers or agencies,[fn] and where he is charged with the duty of requiring performance by state officials or bodies of their duties, this duty is not overcome by a conflicting requirement that he shall represent such officials or bodies in court proceedings, but the duty to prosecute overcomes the duty to represent.[fn]"
>
> 7A Corpus Juris Secundum §11(b):
> "Conflicting Interests"

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30 *See*, also, 6 New York Jurisprudence 2d "Attorney at Law", §70: "Representation of Conflicting Interests"

> "An attorney owes to his client undivided loyalty unhampered by his obligations to any other person.[fn] The general rule is that a lawyer may not represent adverse interests or undertake to discharge conflicting duties[fn] and must avoid even the appearance of representing conflicting interests,[fn] except where the conflict of interest is nominal or negligible, or where there has been complete disclosure[fn] or consent.[fn]"

55. As for facts pertaining to Attorney General James's conflicts of interest, germane to the above-quoted threshold Questions, they are as follows:

(A) she, like her fellow defendant-respondents and this Court's judges, has a HUGE salary interest in appellants' sixth cause of action for declarations that Part E, Chapter 60 of the Laws of 2015 is unconstitutional, *as written* and by its enactment [R.109-112 (R.187-201)]. The Commission on Legislative, Judicial and Executive Compensation it creates is scheduled to be re-established on June 1, 2019 – and her own salary increases are within the purview of its seven members, two of whom will be defendant DiFiore's appointees [R.1080-1082].

And, already, Attorney General James is benefiting from the materially identical Part HHH, Chapter 59 of the Laws of 2018 that established the Legislative and Executive Compensation Committee, which, like Part E, Chapter 60 of the Laws of 2015, was an unconstitutional rider, inserted into the budget as a result of behind-closed-doors, three-men-in-a-room budget deal-making. By its December 10, 2018 Report – replicating ALL the violations which are the subject of appellants' seventh and eighth causes of action [R.112-114 (R.201-213)] – she benefited from a $38,5000 salary raise.

On December 31, 2018, the Attorney General's salary, pursuant to Executive Law §60, was $151,500. As a result of the "force of law" recommendations of the Committees' December 10, 2018 Report, it zoomed to $190,000, effective January 1, 2019. On January 1, 2020, this will shoot up another $20,000 to $210,000, and then, on January 1, 2021, by another $10,000 to $220,000.

(B) she has a HUGE interest in preventing adjudication of the threshold issue of the litigation fraud perpetrated by her March 26, 2019 letter because, in addition to her liability for financial sanctions and costs, pursuant to §130.1.1 of the Chief Administrator's Rules and Judiciary Law §487, such corrupting of the judicial process triggers the Court's mandatory disciplinary responsibilities, pursuant to §100.3D(2) of the Chief Administrator's Rules Governing Judicial Conduct, to refer her and her conspiring attorney staff to disciplinary and criminal authorities – the consequence of which, based on this record, will be disbarment,

indictments, and convictions;

(C) she has HUGE interests in preventing adjudication of the threshold issue of the Attorney General's constitutional function and the statutory provisions embodying it, such as Executive Law §63.1 and State Finance Law Article 7-A, as she has subverted them, totally – and such is a *modus operandi* of how the Attorney General operates, established by the record herein;

(D) she has HUGE interests in perpetuating the corruption of constitutional, checks-and-balance duties by her fellow defendant-respondents – chronicled by the pleadings in this citizen-taxpayer action and the record herein – as a constitutionally-functioning Governor, Legislature, and Judiciary would ensure oversight of the operations of the Attorney General, beginning with how its occupants have been discharging their constitutional responsibilities.

56. As for Solicitor General Underwood's direct knowledge of what took place in this citizen-taxpayer action, from May to December 2018, when it was in the Appellate Division and she was Attorney General, it is particularized by appellants' four appellate motions to the Appellate Division, full copies of which I furnished the Court. Among the massive EVIDENCE they contain are the following three letters – so dispositive that they are annexed hereto for the Court's further convenience:

(a) appellants' May 16, 2018 NOTICE/corruption complaint addressed to then Acting Attorney General Underwood[31] (Exhibit K-2), entitled:

> "NOTICE: Corruption and Litigation Fraud by Former Attorney General Eric Schneiderman and his Office – and Your Duty to Take Investigative and Remedial Action, most immediately, in the Citizen-Taxpayer Action *Center for Judicial Accountability, et al.*

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31 Furnished TWICE to the Appellate Division: (1) as Exhibit I-1 to appellants' 1st motion (July 25, 2018); and (2) as Exhibit C to appellants' 3rd motion (October 23, 2018).

