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BY EXPRESS MAIL

April 11, 2019

New York Court of Appeals
Clerk's Office
20 Eagle Street
Albany, New York 12207-1095

ATT: Chief Clerk John P. Asiello

RE: Aiding the Court in Protecting Itself & Appellants' Appeal of Right from the Litigation Fraud of the New York State Attorney General
Center for Judicial Accountability, Inc., et al. v. Cuomo, ...DiFiore – Citizen-Taxpayer Action / APL-2019-00029

Dear Chief Clerk Asiello:

This follows my phone conversation, on March 28, 2019, with Court Attorney Susan Woods, identifying that the Attorney General's March 26, 2019 letter to Deputy Clerk Heather Davis, opposing appellants' appeal of right, is fraudulent and inquiring as to the proper procedure for so-advising the Court. She stated that I might do so by letter – and that it would be given such consideration as the Court deems appropriate.

For immediate purposes – and so as to afford the Attorney General the opportunity to withdraw her March 26, 2019 letter, without the necessity of a formal motion to strike it as a "fraud on the court" and for such additional relief as disqualifying the Attorney General for violation of Executive Law §63.1 and for appointment of independent counsel "in order to protect the interest of the state" consistent with Executive Law §63.1 and by reason of the Attorney General's direct financial and other interests in this appeal – I herein proceed by letter, furnishing the following as an aid to the Court.

* * *

Ex C

The Attorney General's March 26, 2019 letter, on behalf of defendant-respondents, is signed by Assistant Solicitor General Frederick Brodie, on behalf of Attorney General Letitia James, Solicitor General Barbara Underwood, and Assistant Solicitor General Victor Paladino, whose names appear above his (at p. 9). It urges the Court to dismiss plaintiff-appellants' appeal of right "*sua sponte*, because no substantial constitutional question is directly involved." (at p. 9).

Proving that the Attorney General's letter is a "fraud on the court" – as that term is defined[1] – is my own March 26, 2019 letter to you, with its accompanying and incorporated "legal autopsy"/analysis of the Appellate Division's appealed-from December 27, 2018 Memorandum and Order. These furnish the record-based facts and black-letter law establishing that appellants' entitlement to an appeal of right, pursuant to Article VI, §3(b)(1) of the New York State Constitution and CPLR §5601(b)(1), is absolute.

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1 "Fraud on the court" is defined by Black's Law Dictionary (7th ed. 1999) as:

> "A lawyer's or party's misconduct in a judicial proceeding so serious that it undermines or is intended to undermine the integrity of the proceeding."

The Court's 2014 decision in *CDR Creances S.A.S. v Cohen, et al.*, 23 N.Y.3d 307, reflects this, as follows:

> "Fraud on the court involves willful conduct that is deceitful and obstructionist, which injects misrepresentations and false information into the judicial process 'so serious that it undermines . . . the integrity of the proceeding' (*Baba-Ali v State*, 19 NY3d 627, 634, 975 N.E.2d 475, 951 N.Y.S.2d 94 [2012] [citation and quotations omitted]). It strikes a discordant chord and threatens the integrity of the legal system as a whole, constituting 'a wrong against the institutions set up to protect and safeguard the public' (*Hazel-Atlas Glass Co. v. Hartford-Empite,* 322 U.S. 238, 246, 64 S. Ct. 997, 88 L. Ed. 1250, 1944 Dec. Comm'r Pat. 675 [1944]; *see also Koschak v Gates Const. Corp.*, 225 AD2d 315, 316, 639 N.Y.S.2d 10 [1st Dept 1996]['The paramount concern of this Court is the preservation of the integrity of the judicial process']."

As the record herein reveals [R.474, R.925-926, R.1331, R.1126-1127], the foregoing quotes were furnished to the Attorney General again, and again, and again – as, likewise, the relevant legal principles:

> "when a litigating party resorts to falsehood or other fraud in trying to establish a position, a court may conclude that position to be without merit and that the relevant facts are contrary to those asserted by the party." Corpus Juris Secondum, Vol 31A, 166 (1996 ed., p. 339);
>
> "It has always been understood – the inference, indeed, is one of the simplest in human experience – that a party's falsehood or other fraud in the preparation and presentation of his cause…and all similar conduct, is receivable against him as an indication of his consciousness that his case is a weak or unfounded one; and that from that consciousness may be inferred the fact itself of the cause's lack of truth and merit. The inference thus does not necessarily apply to any specific fact in the cause, but operates, indefinitely though strongly, against the whole mass of alleged facts constituting his cause." II John Henry Wigmore, Evidence §278 at 133 (1979)."

[R.477, R.928, R.1127].

