SUPREME COURT OF STATE OF NEW YORK
COUNTY OF ALBANY

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

Index #:

VERIFIED PETITION/COMPLAINT

Petitioners/Plaintiffs,

-against-

NEW YORK STATE JOINT COMMISSION ON PUBLIC ETHICS,
LEGISLATIVE ETHICS COMMISSION,
NEW YORK STATE INSPECTOR GENERAL,

KATHY HOCHUL, in her official capacity as
GOVERNOR OF THE STATE OF NEW YORK,

ANDREA STEWART-COUSINS, in her official capacity as
TEMPORARY SENATE PRESIDENT, & the NEW YORK STATE SENATE,

CARL HEASTIE, in his official capacity as
ASSEMBLY SPEAKER, & the NEW YORK STATE ASSEMBLY,

LETITIA JAMES, in her official capacity as
ATTORNEY GENERAL OF THE STATE OF NEW YORK,

THOMAS DiNAPOLI, in his official capacity as
COMPTROLLER OF THE STATE OF NEW YORK,

Respondents/Defendants.

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TO THE SUPREME COURT OF THE STATE OF NEW YORK:

Petitioners/Plaintiffs, as and for their verified petition/complaint, state:

1. This CPLR Article 78 proceeding, combined with a CPLR §3001 declaratory judgment action and State Finance Law Article 7-A citizen-taxpayer action, is against public officers and bodies who have violated mandatory statutory and constitutional provisions to corrupt New

York state governance, misappropriate vast amounts of taxpayer monies, and insulate themselves from ethics complaints.

2. For simplicity, this petition/complaint will be referred to as the petition, petitioners/plaintiffs will be designated as petitioners, and respondents/defendants will be designated as respondents. A Table of Contents follows:

TABLE OF CONTENTS

VENUE……..……..……..…..4

THE PARTIES……..……..4

THE FACTUAL ALLEGATIONS……..……..11

CAUSES OF ACTION……..……16

AS AND FOR A FIRST CAUSE OF ACTION……..……..…16
Directing that the New York State Joint Commission on Public Ethics Comply with Executive Law §§94.13(a) and (b) with Respect to Petitioners' Seven Complaints – Starting with the Ministerial Act of 15-Day Letters

AS AND FOR A SECOND CAUSE OF ACTION…….....21
Directing that the New York State Joint Commission on Public Ethics Comply with Executive Law §94.9(l)(i) Mandating that its Annual Reports Contain "a listing by assigned number of each complaint and referral received which alleged a possible violation within its jurisdiction, including the current status of each complaint"

AS AND FOR A THIRD CAUSE OF ACTION…….....23
Directing that Temporary Senate President Stewart-Cousins and Assembly Speaker Heastie Comply with Legislative Law §80.1 and §80.4 Mandating their Joint Appointment of the Legislative Ethics Commission's Ninth Member – this being the Non-Legislative Member that Makes Non-Legislators its Majority;

AS AND FOR A FOURTH CAUSE OF ACTION……..…….....24
Directing that the Legislative Ethics Commission Comply with Legislative Law §80.7(l) Pertaining to its Annual Reports

AS AND FOR A FIFTH CAUSE OF ACTION……...……25

Directing that the New York State Inspector General Comply with the Mandates of Executive Law Article 4-A and its own Policy and Procedure Manual, Violated by its Handling of Petitioners' November 2, 2021 Complaint – and Declaring the Provision of the Inspector General's Policy and Procedure Manual that Allows it to Take "No Action" on Complaints involving "Covered Agencies" to be Violative of Executive Law §53.1 and Void

AS AND FOR A SIXTH CAUSE OF ACTION……..…….....32

Declaring Unconstitutional, Unlawful, and Void Part QQ of Education, Labor, Housing, and Family Assistance Budget Bill #S.8006-C/A.9006-C – the "ethics commission reform act of 2022" – Enacted in Violation of Mandatory Provisions of the New York State Constitution, Statutes, Legislative Rules, and Caselaw

AS AND FOR A SEVENTH CAUSE OF ACTION……35

Declaring Unconstitutional, Unlawful, and Void the FY2022-23 State Budget, Enacted in Violation of Mandatory Provisions of the New York State Constitution, Statutes, Legislative Rules, and Caselaw