> *v. Cuomo, ...Schneiderman, et al.* (Albany Co. #5122-16; RJI #01-16-122174) and pursuant to 'The Public Trust Act' (Penal Law §496: 'Corrupting the government')";

which I furnished Acting Attorney General Underwood, a second time, by a May 18, 2018 letter addressed to candidates for interim Attorney General, of which she was one[32] (Exhibit K-1). Its title:

> "Testing the Fitness of Acting Attorney General Barbara Underwood – & Every Other Candidate for Interim Attorney General";

(b) appellants' May 30, 2018 letter addressed to then Attorney General Underwood[33] (Exhibit L), inquiring as to whether her non-response to CJA's May 16, 2018 NOTICE/complaint was the consequence of her conflicts of interest and requesting that she make disclosure and secure appointment of independent/outside counsel to investigate and report on her ethical and law enforcement obligations with respect to the May 16, 2018 NOTICE/complaint or a special prosecutor.

57. Attorney General Underwood did not respond to these letters – and such is recited by my sworn affidavits in support of the motions.[34] She did not deny or dispute their accuracy in any respect. This includes as to her conflicts of interests, particularized by the May 30, 2018 letter (Exhibit L), which are deemed conceded, *as a matter*.

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32 Furnished to the Appellate Division as Exhibit I-2 to appellants' 1st motion (July 25, 2018).

33 Furnished TWICE to the Appellate Division: (1) as Exhibit J-1 to appellants' 1st motion (July 25, 2018); and (2) as Exhibit D to appellants' 3rd motion (October 23, 2018).

34 See, *inter alia*: (1) appellants' 1st motion (July 25, 2018): ¶¶11-23 of my July 24, 2018 moving affidavit (ALSO annexed to appellants' 3rd motion as Exhibit E-1); (2) appellants' 3rd motion (October 23, 2018): ¶¶10-15 of my October 18, 2018 moving affidavit.

58. As for Attorney General James' direct knowledge of this citizen-taxpayer action, while still a candidate for the office to which she was elected on November 6, 2018, on campaign rhetoric that she would courageously and independently investigate and prosecute government corruption, it is recited by my March 11, 2019 e-mail to Solicitor General Underwood and Assistant Solicitors General Paladino and Brodie (Exhibit M). Such e-mail, which I sent them in the context of requesting consent to a week's extension for responding to Clerk Davis' March 4, 2019 letter (Exhibit C), stated:

> "By the way, new Attorney General James is herself fully knowledgeable of the record in Supreme Court/Albany County. On July 16, 2018, at a debate among candidates for the Democratic nomination for Attorney General, I publicly asked whether the candidates were aware of the Attorney General's *modus operandi* of litigation fraud to defeat lawsuits against the state and its public officers, to which it had NO legitimate defense – and whether they would be willing to examine the EVIDENCE. To her credit, then-candidate James was the only candidate who publicly stated she would examine the EVIDENCE – and, at the end of the program, I gave her, *in hand*, a copy of appellants' July 4, 2018 appeal brief and three-volume record on appeal, as well as a copy of my above-attached May 16, 2018 letter/corruption complaint addressed to you and its May 18, 2018 coverletter to candidates for interim appointment as Attorney General, to which you were a cc. A month later, on August 15, 2018, at the conclusion of another debate among Democratic A.G. candidates, I gave candidate James, *in hand*, a second copy of the May 16-May 18 correspondence, apprising her then – and, thereafter, by e-mails preceding other debates and until just shortly before her election on November 6, 2018 – as to what was taking place, on appeal, at the Appellate Division, Third Department.
>
> Attorney General James presumably still has the copy of the July 4, 2018 appeal brief and three-volume record on appeal that I gave her eight

months ago – as I never received them, in return, and it is hard to imagine that something of that magnitude and consequence, in a live case, would have been discarded by her or by anyone to whom she would have furnished them." (italics and capitalization in the original).