Indeed, evident from my March 26, 2019 letter are the multitude of deceits that the Attorney General was required to perpetrate to overcome the facts and law. As illustrative:

- concealing that appellants' Notice of Appeal and Preliminary Appeal Statement expressly invoke Article VI, §3(b)(1) of the New York State Constitution and CPLR §5601(b)(1) as the basis for their appeal of right – and the constitutional language, reiterated by the statute:

  > "a judgement or order entered upon the decision of an appellate division of the supreme court which finally determines an action or proceeding wherein is directly involved the construction of the constitution of the state or of the United States…";

- concealing that the Court has substituted a gloss "substantial constitutional question…directly involved" as governing appeals of right – thereby converting its mandatory constitutional and statutory duty to one that is discretionary – and so-identified by Judge Robert Smith's dissent in *Kachalsky v. Cacace*, 14 NY3d 743 (2010);

- concealing the innumerable respects in which "the construction of the constitution of the state or of the United States" is "directly involved" in appellants' appeal of right – beginning with the construction of constitutional provisions pertaining to due process – and, thereafter, pertaining to the construction of the constitutional provisions on which appellants' causes of action rest [R.99-130 (R.159-224)], including their sixth, fifth, and ninth causes of action whose determination on constitutional grounds is established by the very face of the Appellate Division's December 27, 2018 Memorandum and Order[2];

- concealing the Court's obvious caselaw to which appellants' appeal of right is either identical or *a fortiori*, as, for instance, *Valz v. Sheepshead Bay*, 249 NY 122 (1923), and *General Motors Corporation v. Rosa*, 82 NY2d 183 (1993), pertaining to due process[3]; and *King v. Cuomo*, 81 NY2d 247 (1993), relevant to "three-men-in-a-

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[2] As stated by New York Appellate Practice – Court of Appeals Practice, Thomas Newman (2001) §11.02[3], quoting Cohen & Karger, Powers of the New York Court of Appeals, 260-261 (Baker, Voohin & Co. rev. ed. 1952), "'the record must affirmatively show that the decision was put on the constitutional issue, and on that issue alone, to entitle the plaintiff to an appeal as of right'".

[3] According to New York Appellate Practice – Court of Appeals Practice, Thomas Newman (2001) §11.02[3], citing *Sharrock v. Dell Buick-Cadillac, Inc.*, 45 N.Y.2d 152, 159-60 (1978):

> "Where the contemplated constitutional question arguably implicates due process, [] counsel should consider that the due process clause of the state Constitution frequently affords greater protection than the due process clause in the federal constitution. In a 1978 decision, the Court stated:

room" budget deal-making – and, additionally, the Court's repeated assertions, in the context of the budget, "The courts will always be available to resolve disputes concerning the scope of that authority which is granted by the Constitution to the other two branches of the government", *Saxton v. Carey*, 44 NY2d 545, 551 (1978); *New York State Bankers Association v. Wetzler*, 81 N.Y.2d 98, 102 (1993); *Pataki v. NYS Assembly/Silver v. Pataki*, 4 NY3d 75, 96 (2004), relevant to appellants' eight causes of action pertaining to the budget;

- concealing that appellants' "lawsuit" herein and its incorporated predecessor are citizen-taxpayer actions, pursuant to State Finance Law, Article 7-A, not only seeking to enjoin disbursement of taxpayer dollars, but declaratory relief as to all ten causes of action;

- falsely making it appear, from the letter's "Factual Background" (at p. 2) and "Procedural Background" (at pp. 2-3), that the entirety of appellants' "lawsuit" pertains to judicial salary increases and the Commission on Legislative, Judicial and Executive Compensation – when, in fact only three of their ten causes of action exclusively do so, with eight causes of action pertaining to the budget, nowhere mentioned by these two prefatory sections;

- concealing, in the letter's "Factual Background" (at p. 2), that the Court's February 23, 2010 decision in *Maron v. Silver*, 14 NY3d 230, included a dissent by Judge Robert Smith, who would have thrown out the judges' judicial pay raise lawsuits, on evidentiary grounds, *to wit*, that there was no evidence supporting their claims that the Legislature's failure to raise judicial salaries constituted a separation-of-powers constitutional violation;

- falsely making it appear, in the "Factual Background" (at p. 2), that following the Court's *Maron v. Silver* decision, it was the Legislature that was responsible for establishing the Commission on Judicial Compensation, by its enactment of Chapter 567 of the Laws of 2010 – when that statute and the materially-identical budget statute that repealed and replaced it, Chapter 60, Part E, of the Laws of 2015, establishing the Commission on Legislative, Judicial and Executive Compensation [R.1080-1082], were based on Judiciary proposals for commissions whose salary increase recommendations would have the "force of law";

"On innumerable occasions this court has given our State Constitution an independent construction, affording the rights and liberties of the citizens of this State even more protection than may be secured under the United States Constitution (citations omitted). This independent construction finds its genesis specifically in the unique language of the due process clause of the New York Constitution as well as the long history of due process protections afforded the citizens of this State and, more generally, in fundamental principles of Federalism.'"