AS AND FOR AN EIGHTH CAUSE OF ACTION…….……38

Declaring Unconstitutional, Unlawful, Larcenous, and Void Legislative/Judiciary Budget Bill S.8001-A/A.9001-A, Enacted in Violation of Mandatory Provisions of the New York State Constitution, Statutes, and Legislative Rules, and Caselaw

AS AND FOR A NINTH CAUSE OF ACTION…….....…….42

Declaring Unconstitutional, Larcenous, and Void the FY2022-23 Appropriations for the New York State Commission on Judicial Conduct, the New York State Inspector General, the Appellate Division Attorney Grievance Committees, and the Unified Court System's Inspector General – Based on the Evidence of their Flagrant Corruption in Handling Complaints, Furnished by Petitioners at the Legislature's January 25, 2022 "Public Protection" Budget Hearing and Again by their March 25, 2022 E-Mail

AS AND FOR A TENTH CAUSE OF ACTION……...…….……45

Declaring Unconstitutional, *as Written* and *as Applied*, Public Officers Law §108.2(b), Flagrantly Violating Article III, §10 of the New York State Constitution and Legislative Rules Consistent Therewith by Exempting the Legislature from the Open Meetings Law to Enable it to Discuss "Public Business" in Closed-Door Party Conferences – Rather than Openly in Committees and on the Senate and Assembly Floor

PRAYER FOR RELIEF……..……48

* * *

VENUE

3. Pursuant to CPLR §7804(b), CPLR §506(b), and State Finance Law §123-c**,** this proceeding is venued in Albany County as this is where respondents are principally located, where they have committed and are committing the complained-of violations of statutory and constitutional mandates, and where the taxpayer monies are being disbursed.

THE PARTIES

4. **Petitioner CENTER FOR JUDICIAL ACCOUNTABILITY, INC. [hereinafter "CJA"]** is a national, non-partisan, non-profit citizens' organization, headquartered in White Plains, New York and incorporated in 1994 under the laws of the State of New York.

(a) CJA's website is www.judgewatch.org and since 2013 it has included a webpage for Respondent NEW YORK STATE JOINT COMMISSION ON PUBLIC ETHICS ["JCOPE"], posting the primary-source documentary evidence of its corruption.[1] From it are accessible all seven sworn complaints that petitioners filed with JCOPE and the record thereon.

(b) Below, as exhibits to this petition, are pdfs of the seven complaints – and beside them the record of each complaint, as posted on their own webpages of CJA's website:

- Petitioners' June 27, 2013 complaint (Exhibit G) ……. record
- Petitioners' December 11, 2014 complaint (Exhibit F)…….. record

[1] CJA's webpage for JCOPE, https://www.judgewatch.org/web-pages/searching-nys/commission-to-investigate-public-corruption/holding-to-account/exposing-jcope-complaints.htm, is accessible from the left side panel "Searching for Champions —NYS", bringing up a menu page with a link for it. The JCOPE webpage now features a link to a menu webpage for this lawsuit. The direct link to it is: https://www.judgewatch.org/web-pages/lawsuit-jcope-et-al/menu.htm.

- petitioners' August 31, 2020 complaint (Exhibit E) …….. record
- petitioners' March 5, 2021 complaint (Exhibit D-1) ……. record
- petitioners' November 24, 2021 complaint (Exhibit C) …… record
- petitioners' December 17, 2021 complaint (Exhibit B) ……. record
- petitioners' April 13, 2022 complaint (Exhibit A-1) …….. record

5. **Petitioner ELENA RUTH SASSOWER [hereinafter "SASSOWER"]** is CJA's director and co-founder and a citizen, resident, elector, and taxpayer of the State of New York.

(a) SASSOWER wrote all seven complaints to JCOPE – and, by 2014, months before her second complaint, she was "whistle-blowing" about how easily JCOPE's readily-verifiable corruption could be remedied simply by compelling its compliance with the mandatory safeguarding provisions of the Public Integrity Reform Act of 2011 (PIRA)[2] that had established it.

(b) All such "whistle-blowing" by SASSOWER, spanning to the present, has been ignored and concealed by JCOPE and its co-respondents herein.

6. **Respondent NEW YORK STATE JOINT COMMISSION ON PUBLIC ETHICS [hereinafter "JCOPE"]** is the state agency, consisting of 14 members, that PIRA established by amending an existing Executive Law §94. Pursuant thereto, JCOPE was to receive, investigate, and initiate complaints against executive and legislative public officers, entities, and employees for violations of Public Officers Law §74 pertaining to conflicts of interests.

