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Elena Ruth Sassower, Director

BY EXPRESS MAIL

March 26, 2019

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

ATT: Chief Clerk John P. Asiello

RE: In Support of Appeal of Right: NYS Constitution Article VI, §3(b)(1); CPLR §5601(b)(1)
Center for Judicial Accountability, et al. v. Cuomo, ...DiFiore – Citizen-Taxpayer Action
APL-2019-00029

Dear Chief Clerk Asiello:

This responds to the March 4, 2019 letter of Deputy Clerk Heather Davis, affording appellants in this citizen-taxpayer action appeal – acting on their own behalf and on behalf of the People of the State of New York and the Public Interest – the opportunity to reinforce:

(1) that the appealed-from December 27, 2018 Memorandum and Order of the Appellate Division, Third Department presents "a substantial constitutional question…directly involved to support an appeal as of right"; and

(2) that the Appellate Division's underlying December 19, 2018, November 13, 2018, October 23, 2018, and August 7, 2018 orders are brought up for review as part thereof because they directly and necessarily affect its December 27, 2018 Memorandum and Order as to the core constitutional question of due process and whether, pursuant to Judiciary Law §14 and this Court's own bedrock decision, *Oakley v. Aspinwall*, 3 N.Y. 547 (1850), the Appellate Division justices even had jurisdiction to sit, where, additionally, they refused to make disclosure of their financial and other interests in the appeal and refused to confront whether they could invoke "rule of necessity", and, in any event, did not invoke it in rendering the December 27, 2018 Memorandum and Order – or any of the four predecessor orders.

Suffice to note that jurisdiction was the due process constitutional question in *Valz v. Sheepshead Bay*, 249 N.Y. 122 (1923), wherein the Court stated:

> "Where the question of whether a judgment is the result of due process is the decisive question upon an appeal, the appeal lies to this court as a matter of right." (at p 131).

Nearly 100 years later, *Valz* remains "good law" to which legal authorities cite.[1] And this is as it must be for cases "wherein is directly involved the construction of the constitution of the state or of the United States" guaranteeing "due process of law" and "equal protection of the laws":

> Article I, §6 of the New York State Constitution:
> "No person shall be deprived of life, liberty or property without due process of law";
>
> Article I, §11 of the New York State Constitution:
> "No person shall be denied the equal protection of the laws of this state or any subdivision thereof";
>
> Fifth Amendment of the United States Constitution:
> "No person shall be...deprived of life, liberty, or property, without due process of law";
>
> Fourteenth Amendment of the United States Constitution, §1:
> "nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws".

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

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1 Powers of the New York Court of Appeals, 3rd ed (2005, Arthur Karger), §7.9 "It is difficult to appraise the precise scope of the *Valz* case and the case is not readily reconcilable with other decisions of the Court… Probably,…the *Valz* case [is] an exceptional ruling."

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Appellants are Entitled to an Appeal of Right,
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of the New York and United States Constitutions on which *Valz* Rests,
Because the Appellate Division had No Jurisdiction & Deprived Them
& Each of Their Ten Causes of Action of Due Process of Law, *Totally*

Already furnished to the Court, in response to the March 4, 2019 letter, is a copy of the briefs and record on appeal and of the record of appellants' four appellate motions whose purpose was to safeguard the integrity of the appellate proceedings at the Appellate Division, beginning with disclosure and disqualification and ending with Questions to be answered by the Appellate Division, if not certified to this Court. These fully substantiate appellants' February 26, 2019 Preliminary Appeal Statement, whose #12 furnished, as required, a "nonbinding designation", "in point-heading form, [of] issues proposed to be raised on appeal". The two identified proposed issues were and remain:

1. The obliteration of ALL ethical, adjudicative, and evidentiary standards by judges of the courts below in this citizen-taxpayer action in which they have HUGE financial interests – as four of the ten causes of action seek declarations that the commission-based judicial salary increases, of which they are beneficiaries, and the Judiciary budget, in which those increases are embedded, are unconstitutional, statutorily-violative, and fraudulent;

2. Appellants' *prima facie* summary judgment entitlement to declarations of unconstitutionality and unlawfulness with respect to each of their ten causes of action pertaining to the fiscal year 2016-2017 budget and Chapter 60, Part E, of the Laws of 2015, establishing the Commission on Legislative, Judicial and Executive Compensation – virtually all of whose unconstitutionality and unlawfulness is identically repeated and embodied in the budgets for fiscal years 2017-2018 and 2018-2019, and in the budget for fiscal year 2019-2020, currently being enacted.

The title headings of these ten causes of action are:

"AS AND FOR A FIRST CAUSE OF ACTION
The Legislature's Proposed Budget for Fiscal Year 2016-2017,
Embodied in Budget Bill #S.6401-a/A.9001-a, is Unconstitutional
& Unlawful"

"AS AND FOR A SECOND CAUSE OF ACTION
The Judiciary's Proposed Budget for 2016-2017,
Embodied in Budget Bill #S.6401-a/A.9001-a, is Unconstitutional
& Unlawful"

"AS AND FOR A THIRD CAUSE OF ACTION
Budget Bill #S.6401-a/A.9001-a is Unconstitutional & Unlawful
Over & Beyond the Legislative & Judiciary Budgets it Embodies
'Without Revision'"

"AS AND FOR A FOURTH CAUSE OF ACTION
Nothing Lawful or Constitutional Can Emerge From a Legislative Process
that Violates its Own Statutory & Rule Safeguards – and the Constitution"

"AS AND FOR A FIFTH CAUSE OF ACTION
The 'Process' by which the State Budget for Fiscal Year 2016-2017
Was Enacted Violated Article VII, §§4, 5, 6 of the New York State
Constitution"

"AS AND FOR A SIXTH CAUSE OF ACTION
Chapter 60, Part E, of the Laws of 2015 is Unconstitutional, *As Written* –
and the Commission's Judicial Salary Increase Recommendations
are Null & Void by Reason Thereof

A. Chapter 60, Part E, of the Laws of 2015 Unconstitutionally Delegates Legislative Power by Giving the Commission's Judicial Salary Recommendations 'the Force of Law'