- concealing in the letter's "Procedural Background" (at p. 3), that pages 6-13 of respondents' brief, to which it refers the Court for "the detailed procedural history in Supreme Court", instead offers up a "procedural history" that is skeletal, fraudulent, and procedurally improper – and so-objected-to by appellants' reply brief (at pp. 53-54), to which it makes no mention;[4]

- falsely making it appear, by the "Procedural Background" (at p. 3), that there is nothing out-of-order about the Appellate Division's four orders on appellants' four appellate motions and by its December 27, 2018 Memorandum and Order, affirming Judge Hartman's appealed-from judgment – when Assistant Solicitor General Brodie, Assistant Solicitor General Paladino, and Solicitor General Underwood are each fully familiar with the appellate record and know that all five orders are insupportable, factually and legally – without requiring the chapter-and-verse particulars of the "legal autopsy" accompanying my March 26, 2019 letter.

With respect to the letter's section I-B entitled "Plaintiffs' Claims on the Merits Do Not Present a Substantial Constitutional Issue" (at pp. 5-6), concealing that respondents' objection on this ground is limited to the three causes of action pertaining to the Commission on Legislative, Judicial and Executive Compensation – *to wit*, appellants' sixth, seventh, and eighth causes of action – without mention of their seven other causes of action, and, most importantly, the fifth and ninth causes of action, each decided solely on constitutional grounds by the Appellate Division Memorandum and whose constitutional issues, never ruled upon by this Court, include:

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[4] As stated by appellants' reply brief (at pp. 53-54):

> "...Pursuant to §1250.8(c) of the Practice Rules of the Appellate Division, 'only if the respondent disagrees with the statement of the appellant', 'shall...[its] brief...include 'a counterstatement of the questions involved or a counterstatement of the nature and facts of the case'. Mr. Brodie's brief does not contest the accuracy of appellants' 'Statement of the Case' upon which their 'Questions Presented' are based – nor contest either their 'Questions Presented' or summarizations of what Judge Hartman did with respect to each. As such, he could not properly offer his own 'Question Presented' and 'Statement of the Case'. That he does so is simply to further deceive by giving the illusion that respondents have grounds of opposition, when, in fact, they have none. In any event, both are worthless. His 'Question Presented' (at p. 2) is altogether meaningless in asking 'Did Supreme Court act properly in granting judgment to defendants on plaintiff's 10 causes of action?' – where his answer, in the affirmative, simply summarizes what Judge Hartman's decisions did, without reference to either evidence or law. Likewise, without reference to evidence and law is his recital pertaining to 'Plaintiff's First Lawsuit' (at pp. 6-9) and 'This Lawsuit' (at pp. 9-13) – which are the second two headings of his 'Statement of the Case'..."

(1) the Legislature's closed-door party conferences substituting for open-door legislative committee meetings, pleaded by appellants' fifth cause of action as violating Article III, §10 [R.108-109 (R.178-179/¶¶364-365)]; and

(2) "three-men-in-a-room", behind-closed-doors, budget deal-making, involving the amending and generating of budget bills, pleaded by appellants' ninth cause of action as violating Article VII, §§1-4, Article IV, §7, and Article III, §10 [R.115 (R.214-219)][5];

As for the sixth cause of action [R.109-112 (R.187-201)] which section I-B addresses, but does not identify (at pp. 5-6):

- falsely purporting that the constitutionality of the delegation of legislative power to the Commission on Legislative, Judicial and Executive Compensation, upheld by the Appellate Division Memorandum, is consistent with "law of this Court…settled for more than 40 years" and "comported with a uniform line of precedent" – when sub-cause A of appellants' sixth cause of action quotes from the *amicus curiae* brief of the New York City Bar Association to this Court in *McKinney v. Commissioner of NYS Dept of Health* [R.190-191/¶391], reflecting the contrary – concealed by both the Appellate Division Memorandum and Judge Hartman's decision and judgment;

- falsely purporting that the commission on downsizing health care facilities, whose constitutionality was upheld by "two Departments of the Appellate Division" in *McKinney v. Commissioner of NYS Dept. of Health* (1st Dept) and *St. Joseph Hospital v. Novello*, (4th Dept.), was "similarly-structured" to the Commission on Legislative, Judicial and Executive Compensation –when appellants' sub-cause B of their sixth cause of action is based on its structural differences, *vis-à-vis* size, membership – and the deficiency of "factors" it was required to "take into account" [R.192-193, R.111/¶65];