(a) PIRA's Executive Law §94 is exemplary by its inclusion of safeguarding provisions which, because they are mandatory, are enforceable by mandamus. Among these – and here sought to be enforced:

- Executive Law §94.13(a), requiring that "If the commission receives a sworn complaint alleging a violation of section…seventy-four of the public officers

[2] PIRA is Chapter 399 of the Laws of 2011.

law…by a person or entity subject to the jurisdiction of the commission…or if the commission determines on its own initiative to investigate a possible violation, the commission shall notify the individual in writing…and provide the person with a fifteen day period in which to submit a written response…and…shall, within sixty calendar days after a complaint is received…vote on whether to commence a full investigation of the matter under consideration to determine whether a substantial basis exists to conclude that a violation of law has occurred";[3]

- Executive Law §94.13(b), requiring that "If the commission determines at any stage that there is no violation, that any potential violation has been rectified, or if the investigation is closed for any other reason, it shall so advise the individual and the complainant, if any in writing within fifteen days of such decision."

- Executive Law §94.9(l)(i), requiring that its annual reports "shall" include "a listing by assigned number of each complaint and referral received which alleged a possible violation within its jurisdiction, including the current status of each complaint".

(b) These mandatory safeguarding provisions will be eliminated, as likewise JCOPE, on July 8, 2022 – when an entirely new, materially inferior Executive Law §94 will take effect, establishing a Commission on Ethics and Lobbying in Government (CELG).

(c) This new Executive Law §94 is part of the "ethics commission reform act of 2022", enacted unconstitutionally and by fraud *via* the FY2022-23 state budget by Respondent KATHY HOCHUL and the members of Respondents NEW YORK STATE SENATE and NEW YORK STATE ASSEMBLY to "protect" themselves from meritorious complaints, such as petitioners'. Petitioners' seventh complaint to JCOPE, the April 13, 2022 complaint (Exhibit A-1), details this – and is expanded upon by their May 6, 2022 e-mail to JCOPE (Exhibit J), identifying a further respect

[3] Prior to 2016, the "sixty calendar days" within which JCOPE commissioners were to vote was 45 calendar days – a statutory change made as a result of a recommendation in the November 1, 2015 report of the JCOPE/LEC review commission. That commission was appointed by then Governor Cuomo and legislative leaders after they unconstitutionally and *via* the FY2015-16 state budget amended PIRA to cover up their flagrant violation of its original provision that they appoint a JCOPE/LEC review commission by "No later than June 1, 2014" – the subject of petitioners' December 11, 2014 complaint to JCOPE against them and against JCOPE for collusion with them (Exhibit F).

in which CELG will be inferior to JCOPE, *to wit*, it will not be a "covered agency" within the jurisdiction of the New York State Inspector General pursuant to Executive Law §51.

7. **Respondent LEGISLATIVE ETHICS COMMISSION [hereinafter "LEC]** is JCOPE's 9-member statutory partner pursuant to Executive Law §94 and Legislative Law §80. Of the seven complaints that petitioners filed with JCOPE, two were also filed with LEC – their March 5, 2021 complaint and December 11, 2014 complaint.

(a) LEC's corruption and collusion in JCOPE's corruption, achieved and perpetuated by Respondents Temporary Senate President STEWART-COUSINS, Assembly Speaker HEASTIE, SENATE, and ASSEMBLY, are the subject of petitioners' December 17, 2021 complaint (Exhibit B) – to which petitioners' April 13, 2022 complaint is expressly a supplement (Exhibit A-1).

(b) The violations of mandatory safeguarding provisions of Legislative Law §80.1, §80.4, and §80.7(l) by Respondents Temporary Senate President STEWART-COUSINS, Assembly Speaker HEASTIE, and LEC, particularized by the December 17, 2021 complaint, are here sought to be enforced by mandamus.

8. **Respondent NEW YORK STATE INSPECTOR GENERAL [hereinafter "NYS-IG"** is an office, headed by an inspector general, established by Executive Law Article 4-A (§§51-55) to "receive and investigate complaints…concerning allegations of corruption, fraud, criminal activity, conflicts of interest or abuse in any covered agency" – and to itself bring complaints pertaining thereto on its own initiative (Executive Law §53.1).