B. Chapter 60, Part E, of the Laws of 2015 Unconstitutionally Delegates Legislative Power Without Safeguarding Provisions

C. Chapter 60, Part E, of the Law of 2015 Violates Article XIII, §7 of the New York State Constitution

D. Chapter 60, Part E, of the Law of 2015 Violates Article VII, §6 of the New York State Constitution – and, Additionally, Article VII, §§2 and 3

E. Chapter 60, Part E, of the Laws of 2015 is Unconstitutional because Budget Bill #4610-A/A.6721-A was Procured Fraudulently and Without Legislative Due Process"

"<u>AS AND FOR A SEVENTH CAUSE OF ACTION</u>
Chapter 60, Part E, of the Laws of 2015 is Unconstitutional, *As Applied* –
& the Commission's Judicial Salary Increase Recommendations
are Null & Void by Reason Thereof

A. *As Applied*, a Commission Comprised of Members who are Actually Biased and Interested and that Conceals and Does Not Determine the Disqualification/Disclosure Issues Before it is Unconstitutional

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

C. *As Applied*, a Commission that Conceals and Does Not Determine the Fraud before It – Including the Complete Absence of ANY Evidence that Judicial Compensation and Non-Salary Benefits are Inadequate – is Unconstitutional

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

"<u>AS AND FOR AN EIGHTH CAUSE OF ACTION</u>
The Commission's Violations of <u>Express</u> Statutory Requirements
of Chapter 60, Part E, of the Laws of 2015 Renders its Judicial Salary
Increase Recommendations Null and Void"

"<u>AS AND FOR AN NINTH CAUSE OF ACTION</u>
Three-Men-in-a-Room Budget Dealing-Making is Unconstitutional,
As Unwritten and *As Applied*

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

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

"<u>AS AND FOR A TENTH CAUSE OF ACTION</u>
The Appropriation Item Entitled 'For grants to counties for district
attorney salaries', in the Division of Criminal Justice Services' Budget,
Contained in Aid for Localities Budget Bill #S.6403-d/A.9003-d,
Does Not Authorize Disbursements for Fiscal Year 2016-2017 and
is Otherwise Unlawful and Unconstitutional. Reappropriation Items
are also Improper, if not Unlawful".

Appellants' brief – chronicling the obliteration of ALL standards *nisi prius* by Acting Supreme Court Justice/Court of Claims Judge Hartman – opens (at p. 1) with an introduction entitled "Whither the Ten Causes of Action?", beneath which reads:

> "'[A] plaintiff's cause of action is valuable property within the generally accepted sense of that word, and as such, it is entitled to the protections of the Constitution.', *Link v. Wabash Railroad Co*, 370 U.S. 626, 646 (1962), U.S. Supreme Court Justice Hugo Black writing in dissent, with Chief Justice Earl Warren concurring."

The Appellate Division gave NO "protections of the Constitution" to ANY of appellants' ten causes of action – and its assault upon ALL ten and upon the *sine qua non* for due process, a fair and impartial tribunal, is particularized by appellants' accompanying 33-page "legal autopsy"[2] of the Appellate Division Memorandum. Such "legal autopsy", incorporated herein by reference, is furnished to assist the Court in speedily verifying what the record establishes, resoundingly, summarized at the first page of the "legal autopsy", *to wit*:

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

In *General Motors Corporation v. Rosa*, 82 N.Y.2d 183, 188 (1993), this Court stated, in a decision by its then Chief Judge, directly under a section heading entitled "The Rule of Necessity":

> "The participation of an independent, unbiased adjudicator in the resolution of disputes is an essential element of due process of law, guaranteed by the Federal and State Constitutions (*see*, US Const, 14th Amend. §1; NY Const, art I, §6; *see also*, *Matter of 1616 Second Ave Rest. v. New York State Liq. Auth*, 75 NY2d 158, 161; Redish and Marshall, *Adjudicatory Independence and the Values of Procedural Due Process*, 95 Yale LJ 455, 475-505 [1986])..." (at p. 188).

The cited-to pages from "*Adjudicatory Independence and the Values of Procedural Due Process*" stress that "None of the core values of due process...can be fulfilled without the participation of an independent adjudicator." (at p. 476); it is "a *sine qua non* of procedural due process" (at p. 477),

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[2] The term "legal autopsy" is taken from the law review article "*Legal Autopsies: Assessing the Performance of Judges and Lawyers Through the Window of Leading Contract Cases*", 73 Albany Law Review 1 (2009), by Gerald Caplan, recognizing that the legitimacy of judicial decisions can only be determined by comparison with the record ('...Performance assessment cannot occur without close examination of the trial record, briefs, oral argument and the like...' (p. 53)).

"there can never be due process without a sufficiently independent adjudicator" (at p. 479), and, further,

> "Review of historical evidence demonstrates that the right to an independent adjudicator was considered a crucial element of procedural justice by the common law, by those that established the law of the colonies, and, perhaps most important, by the Framers of the United States Constitution. This historically fundamental role adds significant weight to the conclusion that the right of an independent adjudicator constitutes the floor of due process." (at p. 479).

Not surprisingly then, the Court took the case by an appeal of right – stating, in its summary order, 81 N.Y.2d 1004 (1993), "Motion for leave to appeal denied upon the ground that an appeal lies as of right." Clearly, the right of appeal rested on due process, for which it could have cited *Valz*.

Appellants Meet the Constitutional Requirements
Entitling Them to an Appeal of Right,
Pursuant to Article VI, §3(b)(1) of the New York State Constitution,
Reiterated by CPLR §5601(b)(1)

The constitutional requirements for appeals of right, pursuant to Article VI, §3(b)(1) of the New York State Constitution, reiterated by CPLR §5601(b)(1), which appellants meet, are:

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

For this reason, appellants' notice of appeal expressly invoked Article VI, §3(b)(1) and CPLR §5601(b)(1) – with the basis for their doing so evident from the Appellate Division Memorandum itself, appended thereto. *On its face*, the Memorandum makes apparent that appellants' sixth cause of action, as well as their fifth and ninth, "directly involve[] the construction of the constitution of the state" and that each was so-decided by the Appellate Division. Likewise, that the Appellate Division made a series of threshold due process rulings involving Judge Hartman – with none made as to its own justices, notwithstanding "the prohibition of Judiciary Law §14 divesting the justices of jurisdiction (*Oakley v. Aspinwall*, 3 N.Y. 547 (1850)", also expressly identified by appellants' notice of appeal.