- falsely purporting that "Supreme Court, Nassau County, has upheld the constitutionality of this very Commission", citing to "*Coll v. N.Y.S. Commission on Legislative, Judicial and Executive Compensation*. Index No. 2598-2016 (Sup. Ct. Nassau Cty. Sept. 1, 2016) (reproduced at R428)" – when that decision [R.428], on its face, purports that the challenge being decided is whether "the Commission on Legislative, Judicial and (sic) Compensation acted in an unconstitutional manner", in other words, not a challenge to the statute, *as written* – which is what sub-causes A and B of appellants'

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5 Appellants' ninth cause of action is annexed as Exhibit B to my March 26, 2019 letter.

sixth cause of action are [R.109-111 (R.187-193)] – and when, as known to the Attorney General, the *Coll* decision is a flagrant fraud because, in fact, the lawsuit challenged the statute, *as written* [R.459-462, R.504];

- falsely purporting that the Commission's "enabling law" was properly contained in a budget statute by, *inter alia*, substituting a paraphrase of Article VII, §6 from *Pataki v. NY State Assembly*, 4 N.Y.3d 75, 99 (2004), for the actual language of Article VII, §6 and concealing the allegations of subsections D and E of appellants' sixth cause of action [R.111-112 (R.194-201)], furnishing *prima facie* particulars as to the unconstitutionality, unlawfulness, and fraudulence of the insertion of Part E and Budget Bill #S.4610-A/A.6721-A into the budget.

As for the seventh and eighth causes of action [R.112-114 (R.201-213)], which section I-B addresses, but does not identify (at p. 6):

- falsely purporting that "the record shows that the Commission [on Legislative, Judicial and Executive Compensation] properly carried out its mandate" and that "It examined every one of the factors identified in the enabling statute" – when the seventh and eighth causes of action [R.201-213] furnish *prima facie* particulars and proof to the contrary;

- falsely purporting that appellants "cannot" "show that the Commission failed to consider a particular factor" – when both the seventh and eighth causes of action [R.201-213] make a *prima facie* evidentiary "show[ing]";

- falsely purporting that even if appellants' could "show that the Commission failed to consider a particular factor" that would "present an issue under C.P.L.R. article 78 – not the New York Constitution" – when the "factors" particularized by appellants' seventh cause [R.202-212] as having been disregarded by the Commission are expressly asserted therein to be of constitutional magnitude, and those particularized by appellants' eighth cause of action [R.212-213] as violated are of constitutional magnitude because they are the very "standards and reasonable safeguards" which are the basis upon which the Appellate Division's Memorandum and Judge Hartman's decision [R.35-36] upheld the constitutionality of the delegation of legislative power to the Commission;

With respect to the letter's section I-C entitled "Plaintiffs' Claims of Defects in the Judicial Process Do Not Present a Substantial Constitutional Issue" (at pp. 7-8),

- falsely purporting (at p. 7), including by its title, that appellants are making claims of "Defects in the Judicial Process" that are "the idiosyncratic complaints of an unsatisfied litigant that the Appellate Division properly rejected" and "do not present a substantial constitutional issue", when the record of the proceedings below – transmitted to this Court in advance of appellants' March 26, 2019 letter, with inventories furnished to the Attorney General (Exhibits A-1, A-2) – establish, *prima facie*, the obliteration of any semblance of due process by Judge Hartman and the Appellate Division in this citizen-taxpayer action and by Judge McDonough in the prior citizen-taxpayer action, in collusion with the Attorney General;

- falsely purporting, as "First" (at p. 7), that the Court's *Maron v. Silver* decision, 14 NY3d 230, 248-49 (2010), is controlling with respect to "Rule of Necessity" in the context of judicial pay raises – when the *Maron v. Silver* decision does not even refer to Judiciary Law §14, let alone confront whether judges who Judiciary Law §14 divests of jurisdiction can nonetheless invoke the judge-made "Rule of Necessity" to confer upon themselves the jurisdiction that the statute removes from them;[6]

- falsely purporting, as "Second" (at p. 7), that "The Third Department correctly recognized that the Attorney General 'has a statutory duty to represent defendants in this action.' CJA, 167 A.D.3d at 1409", when its Memorandum conceals the operative language of Executive Law §63.1 that predicates the Attorney General's litigation posture, either prosecuting or defending, on "the interest of the state" – a concealment the letter repeats, along with the deceit that appellants are "private parties", as if they are not acting "on behalf of the People of the State of New York and the Public Interest", which is what they are doing, expressly – also concealed by the letter;

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[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).