(a) Pursuant to Executive Law §51, JCOPE is a "covered agency" – and, as such, pursuant to Executive Law §55, is mandated to report to the NYS-IG "any information concerning corruption, fraud, criminal activity, conflicts of interest or abuse by another state officer or employee

relating to his or her office or employment…". Simultaneously, the NYS-IG is under JCOPE's ethics jurisdiction, pursuant to Executive Law §94.

(b) Petitioners filed two complaints with the NYS-IG,[4] constituting eight complaints against "covered agencies":

- petitioners' July 11, 2013 complaint[5] (Exhibit H) constituting two interrelated complaints against two "covered agencies:

  1. against the defunct Commission on Judicial Compensation;

  2. against the Division of the Budget and its Budget Director Robert Megna.

- petitioners' November 2, 2021 complaint to current NYS-IG Lucy Lang[6] (Exhibit I), entitled "ENABLING YOU TO FAITHFULLY DISCHARGE THE DUTIES OF YOUR OFFICE", constituting six interrelated complaints against six "covered agencies":

  1. against the office of the NYS-IG for its corrupt inaction on petitioners' July 11, 2013 complaint to it, summarizing conflicts of interest by predecessor IG's – and, additionally IG Lang's own conflicts of interest, including financial;

  2. against JCOPE pertaining to its violations of Executive Law §94.13(a), (b) with respect to petitioners' June 27, 2013, December 11, 2014, August 31, 2020, and March 5, 2021 complaints; its violations of Executive Law §94.9(l)(i) with respect to its annual reports; its collusion, with LEC, in the corruption of the JCOPE/LEC review commission; its violations of Executive Law §55 pertaining to its reporting obligations to the NYS-IG; the financial and other conflicts of interest of its Executive Director Sanford Berland and JCOPE commissioners; and Executive Director Berland's knowingly false and deceitful testimony at the August 25, 2021 hearing on "New York State's System of Ethics Oversight and Enforcement", held by the Senate Committee on Ethics and Internal Governance;

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[4] CJA's menu webpage for the NYS Inspector General, like its menu webpage for JCOPE, is accessible from its left side panel "Searching for Champions – NYS". The direct link is here: https://www.judgewatch.org/web-pages/judicial-compensation/ny-inspector-general.htm.

[5] Here linked is CJA's substantiating evidentiary webpage for the July 11, 2013 complaint, the pdf of which is Exhibit H to this petition.

[6] Here linked is CJA's substantiating evidentiary webpage for the November 2, 2021 complaint, the pdf of which is Exhibit I to this petition.

3. against SUNY – the same as petitioners' August 31, 2020 complaint to JCOPE;

4. against the Division of the Budget and its Budget Director Robert Mujica, largely based on petitioners' March 5, 2021 complaint to JCOPE;

5. against the defunct Commission on Judicial Compensation;

6. against the defunct Commission to Investigate Public Corruption, as particularized by petitioners' April 23, 2014 order to show cause to intervene in the Senate/Assembly declaratory judgment action against it.

(c) Thereafter, beginning with their December 17, 2021 complaint to JCOPE (Exhibit B), petitioners *cc*'d the NYS-IG on it and on virtually all their subsequent correspondence to JCOPE.

(d) On May 16, 2022, petitioners sent NYS-IG Lang a letter (Exhibit K), simultaneously sending it to JCOPE, entitled:

> "(1) Accounting for, and rectifying, your Office's flagrant violations of its 'Policy and Procedure Manual' and Executive Law Article 4-A with regard to CJA's Nov. 2, 2021 complaint vs JCOPE, etc.; (2) Confirmation that you will not have jurisdiction over CELG, pursuant to the newly-enacted Executive Law §94, in contrast to your jurisdiction over JCOPE, pursuant to the current Executive Law §94".

(e) Here also sought to be enforced by mandamus are the mandatory, public integrity provisions of Executive Law Article 4-A and of the NYS-IG's Policy and Procedure Manual.

9. **Respondent KATHY HOCHUL [hereinafter "Governor HOCHUL"]** is Governor of the State of New York, subject to JCOPE's ethics jurisdiction pursuant to Executive Law §94.1 and specifically complained-against by petitioners' April 13, 2022 complaint and, as Lieutenant Governor, by petitioners' March 5, 2021 complaint.