Now that the Court has before it the three-volume record on appeal, the appeal briefs, and appellants' four appellate motions, the Court can further verify the foregoing. Indeed, from appellants' September 2, 2016 verified complaint [R.87-392] and March 29, 2017 supplemental verified complaint [R.671-743], the Court can discern what is not revealed by the face of the Memorandum, namely, that appellants' first, second, third, and fourth causes of action also "directly involve[ ] the

construction of the constitution of the state...", if not, additionally, the seventh, eighth and tenth causes of action.

By reason thereof, 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.[3]

Appellants' Sub-Causes A & B of their Sixth Cause of Action – are *A Fortiori* to the 2007 Appeals of Right in *McKinney & St. Joseph Hospital*, to which those Appellants were Entitled

More than 11 years ago, the Court had before it, virtually simultaneously, two separate cases, from two different ends of the state, on the same and similar directly-involved substantial constitutional questions – accompanied by *amicus curiae* support of the New York City Bar Association, each initially on appeals by right and then by motions for leave to appeal:

> *McKinney v. Commissioner of N.Y.S. Department of Health*, 15 Mis.3d 743 (S.Ct./Bronx: March 8, 2007), affm'd 41 A.D.3d 252 (1st Dept: June 19, 2007), appeal dismissed, 9 N.Y.3d 891 (September 6, 2007), appeal denied, 9 N.Y.3d 815 (November 27, 2007); motion granting New York City Bar Association leave to file *amicus curiae* brief (November 27, 2007); and

> *St. Joseph Hospital of Cheetowaga v. Novello*, 15 Misc. 3d 333 (S.Ct./Erie County: February 2, 2007), affm'd as modified, dissent by Justice Fahey, 43 A.D.3d 139 (4th Dept: July 18, 2007), appeal dismissed, 9 N.Y.3d 988 (November 27, 2007), appeal denied, 10 N.Y.3d 702 (February 12, 2008).

Both cases challenged, as unconstitutional, Chapter 63, Part E, of the Laws of 2005, establishing the Commission on Health Care Facilities in the 21st Century, with "force of law" powers.

Appellants' sub-causes A and B of their sixth cause of action [R.109-110 (R.187-192)] expressly rely on *McKinney* and *St. Joseph Hospital* as corroborative of the unconstitutionality, *as written*, of

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3 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).

Chapter 60, Part E, of the Laws of 2015, establishing the Commission on Legislative, Judicial and Executive Compensation, also with "force of law" powers [R.1080-1082]. The pertinent allegations of those sub-causes are, as follows [R.190-193]:

"A. **Chapter 60, Part E of the Laws of 2015 Unconstitutionally Delegates Legislative Power by Giving the Commission's Judicial Salary Recommendations 'the Force of Law'**

...

390. In *St. Joseph Hospital, et al. v. Novello, et al.*, 43 A.D.3d 139 (2007), a case challenging a statute that gave 'force of law' effect to a special commission's recommendations – Chapter 63, Part E, of the Laws of 2005 – then Appellate Division, Fourth Department Justice Eugene Fahey, writing in dissent, deemed the statute unconstitutional, violating the presentment clause and separation of powers:

> 'It is apparent that the Legislation inverts the usual procedure utilized for the passage of a bill. According to the usual procedure, a bill is presented to the Governor for his or her signature or veto after passage by the Senate and the Assembly. Should the Governor sign the bill, it becomes law; should the bill be vetoed, the veto may be overridden by a two-thirds vote of the Legislature. Here, the Legislation creates a process that allows the recommendations of the Commission to become law without ever being presented to the Governor after the action of the Legislature.' *Id*, 152.

391. Justice Fahey's dissent was cited by the New York City Bar Association's *amicus curiae* brief to the Court of Appeals in a different case challenging the same statute, *Mary McKinney, et al. v. Commissioner of the New York State Department of Health, et al.*, 15 Misc.3d 743 (S.Ct. Bronx 200[7]), affm'd 41 A.D.3d 252 (1st Dept. 2007), appeal dismissed, 9 N.Y.3d 891 (2007), appeal denied, 9 N.Y.3d 815; motion granted, 9 N.Y.3d 986. It characterized 'the force of law' provision as:

> 'a process of lawmaking never before seen in the State of New York' (at p. 24);
>
> a 'novel form of legislation...in direct conflict with representative democracy [that] cannot stand constitutional scrutiny (at p. 24)';
>
> a 'gross violation of the State Constitution's separation-of-powers and...the centuries-old constitutional mandate that the Legislature, and no other entity, make New York State's laws' (at p. 25);
>
> 'most unusual [in its]...self-executing mechanism by which recommendations formulated by an unelected commission automatically become law...without any legislative action' (at p. 28);
>
> unlike 'any other known law' (at p. 29);

'a dangerous precedent' (at p. 11) that

'will set the stage for the arbitrary handling of public resources under the guise of future temporary commissions that are not subject to any public scrutiny or accountability (at p. 36).[fn]'

392. This outsourcing to an appointed seven-member commission of the duties of examination, evaluation, consideration, hearing, recommendation, which Chapter 60, Part E, of the Laws of 2015 confers upon it, are the duties of a properly functioning Legislature, acting through its committees – and there is NO EVIDENCE that any legislative committee has ever been unsuccessful in engaging in such duties and in producing bills based thereon that could not then be enacted by the Legislature and Governor.

393. The unconstitutionality of 'the force of law' provision of Chapter 60, Part E, of the Laws of 2015 – and of the timing for the Commission's recommendation for legislative and executive branch officers – requires the striking of the statute, in its entirety – there being no severability provision in the statute. (*St. Joseph Hospital, et al. v. Novello, et al., id.*).

B. Chapter 60, Part E, of the Laws of 2015 Unconstitutionally Delegates Legislative Power Without Safeguarding Provisions

394. By contrast to *McKinney*, where the Supreme Court upheld the statute because of the safeguarding provisions it contained, such safeguards are here absent.