- falsely purporting that the issue of the Attorney General's representation does not, itself, "support an appeal of right under C.P.L.R §5601(b)(1)", when it surely does inasmuch as the Attorney General is a constitutional officer, whose duties, elaborated upon by Executive Law §63.1, State Finance Law, Article 7-A, and other statutory provisions, reflect that the Attorney General's constitutional function is to uphold and safeguard the state constitution and ensure that state statutes and public officers are in conformity therewith[7] – a function inconsistent with the Attorney General's litigation fraud to defeat meritorious lawsuits, as this, where she has no legitimate defense;

- falsely purporting, as "Third" (at p. 8), that the Attorney General's advocacy below was proper and that the Appellate Division's "fact-based discretionary decision"[8] not to impose sanctions upon the Attorney General presents no "substantial constitutional issue", concealing that the Appellate Division's "discretion" was not based on ANY facts, making it a question of law[9] – and, in the context of the Attorney General's constitutional function, "a substantial constitutional question".

With respect to the letter's section II entitled "The Third Department's Four Orders on Plaintiffs' Motions Were Non-Final" (at p. 8), it falsely purports that the issue pertaining to the Appellate Division's August 7, 2018, October 23, 2018, November 13, 2018, and December 19, 2018 orders is one of "finality" – rather than, as it is, whether they directly and necessarily affect the December 27, 2018 Memorandum and Order[10] as to the core constitutional question of due process and the jurisdiction of the Appellate Division justices by reason of the Judiciary Law §14 bar.

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7 It would appear that in the period immediately following passage of the constitutional amendments that are the executive budget provisions of Article VII, §§1-7, the Attorney General recognized his constitutional function with respect to the budget – and himself brought the two seminal cases, each entitled *People v. Tremaine*, decided by the Court of Appeals, 252 NY 27 (1929) and 281 NY 1 (1939).

8 "Discretion" is not absolute – and is "a reviewable question of law", where abused, Carmody-Wait 2nd, §71.113 "Review of discretionary matters, generally".

9 "this court has no power to review factual determinations unless they are unsupported as a matter of law", *People v. Rizzo*, 40 NY2d 425 (1976), *People v. Leonti*, 18 NY2d 384, 390 (1966), Powers of the New York Court of Appeals, Cohen & Karger (1998), p. 742; 28 NY Jurisprudence 2d §262.

10 This standard is reflected by the Court's "Civil Jurisdiction & Practice Outline, to which section II cites (at p. 8), giving as a page reference 28-29. The applicable page is 24, stating:

> "2. CPLR 5501(a) – Review of Prior Nonfinal Orders and Determinations
>
> a. CPLR 5501(a) provides that an appeal from a final judgment brings up for review, among other things:
>
> i. any nonfinal judgment or order which necessarily affects the final judgment…"

As for the only section of the Attorney General's March 26, 2019 letter whose fraud might not be immediately evident from my own March 26, 2019 letter, it is its section I-A entitled "A Constitutional Issue is Not Directly Involved Because Plaintiffs' Appeal is Procedurally Barred" (at p. 4) – and this because it echoes deceits in the Attorney General's respondents' brief, whose rebuttal is furnished by appellants' reply brief.

According to section I-A, there are four supposed "fundamental procedural defects" which "preclude consideration of plaintiffs' constitutional claims". This is completely bogus – and appellants' reply brief establishes this by its rebuttal of the very pages to which section I-A cites for further particulars with respect to each of the four supposed "fundamental procedural defects".[11]

The "First" supposed "fundamental procedural defect" (at p. 4) is that CJA's appeal must be dismissed because, as a "corporate entity", CJA "cannot appear in this Court without an attorney" and "purports to appear *pro se*".

This is false. CJA does NOT purport to appear *pro se* before this Court – and its status and mine as "unrepresented litigants" is clearly identified by our February 26, 2019 Preliminary Appeal Statement (#10 – "Self-Represented Litigant Information"). However, the Attorney General's March 26, 2019 letter does not cite to that, but, instead, to pages 13-14 of respondents' brief, whose claim was NOT that CJA was appearing *pro se*, but that I was representing CJA. Appellants' reply brief had rebutted this, at page 12, as follows:

> "In addition to falsely purporting that the individual appellant is representing the corporate appellant, implying that she is seeking to do so, Mr. Brodie conceals that both are unrepresented and that the individual appellant, from the outset and repeatedly, invoked their entitlement to representation by the attorney general, pursuant to Executive Law §63.1 and State Finance Law Article 7-A – with no adjudication thereof by Judge Hartman or by Judge McDonough before her."

In any event, dismissing CJA's appeal would have no practical significance, as ALL of CJA's claims would remain viable through my appeal. The record establishes this and contains appellants' rebuttal to the Attorney General's comparable efforts to secure dismissal of CJA's claims in Supreme Court, both in this citizen-taxpayer action and in its predecessor [R.508-509; R.1138-1139].