(a) Governor HOCHUL is additionally subject to the NYS-IG's jurisdiction pursuant to Executive Law §51 – as is the Division of the Budget and its Budget Director Mujica, the latter specifically complained against by petitioners' April 13, 2022 complaint and March 5, 2021 complaint.

10. **Respondent ANDREA STEWART-COUSINS [hereinafter "Temporary Senate President STEWART-COUSINS"]** is Temporary Senate President of the NEW YORK STATE SENATE, subject to JCOPE's ethics jurisdiction pursuant to Executive Law §94.1 and specifically complained-against by petitioners' April 13, 2022 complaint, December 17, 2021 complaint, March 5, 2021 complaint – and, prior thereto, when she was Senate Minority Leader, by petitioners' December 11, 2014 complaint and June 27, 2013 complaint.

11. **Respondent NEW YORK STATE SENATE [hereinafter "SENATE"]** is the upper house of the New York State Legislature, consisting of 63 members. All its members are subject to JCOPE's ethics jurisdiction pursuant to Executive Law §94.1 and specifically complained-against by petitioners' April 13, 2022 complaint, December 17, 2021 complaint, March 5, 2021 complaint, and, prior thereto, by their June 27, 2013 complaint.

12. **Respondent CARL E. HEASTIE [hereinafter "Assembly Speaker HEASTIE"]** is Speaker of the NEW YORK STATE ASSEMBLY, subject to JCOPE's ethics jurisdiction pursuant to Executive Law §94.1 and specifically complained-against as Assembly Speaker by petitioners' April 13, 2022 complaint, December 17, 2021 complaint, March 5, 2021 complaint, and, prior thereto, as an Assembly member, by their June 27, 2013 complaint.

13. **Respondent NEW YORK STATE ASSEMBLY [hereinafter "ASSEMBLY"]** is the lower house of the New York State Legislature, consisting of 150 members. All its members are subject to JCOPE's ethics jurisdiction pursuant to Executive Law §94.1 and specifically complained-against by petitioners' April 13, 2022 complaint, December 17, 2021 complaint, March 5, 2021 complaint, and, prior thereto, by their June 27, 2013 complaint.

14. **Respondent LETITIA JAMES [hereinafter "AG JAMES"]** is New York State Attorney General, subject to JCOPE's ethics jurisdiction pursuant to Executive Law §94.1 and

specifically complained-against by petitioners' March 5, 2021 complaint, which, as to her, materially rests on petitioners' February 11, 2021 complaint against her to the Appellate Division attorney grievance committees (Exhibit D-2) and its included February 7, 2021 complaint to the New York State Commission on Judicial Conduct (Exhibit D-3).

(a) Pursuant to the "ethics commission reform act of 2022", she will become an appointing authority for one of CELG's 11 members.

15. **Respondent THOMAS DiNAPOLI [hereinafter "Comptroller DiNAPOLI]** is New York State Comptroller, subject to JCOPE's ethics jurisdiction pursuant to Executive Law §94.1 and specifically complained-against by petitioners' March 5, 2021 complaint and June 27, 2013 complaint.

(a) Pursuant to the "ethics commission reform act of 2022", he will become an appointing authority for one of CELG's 11 members.

FACTUAL ALLEGATIONS

16. Petitioners' April 13, 2022 complaint to JCOPE, to which NYS-IG Lang was *cc*'d, (Exhibit A-1) sets forth the facts most immediately germane to the mandamus and declaratory relief here sought.

17. Written by SASSOWER and entitled:

> "(1) Conflict-of-interest/ethics complaint vs Governor Hochul, Temporary Senate President Stewart-Cousins, Assembly Speaker Heastie, the 211 other state legislators – and their culpable staff, including Division of the Budget Director Mujica – for their Public Officers Law §74 violations pertaining to the FY2022-23 state budget, and, in particular, pertaining to their repeal and elimination of JCOPE by Part QQ of Education, Labor, Housing, and Family Assistance Budget Bill S.8006-C/A.9006-C and their larceny of taxpayer monies by Legislative/Judiciary Budget Bill S.8001-A/A.9001-A;

(2) Supplement to CJA's December 17, 2021 conflict-of-interest/ethics complaint vs legislators and legislative employees pertaining to the Legislative Ethics Commission (JCOPE #21-244)",

it opened, as follows, under the title heading "THE COMPLAINT" (pp. 1-2):