395. Unlike the statute in *McKinney*, Chapter 60, Part E, of the Laws of 2015 does not provide for a commission of sufficient size and diversity, nor furnish the commission with sufficient guidance as to standards and factors governing its determinations.

396. It establishes a seven-member commission – and of these, only two members are legislative appointees, designated by the majority leaders of each house. This is an insufficient number to reflect the diversity of either the Legislature or the State.

397. Nor does the statute specify neutrality as a criteria for appointment – and having two commissioners appointed by the chief judge assures that at least two of the seven commissioners will have been appointed to achieve the Judiciary's agenda of pay raises.

398. As the Judiciary would otherwise have no deliberative role in determining judicial pay raises legislatively and the Chief Judge is directly interested

in the determination, the Chief Judge's participation as an appointing authority is, at very least, a constitutional infirmity.

399. Additionally, Chapter 60, Part E, of the Laws of 2015 furnishes insufficient guidance to the Commission as to the 'appropriate factors' for it to consider. The statute requires the Commission to 'take into account all appropriate factors, including but not limited to' six enumerated factors (§2, ¶3). These six enumerated factors are all economic and financial – and are completely untethered to any consideration as to whether the judges whose salaries are being evaluated are discharging their constitutional duty to render fair and impartial justice and afford the People their due process and equal protection rights under Article I of the New York State Constitution.

400. It is unconstitutional to raise the salaries of judges who should be removed from the bench for corruption or incompetence – and who, by reason thereof, are not earning their current salaries. *Consequently, a prerequisite to any judicial salary increase recommendation must be a determination that safeguarding appellate, administrative, disciplinary and removal provisions of Article VI of the New York State Constitution are functioning.*

401. Likewise, it is unconstitutional to raise the salaries of other constitutional officers and public officials who should be removed from office for corruption – and who, by reason thereof, are not earning their current salaries. *Consequently, a prerequisite to any salary increase recommendation as to them must be a determination that mechanisms to remove such constitutional and public officers are functional, lest these corrupt public officers be the beneficiaries of salary increases.*

402. The absence of explicit guidance to the Commission that corruption and the lack of functioning mechanisms to remove corrupt public officers are 'appropriate factors' for its consideration in making salary recommendations renders the statute unconstitutional, *as written*." [R.190-193, underlining and italics in the original].

By contrast to *St. Joseph Hospital*, where both the appealed-from Supreme Court and Appellate Division decisions identify allegations of the plaintiffs/appellants therein, and, by contrast to *McKinney*, where the Supreme Court decision likewise identifies allegations of the plaintiffs therein, at bar neither the Appellate Division's Memorandum nor Judge Hartman's decision [R.31-41] reflect a single allegation of sub-causes A and B. Indeed, *McKinney* and *St. Joseph Hospital* are not mentioned, at all, by the Memorandum, while Judge Hartman, without confronting appellants' assertions that *McKinney* and *St. Joseph Hospital* corroborate the unconstitutionality of Chapter 60, Part E, of the Laws of 2015, simply relies on the two appellate decisions to uphold its constitutionality, stating:

"'Enabling statutes even broader than this one have been found constitutional' (*McKinney v. Commr. of the N.Y. State Dept. of Health*, 41 AD3d 252, 253 [1st Dept 2007], *lv denied* 9 NY3d 815 [2007], *appeal dismissed* 9 NY3d 891 [2007], *see also e.g. Shattenkirk v. Finnerty*, 62 NY2d 949, 951 [1984]). In short, because 'the basic policy decisions underlying the [Commission] have been made and articulated by the Legislature,' the Commission delegation is not an unconstitutional delegation of legislative power (*N.Y. State Health Facilities Assn. v. Axelrod*, 77 NY2d 340 [1991]; *see Dalton v. Pataki*, 5 NY3d 243, 262-263 [2005]; *compare St. Joseph's Hospital v. Novello*, 43 AD3d 139 [4th Dept 2007] declining to address constitutionality of delegation of authority that allowed for de facto legislative veto]). Thus, defendants are entitled to judgment as a matter of law on sub-causes A and B." [R.36, underlining added].

Judge Hartman's assertion that "the Commission delegation is not an unconstitutional delegation of legislative power" – buttressed by nothing but her barebones cites to the *McKinney* and *St. Joseph Hospital* appellate decisions and three even barer cites to decisions of this Court – and the impression by her decision and by the Appellate Division Memorandum that there is nothing unusual about such delegation are rebutted by the submissions long ago made to this Court by the *McKinney* and *St. Joseph Hospital* appellants and by the *amicus curiae* New York City Bar Association. The following excerpt from the *McKinney* appellants' motion for leave to appeal is illustrative, doubtless repeating what they had set forth in support of their appeal of right:

"The Appellate Division erroneously upheld the constitutionality of the Enabling Legislation on the basis of two related findings: (1) that enabling statutes 'broader' than the Enabling Legislation have been upheld and (2) that the Enabling Legislation articulates a meaningful *policy choice*... The first one,...merits brief discussion at the outset because it echoes the deeply misleading contention, repeated by Defendants-Respondents throughout this litigation, that the Enabling Legislation is an unremarkable, run-of-the-mill administrative delegation, of the type routinely engaged in by the Legislature.

To the contrary, the Enabling Legislation represents a type of legislative action that has never before been attempted in this State and never been endorsed by this Court. ... In creating this novel type of delegation, the Legislature departed radically from the well-established role of temporary commissions in this State – that of presenting genuine recommendations to the Legislature for debate and approval.

Prior to the Enabling Legislation, unelected, temporary commissions in this State had uniformly been empowered only to present their 'recommendations' to the Legislature for a vote. ...

Even subsequent to the Enabling Legislation, temporary commissions in this State have been tasked with making recommendations, not enacting mandatory laws. ...

Recognizing that the Enabling Legislation is a type of legislative act never before seen in New York, Defendants-Respondents have relied on a federal commission – created pursuant to a federal statute and found to be constitutional

under the United States Constitution – as the sole precedent for their assertion that the Enabling statute is a routine delegation. .... However, this misguided comparison is not only irrelevant to a separation of powers analysis under the New York State Constitution[fn4] – it also underscores the complete lack of precedent in this State for the vesting of lawmaking authority in a temporary commission. This Court has never addressed or considered the constitutionality of this type of legislative action.