The "Second" supposed "fundamental procedural defect" (at p. 4) is that appellants' first four causes of action [R.99-108 (R.159-187)] were "found to be meritless in the predecessor lawsuit" and appellants "lost the right to challenge Judge McDonough's rulings", as they did not appeal them,

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[11] Suffice to note that the Attorney General had the opportunity to rebut the relevant pages of appellants' reply brief, upon their bringing their October 23, 2018 motion to strike the respondents' brief as a fraud upon the court, the denial of which, by the appeal panel, including upon reargument, was – as reflected by its November 13, 2018 and December 19, 2018 decisions – without any facts, law, or reasons.

citing to 14-16 of respondents' brief – and the Appellate Division's Memorandum.

This is false – and pages 15-17 of appellants' reply brief rebutted same, uncontested by the Attorney General and the Appellate Division:

> "Appellants' first through fourth causes of action are not 'a collateral attack on Justice McDonough's rulings', as Mr. Brodie purports (at p. 14). Judge McDonough's applicable ruling, in the prior citizen-taxpayer action, was to deny appellants leave to supplement, with causes of action pertaining to fiscal year 2016-2017, their eight causes of action pertaining to fiscal years 2014-2015 and 2015-2016 – all of which he dismissed, in whole or in part, on 'evidence' that he did not identify and which does not exist (Br. at p. 43; R.355-366]). His rationale for denying appellants leave to supplement with their proposed 'causes of action 9-12', *to wit*, that they were 'patently devoid of merit' [R.321] – which is not a CPLR §3211 ground for dismissal – is *dicta* and extraneous to his denial of leave to supplement, which was his ruling. Appellants did not need to appeal Judge McDonough's denial of leave to supplement in order to commence a new citizen-taxpayer action, presenting their causes of action pertaining to the 2016-2017 fiscal year, as these were never before Judge McDonough except as a motion for leave to supplement, which he denied.
>
> Likewise deceitful is Mr. Brodie's hedged assertion 'the instant complaint is barred to the extent it challenges budgets prior to 2016-2017' (underlining added). Appellants' first three causes of action challenge the legislative and judiciary proposed budgets and the governor's combined legislative/judiciary budget bill for the 2016-2017 fiscal year, with their fourth cause of action challenging the whole of the budget for fiscal year 2016-2017.
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> Moreover, as Mr. Brodie well knows, but does not recite (at p. 15), *res judicata* requires 'a judgment rendered jurisdictionally and unimpeached for fraud', with collateral estoppel additionally requiring that the party against whom it is asserted had 'a full and fair opportunity' to litigate, *Ryan v. NY Tel. Co*, 62 N.Y.2d 494 (1984). Judge Hartman's December 21, 2016 decision [R.527-535] neither cited to, nor made findings with respect to, *res judicata* or collateral estoppel in dismissing appellants' first four causes of action, each of whose pleaded allegations [R.99-108] – required to be accepted as true on a motion to dismiss for failure to state a cause of action – alerted her to the due process issues, as to which appellants' incorporated Exhibit G 'legal autopsy'/analysis of Judge McDonough's decisions in the prior citizen-taxpayer action [R.338-373] furnished proof, which she concealed. '[F]raud vitiates everything which it touches', *Hadden v. Consolidated Edison Company of New York*, 45 N.Y.2d 466 (1978)."

The "Third" supposed "fundamental procedural defect" (at p. 4) is that:

> "plaintiffs cannot attack the 2017-2018 budget year in this appeal, because Supreme Court denied their motion to supplement the complaint to include such claims. (*See* R69.) Supreme Court's exercise of case-management discretion not to expand the litigation to include additional claims (*see* R.Br. at 16-18) does not present a constitutional issue."

This is false. At issue is NOT Judge Hartman's "exercise of case-management discretion", but her obliteration of ALL cognizable adjudicative and evidentiary standards, depriving appellants of relief to which they were entitled, *as a matter of law*, by decisions unconstitutional by reason thereof. That includes – as reflected by sub-question #5 of appellants' brief – Judge Hartman's denial of appellants' March 29, 2017 order to show cause [R.635-743] whose second branch sought an order:

> "pursuant to CPLR 3025(b), granting leave to plaintiffs to supplement their September 2, 2106 verified complaint (pertaining to fiscal year 2016-2017) by their March 2[9] verified supplemental complaint (pertaining to fiscal year 2017-2018)" [R.636].

As for the cited pages 16-18 of respondents' brief, they are rebutted by pages 47-48 of appellants' reply brief, identifying that Mr. Brodie made "NO showing that Judge Hartman's denial was proper". Nor does the Appellate Division Memorandum make any specific adjudication of sub-question #5 or confront ANY of the facts, law, and legal argument presented by appellants' brief with respect thereto – all uncontested by respondents.

