

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,

Plaintiffs-Appellants,

May 31, 2019

**NOTICE OF MOTION  
for Reargument/Renewal  
& Vacatur,  
Determination/Certification  
of Threshold Issues,  
Disclosure/ Disqualification  
& Other Relief**

-against-

SSD23 – APL-2019-00029

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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Upon the annexed affidavit of the unrepresented individual plaintiff-appellant  
Elena Ruth Sassower, sworn to on May 31, 2019, the exhibits annexed thereto, and  
upon all the papers and proceedings heretofore had, the unrepresented plaintiff-

appellants will move this Court at 20 Eagle Street, Albany, New York 12207 on Monday, July 8, 2019 at 10:00 a.m. or as soon thereafter as defendant-respondents can be heard for an order:

1. Granting reargument/renewal pursuant to CPLR §2221 and vacating the Court's May 2, 2019 Order because it is unconstitutional, jurisdictionally-void, and fraudulent – upon first determining whether the Court's six associate judges have jurisdiction to do so and, if they have no jurisdiction by reason of Judiciary Law §14 and the Court's interpretive decision in *Oakley v. Aspinwall*, 3 NY 547 (1850), taking emergency steps to ensure a forum in the federal courts to vacate it and the underlying lower state court orders, likewise void, *ab initio*, by reason of Judiciary Law §14 violations, and to determine plaintiff-appellants' entitlement to summary judgment on their ten causes of action;
2. Determining the threshold issues which the May 2, 2019 Order neither identifies nor determines – or certifying same to the United States Supreme Court, *to wit*:
  - a) Whether Judiciary Law §14 and *Oakley v. Aspinwall* bar New York State judges from “sit[ting]...or tak[ing] any part in” this citizen-taxpayer action in which they have huge financial and other interests – and, if so, can it be transferred 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”?;
  - b) If this citizen-taxpayer action cannot be transferred to the federal courts, whether this Court's judges can invoke the “Rule of Necessity” to give themselves the jurisdiction that Judiciary Law §14 removes from them – and, if so, are there safeguarding prerequisites to prevent their using it to act on their biases born of interest, as, for instance, the “remittal of disqualification” procedure specified by §100.3F of the Chief Administrator's Rules Governing Judicial



Conduct, where the judge states he believes he can be fair and impartial notwithstanding the existence of grounds for his disqualification pursuant to §100.3E?;

- c) 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?*;
  - 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, obliterating all semblance of the Rule of Law;
3. For disclosure, pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct and consistent with *Oakley v. Aspinwall*, by the Court's six associate judges of their financial and other interests in the appeal and for their disqualification, pursuant to §100.3E of the Chief Administrator's Rules and Judiciary Law §14 by reason thereof and for the actual bias, born of interest and relationships, demonstrated by their May 2, 2019 Order, if in fact they rendered it;

4. For determination, pursuant to §100.3E and F of the Chief Administrator's Rules Governing Judicial Conduct, as to whether Associate Judge Michael Garcia must additionally make disclosure and disqualify himself or be disqualified by reason of his knowledge of, and participation in, the underlying governmental corruption giving rise to this citizen-taxpayer action;
5. Pursuant to Article VI, §2a of the New York State Constitution, designating justices of the Supreme Court to serve as judges of this Court in connection with this appeal, with the condition that the so-designated judges follow the "remittal of disqualification" procedure of §100.3F of the Chief Administrator's Rules Governing Judicial Conduct;
6. Pursuant to §100.3D(2) of the Chief Administrators Rules Governing Judicial Conduct, issuing a show cause order requiring Attorney General Letitia James, Solicitor General Barbara Underwood, Assistant Solicitor General Victor Paladino, and Assistant Solicitor General Frederick Brodie to respond to appellants' April 11, 2019 letter, as expressly sought in its concluding paragraph:

"if the Attorney General [did] not promptly withdraw her fraudulent March 26, 2019 letter [urging the Court's *sua sponte* dismissal of the appeal of right] 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 the appeal". (at pp. 15-16, underlining in the original).
7. Granting such other and granting such other and further relief as may be just and proper, including \$100 motion costs pursuant to CPLR §8202.



PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR §2214(b), answering papers, if any, are to be served on plaintiff-appellants seven days before the return date by e-mail and regular mail, *to wit*, July 1, 2019.



ELENA RUTH SASSOWER, unrepresented plaintiff-appellant, individually & as Director of the Center for Judicial Accountability, Inc., and on behalf of the People of the State of New York & the Public Interest

Dated: White Plains, New York  
May 31, 2019

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

ATT: Solicitor General Barbara Underwood  
Assistant Solicitor General Victor Paladino  
Assistant Solicitor General Frederick Brodie