> If the Enabling Legislation is permitted to stand unreviewed by this Court, it will create a new template by which the Legislature can avoid accountability for politically difficult decisions affecting fundamental policy questions in this State. Using this type of legislation, the Legislature will be able to outsource its policymaking responsibilities to a temporary commission, answerable to no one, but with final authority over difficult policy issues, and in so doing, divest itself of responsibility for the commission's 'recommendations.' Article III, Section 1 of the Constitution of the State of New York, however, demands that the Legislature bear the ultimate responsibility for making the policy decisions..." (pp. 14-21, underlining added, italics in the original).

Page after page of scholarly analysis and law fill the *McKinney* motion for leave to appeal and the accompanying *amicus curiae* brief of the New York City Bar Association. Likewise, the appeal papers of *St. Joseph Hospital*, as to which, in support of the appeal of right, the appellants there had succinctly stated:

> "Second, Respondents argue that the question of Appellants' due process and other constitutional claims 'involve[] only the routine application of settled principles of law to a particular statutory scheme.' (Resp. Ltr. P. 4)(emphasis added). This, however, overlooks Justice Fahey's vigorous dissent on these issues, as well as the fact that Respondents required more than 100 pages to address these 'settled principles' in their briefs filed in the trial court and the Fourth Department. We submit that the issues posed on this appeal concerning the constitutionality of the Enabling Legislation are, in fact, those of **first impression**, including whether: (i) its attempted suspension of Appellants' due process rights is impermissible; and (ii) its legislative veto provision violates the Presentment Clause and the Separation of Powers Doctrine.
>
> Third, Respondents argue that the legislative veto provision is not 'directly involved' on this appeal because the Fourth Department determined that the provision was severable from the remainder of the Enabling Legislation. This, however, overlooks that '[a]ll relevant questions of law may be argued' on an appeal, as of right, 'upon a constitutional question.' Adirondack League Club v. Board of the Black River Regulating Dist., 300 N.Y. 624, 624 (1950); Bogart v. County of Westchester, 295 N.Y. 934, 934 (1946)." (bold added).

Any objective examination of what was there before the Court – and the intelligent, forceful dissent of then Justice Fahey (Exhibit A) – permits of only one conclusion: the *McKinney* and *St. Joseph*

Hospital appellants had appeals to which they were entitled, by right.[4] And appellants herein have an entitlement that is not only identical, but, as their sixth cause of action makes clear, *a fortiori* with respect to sub-causes A and B for reasons including that the legislative delegation at issue involves the construction of additional provisions of the New York State Constitution, Article III, §6, Article VI, §25, Article XIII, §7 pertaining to the compensation of constitutional officers. Consequently, and because this Court no longer has the *McKinney* and *St. Joseph Hospital* appeal papers, appellants are furnishing a copy of as much of the record as they thus far have been able to obtain, in support of their appeal of right on their sub-causes A and B.[5]

The Precedent Now Set by the Appellate Division Memorandum & the Misrepresentations that it Fits within "Settled Law" Reinforce the Importance of Appellants' Appeal of Right

Reinforcing the importance of appellants' appeal of right – and of this Court's confronting what precedent, if any, exists for the delegation of legislative power that the Appellate Division has here held constitutional with respect to Chapter 60, Part E, of the Laws of 2015 [R.1080-1082] – is that, pursuant to Chapter 60, Part E, of the Laws of 2015 (§2.1), another Commission on Legislative, Judicial and Executive Compensation is scheduled to be established on June 1, 2019. On top of that, unfolding NOW in Supreme Court/Albany County is a lawsuit challenging Chapter 59, Part HHH, of the Laws of 2018, which established a one-time Compensation Committee to raise legislative and executive salaries. That statute is materially identical to Chapter 60, Part E, of the Laws of 2015, except that among the "appropriate factors" the Compensation Committee was required to "take into account" were "the parties' performance and timely fulfillment of their statutory and Constitutional

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4 As no fair and impartial tribunal, charged with the duties that this Court is, could have turned its back on the *McKinney* and *St. Joseph Hospital* appellants – and on then Justice Fahey's dissent in *St. Joseph Hospital* (Exhibit A) – it may be reasonably surmised that the Court was influenced by the fact that by 2007, the then Chief Judge and the Unified Court System were already advocating for a commission that would provide for pay raises for judicial, legislative, and executive officers – whose recommendations would have the "force of law". Such a commission, for judicial salary raises, ultimately emerged: the Commission on Judicial Compensation, established by Chapter 567 of the Laws of 2010, with "force of law" powers. Its enactment was propelled by the Court's February 23, 2010 decision in *Maron v. Silver*, 14 N.Y.3d 230, a consolidation of three cases, including the Chief Judge's own, finding a separation-of-powers constitutional violation in the Legislature's failure to raise judicial salaries. Ironically, Judge Smith, writing in dissent, would have thrown out the judges' pay raise claims, <u>on evidentiary grounds</u>. This was a week after having penned his February 16, 2010 dissent in *Kachalsky*.

Chapter 567 of the Laws of 2010 was repealed by §1 of Chapter 60, Part E, of the Laws of 2015, establishing, in its stead, the Commission on Legislative, Judicial, and Executive Compensation [R.1080], herein challenged.

5 The record of the appeal of right and motion for leave to appeal of the *St. Joseph Hospital* appellants appears complete. As for *McKinney*, the following remain to be recovered: (1) the entire record of the appeal of right; and (2) the Attorney General's opposition to the motion for leave to appeal and to the New York City Bar *amicus* brief, as well as any replies thereto from the *McKinney* appellants and from the *amicus*.

responsibilities".