The "Fourth" supposed "fundamental procedural defect" (at p. 4) is that:

> "to the extent plaintiffs challenge the expenditures from the 2016-2017 budget year, their appeal is moot because the authority to spend funds pursuant to the 2016-2017 budget appropriations has lapsed. *See* State Finance Law §40; N.Y. Const. Art 7, §7. (*See also* R. Br. at 18-19.)"

This is false. And rebutting the cited pages 18-19 of respondents' brief are pages 51-52 of appellants' reply brief. These not only point out that the declaratory relief sought by the ten causes of action of appellants' citizen-taxpayer action meet:

> "the recognized exceptions to mootness: (1) likelihood of repetition; (2) a phenomenon typically evading review; (3) involves a novel issue or significant or important questions not previously passed upon; (4) involves a matter of widespread public interest or importance or of ongoing public interest; *Winner v. Cuomo*, 176 A.D.2d 60 (3rd Dept. 1992); *Schulz v. Silver*, 212 A.D.2d 293

(3rd Dept. 1995); 43 New York Jurisprudence §25 'Exceptions to mootness doctrine'".[12]

but, additionally, that:

> "the odyssey of this citizen-taxpayer action and its predecessor – involving successive budget years repeating the identical constitutional, statutory, and rule violations of prior years and an initial commission pay raise statute thereafter replaced, *via* constitutional violations, by a second commission pay raise statute, not only materially identical, but expanded in scope – exemplifies not merely a 'likelihood of repetition', but its certainty, continuing in the present, all 'evading review', because of the corrupting of the judicial process – including subversion of the safeguarding citizen-taxpayer action statute – by judges, in collusion with the attorney general, each suffering from immense financial and other conflicts of interest.".

In fact, this is what has happened. As anticipated by appellants' February 26, 2019 Preliminary Appeal Statement (#12, ¶2), the budget for fiscal year 2019-2020, just enacted, replicates virtually all the constitutional, statutory, and rule violations detailed by appellants' September 2, 2016 verified complaint pertaining to fiscal year 2016-2017 [R.87-392] and their March 29, 2017 verified supplemental complaint pertaining to fiscal year 2017-2018 [R.671-743]. Indeed, as a result of this year's behind-closed-door, "three-men-in-a-room" budget deal-making, a new commission having "force of law" legislative powers was, on March 31, 2019, popped into the fiscal year 2019-2020 budget as Part XXX of Revenue Budget Bill #S.1509-C/A.2009-C and enacted just hours later. The commission – this time, to establish a system of voluntary campaign financing – is, in material respects, identical to Chapter 60, Part E, of the Laws of 2015 [R.1080-1082] – whose unconstitutionality, *as written and by its enactment*, is the subject of appellants' sixth cause of action, as to which the Attorney General March 26, 2019 letter focuses so much of its deceit. A copy of Part XXX of the 2019 Revenue Budget Bill is annexed (Exhibit B), from which the Court can discern, for itself, that its adjudication of the issues of constitutional construction presented by appellants' sixth cause of the action pertaining to Chapter 60, Part E, of the Laws of 2015 – and by their fourth, fifth, and ninth causes of

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12 See, additionally, this Court's "Civil Jurisdiction & Practice Outline, at p. 22 – "Mootness", citing *Matter of Hearst Corp. v Clyne*, 50 NY2d 707, 713-714 [1980]), and stating:

> "the Court may entertain an appeal or motion when each of the three prongs of the mootness exception is satisfied: '(1) a likelihood of repetition . . .; (2) a phenomenon typically evading review; and (3) a showing of significant or important questions not previously passed on, i.e. substantial and novel issues' (id. at 714-715)."

Such is at bar – and the Attorney General makes no showing or claim to the contrary.

action pertaining to the budget – will obviate foreseeable litigation challenges to void Part XXX.

As for Part HHH of the 2018 Revenue Budget Bill[13], which is more materially identical to Chapter 60, Part E, of the Laws of 2015 by its establishment of a "Committee on Legislative and Executive Compensation" – and whose litigation challenge in Supreme Court/Albany County by *Delgado v. New York State* is recounted by pages 15-19 of my March 26, 2019 letter[14], there is now a second litigation challenge to it in Albany Supreme Court – *Barclay, et al. v. New York State Committee on Legislative and Executive Compensation, et al.* (#901837-19). The lawsuit, commenced by nine assemblymen and two senators, on March 29, 2019, includes a "Cause of Action 6" entitled "(Unconstitutional delegation of law-making authority), reading, in pertinent part:

> "81. The legislation that created the Committee on Legislative and Executive Compensation violated several fundamental Constitutional provisions because it purported to grant this Committee the ability to make determinations that 'have *the force of law*, and shall *supersede*, where appropriate, inconsistent provisions of section 169 of the executive law and sections 5 and 5-a of the legislative law, unless modified or abrogated by statute prior to January first…'
>
> 82. Only the State Legislature, subject to the approval or veto by the Governor, can enact laws. This power cannot be delegated to a hand-picked committee, thus circumventing the right of every State Legislator to vote on the 'law' and eliminating the right of the governor to veto or approve of such 'law.'
>
> 83. The salaries of State Legislators must be set by law pursuant to Article III, Section 6 of the New York State Constitution, which states that '[e]ach member of the legislature shall receive for his services a like annual salary, *to be fixed by law*.' It further states that members shall continue to receive such salary 'until *changed by law* pursuant to this section.'
>
> 84. Only the Senate and Assembly have the power to enact laws, subject to approval or veto by the Governor, pursuant to Article III, Section 1 of the New York State Constitution, which states that '[t]he legislative power of this State shall be vested in the Senate and Assembly.'

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[13] Part HHH is annexed as Exhibit H to appellants' 1st order to show cause in the Appellate Division, filed July 25, 2018 – and discussed at ¶31 therein and its footnote 9.

[14] The December 14, 2018 summons and verified complaint in *Delgado v. NYS* are annexed as Exhibit J to my December 15, 2018 reply affidavit in further support of appellants' 4th order to show cause in the Appellate Division.

85. The procedure for adopting a law is carefully set forth in Article III, Section 13 of the State Constitution, which states that '*no law shall be enacted except by bill*.' Article III, Section 14 of the State Constitution states that no bill shall 'be passed or *become law*, except by the assent of a majority of the members elected to each branch of the legislature...and the ayes and nays entered on the journal.'

86. Every bill passed by the Assembly and the Senate must then be presented to the Governor pursuant to Article IV, Section 7 of the State Constitution, to be signed or vetoed. If vetoed, the Legislature has the opportunity to override the veto.

87. The Commission does not have the Constitutional authority to supersede a duly adoption (sic) law, or change the salary or compensation of a state legislature (sic) by circumventing the statutory duty and responsibility of the state legislator to consider and vote on such a law, or to completely eliminate the ability of the governor to sign or veto such a law, subject to a possible veto override." (at pp. 13-14, italics in the original).

A copy of the March 29, 2019 *Barclay* petitioners' Notice of Petition, with Verified Petition and Complaint, returnable on May 3, 2019, is annexed (Exhibit C) – so that this Court can further discern that not only is the declaratory relief sought by appellants' causes of action not moot, but adjudication, in appellants' favor, will end the *Barclay* case, in addition to the *Delgado* case, because it will require the voiding of Part HHH, *as a matter of law*.[15]

* * *

Based upon the foregoing, if the Attorney General does not promptly withdraw her fraudulent March 26, 2019 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, the formal motion to secure same should come from the Court. This, by issuance of an order to show cause, requiring signed responses to the above and to my March 26, 2019 letter (including its incorporated "legal autopsy" of the Appellate Division's Memorandum and

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[15] There is also a federal litigation challenge to the constitutionality of Part HHH, pending in the United States District Court for the Northern District of New York. Entitled *Robert L. Schulz, et al. v. New York State, et al.* (#1:19-cv-56), it was filed on January 15, 2019. An extract of the verified complaint, with relevant portions, is annexed (Exhibit D). Defendants are represented by the Attorney General, whose pending February 6, 2019 motion to dismiss does not purport that the plaintiffs therein have a state remedy, or reveal existing relevant state litigations – such as the *Delgado* challenge to Part HHH, as to which the Attorney General had made a January 28, 2019 motion to dismiss pivotally based on the Appellate Division's December 27, 2018 Memorandum herein.

Order), from each of the four attorneys whose names are on the signature page of the Attorney General's March 26, 2019 letter. This would accord with the Court's *own* first Rule of Practice, its 500.1(a), which – recognizing the importance of preserving the integrity of its proceedings – states, in mandatory terms:

> "All papers shall comply with applicable statutes and rules, particularly the signing requirement of 22 NYCRR 130-1.1a."

Thank you.

Respectfully submitted,

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

cc: Attorney General Letitia James
Solicitor General Barbara Underwood
Assistant Solicitor General Victor Paladino
Assistant Solicitor General Frederick Brodie

TABLE OF EXHIBITS

Exhibit A-1: Appellants' March 16, 2019 letter

Exhibit A-2: Appellants' March 18, 2019 letter, with inventories & annexed e-mail chain

Exhibit B: Part XXX of 2019 Revenue Budget Bill #S.1509-C/A.2009-C

Exhibit C-1: March 29, 2019 Notice of Petition
Barclay v. NYS Committee on Legislative and Executive Compensation

Exhibit C-2: March 29, 2019 Verified Petition & Complaint
Barclay v. NYS Committee on Legislative and Executive Compensation

Exhibit D: Extract of January 15, 2019 Verified Complaint
Schulz v. State of New York