59. As for Attorney General James' knowledge, since taking office, of the litigation fraud conducted in her name before this Court, particularized by appellants' April 11, 2019 letter, attached is my e-mail of that date, sent to Solicitor General Underwood and Assistant Solicitors General Paladino and Brodie (Exhibit N). Bearing the subject line: "Immediate Attention Required – & by Attorney General James, Personally…", the e-mail stated: "Please immediately forward to Attorney General James".

Elena Ruth Sassower, Unrepresented Plaintiff-Appellant

Sworn to before me this
31st day of May 2019

Notary Public

Jared Mailman
Notary Public, State of New York
NO. 04MA6131176
Qualified in Westchester County
Commision Expires on August 1, 20 21

TABLE OF EXHIBITS

Exhibit F-2: Appellants' written testimony to Legislature, February 19, 2019

Exhibit F-3: "Questions for Former Temporary Senate President John Flanagan, & Assembly Speaker Carl Heastie, & for Temporary Senate President Andrea Stewart-Cousins" pertaining to the Legislature's proposed budget for fiscal year 2019-2020 & Governor Cuomo's Legislative/Judiciary Budget Bill #S.1501/A.2001

Exhibit G: Appellants' December 31, 2015 letter to then Westchester District Attorney/Chief Judge Nominee DiFIORE – "So, You Want to be New York's Chief Judge? – Here's Your Test: Will You Safeguard the People of the State of New York – & the Public Fisc?"

Exhibit H: Appellants' January 15, 2016 letter to then Temporary Senate President Skelos and then Assembly Speaker Heastie – "IMMEDIATE OVERSIGHT REQUIRED":

(1) The Commission on Legislative, Judicial and Executive Compensation and its statute-repudiating, fraudulent, and unconstitutional December 24, 2015 Report with 'force of law' judicial salary recommendations;

(2) The Senate Judiciary Committee's January 20, 2016 public hearing to confirm the nomination of Westchester District Attorney Janet DiFiore as New York's Chief Judge – and the deceptive notice concealing that oral testimony is restricted to the nominee and bar associations"

Exhibit I: unsigned April 23, 2014 order to show cause and pages 1-7 of appellant Sassower's moving affidavit to intervene in the declaratory judgment action against the Commission to Investigate Public Corruption, allegedly brought by the Senate, Assembly, and their majority leaders

Exhibit J: Law & argument pertaining to the Attorney General and Executive Law §63.1, State Finance Law Article 7-A, and

conflict of interest from pages 44-47 of appellants' September 30, 2016 memorandum of law under the title "The Court's Second Threshold Duty: To Ensure that the Parties are Properly Represented by Counsel" [R.517-520]

Exhibit K-1: Appellants' May 18, 2018 coverletter to Interim Attorney General Candidates, with *cc* to Acting Attorney General Underwood – "Testing the Fitness of Acting Attorney General Barbara Underwood – & Every Other Candidate for Interim Attorney General"

Exhibit K-2: Appellant's May 16, 2018 letter/complaint to then Acting Attorney General Underwood – "NOTICE: Corruption and Litigation Fraud by Former Attorney General Eric Schneiderman and his Office – and Your Duty to Take Investigative and Remedial Action, most immediately, in the Citizen-Taxpayer Action *Center for Judicial Accountability, et al. v. Cuomo,...Schneiderman, et al.* (Albany Co. #5122-16; RJI #01-16-122174) and pursuant to 'The Public Trust Act' (Penal Law §496: 'Corrupting the government')"

Exhibit L: Appellants' May 30, 2018 letter to then Attorney General Underwood – "What is the Status? – CJA's May 16, 2018 letter: 'NOTICE...(1) Disclosure of facts giving rise to your duty to secure appointment of independent/outside counsel to investigate and report on your ethical and law enforcement obligations with respect to the May 16, 2018 NOTICE, or a special prosecutor..."

Exhibit M: Appellants' March 11, 2019 e-mail to Solicitor General Underwood, etc. – "...extension request"

Exhibit N: Appellants' April 11, 2019 e-mail to Solicitor General Underwood, etc. – "Immediate Attention Required – & by Attorney General James, Personally..."