The lawsuit challenging Chapter 59, Part HHH, of the Laws of 2018 is *Delgado v. State of New York*, (#907537-18)[6] – and, like here, the defendants are represented by the Attorney General, who is a direct beneficiary of the Compensation Committee's "force of law" salary increase recommendations. The Attorney General is there arguing[7] that the Appellate Division's December 27, 2018 Memorandum herein is not only dispositive that Chapter 59, Part HHH, of the Laws of 2018 is constitutional, but is part of "settled law" and a "long line of cases". Illustrative of these arguments, since January 9, 2019 and at the January 11, 2019 hearing on the *Delgado* plaintiffs' order to show cause for a preliminary injunction, is the Attorney General's January 28, 2019 motion to dismiss their December 14, 2018 verified complaint[8]. Her memorandum of law there asserts:

> "Plaintiffs fail to state a claim. First, Part HHH was, pursuant to settled law, a permissible exercise of the Legislature's authority to delegate administrative functions. Indeed, a nearly identical statute –which, in 2015, created the commission on legislative, judicial, and executive compensation–was recently affirmed as constitutional by the Appellate Division, Third Department. *See Ctr. for Judicial Accountability, Inc. v. Cuomo*, No. 527081, 2018 WL6797292, at *3 (N.Y. App. Div. 3d Dep't Dec. 27, 2018). *Center for Judicial Accountability* is part of a long line of cases upholding the constitutionality of the delegation by the Legislature of administrative tasks, and it refutes Plaintiffs' legal theory that the Legislature may not delegate the task of making recommendations regarding compensation for state officials." (at pp. 1-2).
>
> "Plaintiffs' novel legal theory that the Legislature may not delegate administrative tasks related to compensation of State officials fails as a matter of law and was

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6 The record in *Delgado* is available from the Unified Court System's electronic docket. Not there included, however, is the VIDEO of the January 11, 2019 oral argument of the order to show cause brought by the *Delgado* plaintiffs for a preliminary injunction, which CJA applied to have videoed – an application which was granted. CJA's webpage for the *Delgado* case, from which the electronic docket can be accessed, ALSO posts the VIDEO. The direct link to the webpage is here: http://www.judgewatch.org/web-pages/searching-nys/2018-legislature/hhh-compensation-committee/delgado-v-state.htm. The VIDEO reflects significant discussion of the Appellate Division's December 27, 2018 Memorandum, led off by the judge's queries about it.

7 Appearing for the Attorney General in *Delgad*o is the same assistant attorney general who had been briefly parachuted into this case in March 2017 – and whose litigation misconduct, including her fraud as to appellants' sixth cause of action, by her opposition to appellants' March 29, 2019 order to show cause for summary judgment on the sixth cause of action [R.636, R.639-640] is chronicled by the record and recounted in appellants' brief (at pp. 25-36, 51-52).

8 The December 14, 2018 verified complaint in *Delgado* is part of the record herein, annexed as Exhibit J to my December 15, 2018 reply affidavit in further support of appellant' order to show cause #4. The record of that 4th order to show cause – and of appellants' three predecessor orders to show cause – was transmitted to the Court, with an inventory, by appellants' March 18, 2019 coverletter.

rejected in *Center for Judicial Accountability*. Plaintiffs acknowledge that agencies may be 'tasked with filling in the details, or interstices, of policies in laws passed by the Legislature.' Compl. ¶ 30. Plaintiffs then inexplicably assert that the Legislature may not delegate administrative tasks related to compensation of state officials, Compl. ¶¶ 27, 28, 31, but they provide no support for their novel assertion that an exception exists for state officials' compensation. In any event, Plaintiffs' proposed theory is easily disposed of by *Center for Judicial Accountability*, the Third Department's recent decision affirming the constitutionality of Part E of Chapter 60 of the Laws of 2015, the statute that created the 2015 Commission.

The 2015 Commission's and the Committee's mandates are nearly identical. *See* Compl. ¶ 48 (emphasizing that the 2015 enabling statute for the 2015 Commission is remarkably similar to Part HHH). The 2015 enabling statute directed the 2015 Commission to examine legislative, judicial, and certain executive salaries and make recommendations regarding the adequacy of compensation based on a list of numerous factors specified by the Legislature. *See* Compl. ¶ 45. The Committee was instructed to consider the identical list, plus an additional factor, namely legislators' and executive officials' compliance with their constitutional and statutory mandates. Compl. Ex. A at 28, §2.3. The 2015 Commission's enabling statute similarly directed that each of its recommendations "shall have the force of law, and shall supersede, where appropriate, inconsistent provisions of article 7-B of the judiciary law, section 169 of the executive law, and sections 5 and 5-a of the legislative law, unless modified or abrogated by statute." L. 2015, Ch. 60, Part E at §7. The Third Department affirmed the constitutionality of the 2015 Commission's enabling statute, holding:

> In the 2015 enabling statute at issue here, the Legislature made the determination that judicial salaries must be appropriate and adequate. The Legislature directed the [2015] Commission to examine judicial salaries and make recommendations regarding the adequacy of judicial compensation based on numerous factors specified by the Legislature. . . . The factors established by the Legislature provide adequate standards and guidance for the exercise of discretion by the [2015] Commission. Moreover, the enabling statute contains the safeguard of requiring that the [2105] Commission report its recommendations directly to the Legislature so that it would have sufficient time to exercise its prerogative to reject any [2105] Commission recommendations before they become effective. Thus, we conclude that the statute does not unconstitutionally delegate legislative power to the [2015] Commission.

Ctr. for Judicial Accountability, Inc., 2018 WL 6797292, at *3.

The Third Department's holding is squarely on point here. The respective policies are identical, i.e., adequate compensation – for the judiciary in *Center for Judicial Accountability* and for legislators and certain executive branch officials in the instant matter.[fn3] The standards and guidelines (the factors that Part HHH directs the Committee to consider) are nearly identical to the standards and guidelines affirmed as constitutionally adequate by the Third Department, with Part HHH containing one additional guideline. Finally, the 2015 Commission's enabling statute and Part HHH have the identical safeguards, i.e., that the recommendations of the respective bodies must be reported directly to the Legislature, and the Legislature decides whether to allow the recommendations to become law. 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.[fn4]

> Plaintiffs fail to state a claim that Part HHH is an unconstitutional delegation of legislative authority, and this claim must be dismissed." (at pp. 14-17, underlining added).[9]

So, too, does the Attorney General invoke *McKinney* for the proposition that Chapter 63, Part E, of the Laws of 2005 is "another example of proper delegation" (at p. 15).

Assembly Speaker Heastie, a named defendant herein, is appearing as *amicus curiae* in *Delgado* His attorney echoes the Attorney General. Thus, his March 4, 2019 memorandum of law in support of the Attorney General's dismissal motion gives passing citation to *McKinney* (at p. 7), focusing on the Appellate Division's Memorandum herein, describing it as "controlling" (at p. 6) and having "binding force" (at p. 7), further stating, in comparing this case with *Delgado*:

> "There is no daylight between these cases. If the Legislature can delegate its authority to set judicial salaries, and the enabling statute in *Center for Judicial Accountability* was an acceptable way to do so, then Part HHH—which is almost identical with regard to legislative salary increases—must be an effective delegation of pay-setting authority as well." (at p. 5).

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[9] The Attorney General has continued in the same vein in her February 13, 2019 reply memorandum of law, as for instance, at page 1:

> "As Defendants demonstrated in their opening memorandum of law, Part HHH of Chapter 59 of the Laws of 2018 ('Part HHH') is, pursuant to well settled law, a permissible exercise of the Legislature's authority to delegate tasks.... In response, Plaintiffs rely primarily on their novel and unsupported legal theory that the Legislature may not delegate tasks related to legislative and executive compensation." (underlining added).

The Budget is "OFF THE CONSTITUTIONAL RAILS" – & its Capstone, Driving the Unconstitutionality, is its Culminating "Three-Men-in-a-Room", Behind-Closed Doors, Budget Deal-Making, Amending & Generating Budget Bills

There are a multitude of respects in which "There is no daylight" between this case and *Delgado*. And one of the most important respects is that both Chapter 60, Part E, of the Laws of 2015 and Chapter 59, Part HHH, of the Laws of 2018 are products of a corrupted budget "process" that has been willfully and deliberately driven "OFF THE CONSTITUTIONAL RAILS" by the respondents herein, in collusion with each other. Its culminating feature is the behind-closed-doors, "three men in a room" budget deal-making that takes place between the Governor, Temporary Senate President and Assembly Speaker – and this is how Part E and Part HHH were each popped into the budget, each unconstitutional riders, violative of Article VII, §6.

This Court has stated, repeatedly, including in the context of the state budget, that

> "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).

Excepting appellants' seventh and eighth causes of action, relating to the constitutionality of Chapter 60, Part E, of the Laws of 2015, as applied [R.112-114 (R.201-213)], the other eight pertain to the budget and the "authority which the New York Constitution has granted to the other branches of government". The most spectacular of these involve the whole of the state budget: appellants' fourth, fifth, and ninth causes of action.

The ninth cause of action [R.115 (R.214-219)] seeks a declaration that three-men-in-a-room, budget dealing-making is unconstitutional, "*As Unwritten* and *As Applied*". It is based, explicitly, on this Court's decision in *King v. Cuomo*, 81 N.Y.2d 247 (1993), and identifies that "the multitude of reasons" that decision particularizes for striking down the Legislature's practice of recalling, from the Governor, bills it had passed, mandates the striking down of three-men-in-a-room, budget deal-making. Indeed, the ninth cause of action asserts that the text of *King v. Cuomo*, with but minor alterations, is ready-made for the declaration as to the unconstitutionality of three-men-in-a-room budget-making – and supplies the altered text to prove it [R.215-217]. So that the Court can see this, for itself, the ninth cause of action is annexed hereto as Exhibit B.[10]

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[10] "Three-men-in-a-room" style governance and the complete collapse of a constitutionally-functioning Legislature, enacting legislation consistent with the most basic legislative due process – committee hearings, discussion, mark-ups, amending of bills, then moving to the full chambers, with debate, further amending, and votes – followed by reconciliation of disparate bills by Senate-Assembly conference committees, then passed to the Governor and, if vetoed, returned to the Legislature for overriding votes – a Legislature that discharges the most basic oversight of legislation it has enacted and governmental operations – ALSO underlies Chapter 63, Part E, of the Laws of 2005, establishing the Commission on Health Care Facilities in the 21st Century, as well as Chapter 567 of the Laws of 2010, establishing the Commission on Judicial Compensation. Indeed, the

This Court granted an appeal of right in *King v. Cuomo*, identifying, at the outset of its decision: "Appellants are before this Court by an appeal taken as of right on a substantial constitutional issue." The Court's recognition in *King v. Cuomo* of "a substantial constitutional issue" compels the same result here – where, additionally, the unconstitutionality of three-men-in-a-room budget deal-making is *a fortiori* to the unconstitutionality of recall. In the words of appellants' ninth cause of action:

> "464. At bar, the unconstitutionality is *a fortiori* to that in *King* because, unlike with bicameral recall, no Senate and Assembly rules 'reflect and even purport to create the [three-men-in-a-room] practice' ([*King*] at p. 250) AND such budget deal-making by them, conducted behind-closed-doors, is UNIFORMLY derided as deleterious to good-government." (R.217, italics and capitalization in the original).

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pertinent facts pertaining to Chapter 63, Part E, of the Laws of 2005 – and the New York City Bar Association's intention to appear as *amicus curiae* in the *McKinney* case – were recited by its May 2007 Report entitled "*Supporting Legislative Rules Reform: The Fundamentals*". In pertinent part, it stated:

> "the legislature never attempted to address the underlying policy issue of health care capacity and resources, prior to the enabling and creating the Berger Commission in 2005.[fn46] Moreover, the Legislature never held any hearings with respect to the enabling legislation itself.[fn47] Note that, health care spending in New York State affects billions of dollars a year." (at p. 10).

The opening paragraphs of the City Bar's Report furnished context, as follows:

> "For many in academia, government, the media and the public, the phrase 'three men in a room' symbolizes all that is wrong with state government and the culture of Albany. It crystallizes the simple truth that the Governor, Assembly Speaker ('Speaker') and Senate Majority Leader ('Majority Leader') 'largely control the state government'[fn7] Consolidating so much power among three individuals seriously undermines the fundamental principles of democracy and the purpose of representative government.
>
> Many of New York State's problems in achieving a truly representative government can be traced to the 'dysfunctional legislature'[fn8] and the rules that allow two individuals to control the entire legislative branch of government. Specifically, the strength of the Speaker and Majority Leader has been characterized as a ''stranglehold' on New York lawmaking, with members having 'little more than cheerleading rights.''[fn9] …
>
> The negative effects of the current system are many and far-reaching, from the failure to craft good public policy to chronic delays in the passage of an annual budget. This system of governance and policymaking has had and continues to have a harmful effect upon legislation and public policy…"

Annexed, as Exhibit C, is the Report's Executive Summary, as well as pages 8-11 specifically pertaining to Chapter 63, Part E, of the Laws of 2005 – and giving case citations for the "no less than seven lawsuits" that had been filed "seeking to enjoin and/or invalidate the commission and/or its recommendations".

Integrally part of the ninth cause of action and expressly embracing it, is appellants' fifth cause of action [R.108-109 (R.177-168)], seeking declarations that the budget "process" violates Article VII, §§4, 5, and 6 of the New York State Constitution. Its starting point is the failure of Senate and Assembly committees to amend the Governor's appropriation bills, consistent with Article VII, §4 and then, upon passage by each house, to reconcile them so that they might "become law immediately without further action by the governor", as Article VII, §4 mandates.

And both the ninth and fifth causes of action sit on the fourth cause of action [R.106-108 (R.170-187)], seeking declarations of unconstitutionality and unlawfulness because neither the Senate nor Assembly, in fact, "amend" the Governor's budget bills. Rather, legislative staff, operating behind-closed-doors and in violation of Article III, §10, "amend" them, without discussion by legislators at any committee meeting, without a single legislator voting to amend, and in ways flagrantly violating Article VII, §§4-7, dramatically increasing appropriations and changing text of the Governor's bills. It is these that are then released, in unison, and, together with the unamended Legislative/Judiciary budget bill, loaded into one-house Senate and Assembly budget resolutions – the product of closed-door, majority-party legislative conferences – that then become the pretext for sham legislative conference committees, fronting for more behind-closed-doors staff machinations, then dissolving to another round of behind-closed-doors "amending" of budget bills, now by the "three-men-in-a-room" – no less unconstitutional this year because one of the "men" is a woman – then sped to passage on "messages of necessity".

In Conclusion:
New York's Constitution Has Been Undone by Collusion of Powers

No fair and impartial tribunal, constitutionally charged, as this Court is, with reviewing appeals wherein is "directly involved the construction of the constitution of the state", could fail to discharge that duty here.

What is before the Court, on this appeal of right, is catastrophic. Gone is the constitutional design of separation of executive and legislative powers – replaced by collusion of powers that has undone our State Constitution. And more than the budget is at issue. It is the very governance of this State, as the budget has become a pass-through for policy having nothing to do with the budget – the "proposed legislation, if any" of Article VII, §3 having become separated from its meaning in Article VII, §2: "proposed legislation, if any, which the governor may deem necessary to provide moneys and revenues sufficient to meet such proposed expenditures [of the budget]",[11] further foisted by

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> "In 1927, after the dangers of legislative budgeting had been identified and debated, the Governor was for the first time given the power to propose legislation directly—but only in appropriation bills. To be sure, the Governor could *recommend* other legislation in his executive budget, but the power to actually introduce bills obliging action into both houses of the Legislature —a power he has in no other context than the budget—was limited to appropriation bills. Only in 1938 was the predecessor to section 3 amended to give the Governor the additional authority to introduce other 'proposed legislation' recommended in

constitutionally unauthorized "non-appropriation" Article VII budget bills.[12]

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

Enclosures

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

> his executive budget. This amendment was adopted primarily to make the Governor responsible for submitting tax legislation, rather than merely recommending it. 'Believing that the revenue side of the budget is of equal importance with the expenditure side, the committee feels that any bills to carry into effect legislation affecting the revenues of the State which the Governor may propose should have the same dignity and importance as his appropriation bills, and all should be submitted directly by the Governor and treated as budget bills' (Report of Comm on State Finances and Revenues of New York State Constitutional Convention, State of New York Constitutional Convention 1938 Doc No. 3, at 3 [July 8, 1938])." (*Pataki v. Silver*, 4 N.Y.75, 117-118, dissent of then Chief Judge Judith Kaye, to which Associate Justice Carmen Ciparick concurred).

[12] As this Court had recognized in 2001, but did not repeat in 2004, "The term 'non-appropriation' bill is not found in the Constitution.", *Silver v. Pataki*, 96 NY2d 532, 535 (fn 1). This repeated the underlying 1999 NY Co/Supreme Court decision which had stated, "…'non-appropriation bills', a term which both parties agree is not in the Constitution.", *Silver v. Pataki*, 179 Misc. 2d 315, 316, but not the more stunning, constitution-violating admission in the Appellate Division, First Department's 2000 decision:

> "According to the Speaker, the present dispute arises from the Legislature's response to New York *State Bankers Assn. v. Wetzler* ([81 N.Y.2d 98 (1993)]), whereby, to preserve the legislators' desire to enact amendments to the Governor's budget bill, an 'appropriations' budget bill and a complementary 'programmatic' budget bill have been enacted in recent years as part of the annual budget process. Although there is no apparent legal warrant for such budget bifurcation, the Speaker asserts that the Governor can only veto the entire 'programmatic' budget bill and, thus, has no line-item veto power with respect to that bill.", *Silver v. Pataki*, 274 A.D.2d 57, 59 (1st Dept 2000) (underlining added).

Plaintiff-Appellants' March 26, 2019 Letter in Support of their Appeal of Right

TABLE OF EXHIBITS

Exhibit A: Dissent of then Appellate Division, Fourth Department Justice Fahey – *St. Joseph Hospital, et al. v. Novello, et al.*, 43 AD3d 139, 148 (2007)

Exhibit B: Plaintiff-Appellants' Ninth Cause of Action – "Three-Men-in-a-Room Budget Dealmaking is Unconstitutional, *As Unwritten and As Applied*"

Exhibit C: New York City Bar Association May 2007 Report: "*Supporting Legislative Rules Reform – The Fundamentals*" – Executive Summary & pages 8-11