"This is a complaint against Governor Hochul, Temporary Senate President Stewart-Cousins, Assembly Speaker Heastie, the 213 other state legislators, and culpable staff, including Division of the Budget Director Mujica. All share a direct, self-interest in an ethics entity NOT bound – as JCOPE is – by the salutary mandatory provisions, enforceable by Article 78/mandamus:

- of Executive Law §94.13(a) …
- of Executive Law §94.9(l)(i) …

All acted on their self-interest, in violation of Public Officers Law §74, by their so-called 'ethics commission reform act of 2022', which – *for no reason other than self-interest* – removed those mandatory, integrity requirements from the new Executive Law §94 that replaces JCOPE with a Commission on Ethics and Lobbying in Government – and which they enacted as Part QQ of Education, Labor, Housing, and Family Assistance Budget Bill #S.8006-C/A.9006-C (at pp. 151-201) by the same flagrant fraud and constitutional, statutory, and legislative rule violations as they always commit with respect to the budget and as to which I have sought redress by my six prior complaints to JCOPE.

In violation of Executive Law §94.13(a), JCOPE has been 'sitting on' the first four of these complaints, the most comprehensive of which is the fourth: my March 5, 2021 complaint – which (at pp. 1, 8-9) expressly gave JCOPE 'NOTICE OF [my] INTENT to bring [a] mandamus/Article 78 proceeding' to secure its compliance with Executive Law §94.13(a), with respect to those four complaints, and with Executive Law §94.9(l)(i), with respect to its annual reports.

As for my last two complaints – my November 24, 2021 complaint and my December 17, 2021 complaint – your director of investigations and enforcement purported you had voted 'to close' each – and I challenged this, based on Executive Law §94.13(a), by my February 28, 2022 e-mail and March 4, 2022 e-mail. Both those e-mails were addressed to Chair Nieves, cc'd the JCOPE members whose e-mail addresses I had, Gerstman, Jacob, Lavine, and McNamara, and expressly requested forwarding to the other JCOPE members. I received no responses to either e-mail, nor to my March 17, 2022 e-mail, summarizing subsequent developments germane to these last two complaints.

This, then, is my seventh complaint to JCOPE pertaining to the state budget – the FY2022-23 state budget, as to which I gave you a 'heads up' by my February 28, 2022 e-mail, stating:

> **'TIME IS OF THE ESSENCE.** ALL the constitutional, statutory, and legislative rule violations of the state budget and its massive larcenies of taxpayer monies – to which my above six complaints alerted JCOPE – have continued, unabated, in the FY2022-23 state budget – and the situation is reflected by my January 22, 2022 written statement in support of oral testimony and my January 25, 2022 written three-minute oral testimony, presented at the Legislature's January 25, 2022 'public protection' budget hearing, to which, because of **the legislators' direct financial and other conflicting interests**, there has been ZERO response.' (capitalization, bold, hyperlinking in the original).

Apart from the direct, self-interest of the legislators and legislative staff in getting rid of an ethics entity, such as JCOPE, whose operating statute gives the public rights that are enforceable through mandamus, their most direct and financial interest in the FY2022-23 budget was in the Legislature's own December 1, 2021 proposed budget – and the legislative portions of Governor Hochul's combined Legislative/Judiciary Budget Bill S.8001/A.9001." (underlining, italics, hyperlinking in the original).

18. The April 13, 2022 complaint then continued under the title heading "THE EVIDENCE" (p. 3) – and after its more than ten pages of evidentiary particulars (pp. 3-14) concluded, as follows:

> "The last section of Part QQ, §19, states: 'This act shall take effect on the ninetieth day after it shall have become a law.' That gives JCOPE more than enough time to discharge its mandatory, non-discretionary duty with respect to this complaint pursuant to the still in-force-Executive Law §94.13(a) binding upon it.
>
> Although I have sworn to this complaint's truth by the accompanying JCOPE 'SWORN COMPLAINT' form, I herewith additionally repeat the attestation that Albany District Attorney Soares requires for complaints filed with his Public Integrity Unit, quoted on the last page of my June 4, 2020 grand jury/public corruption complaint to him (at p. 9), underlying my March 5, 2021 complaint to you:
>
> > 'I understand that any false statements made in this complaint are punishable as a Class A Misdemeanor under Section 175.30 and/or Section 210.45 of the Penal Law.'
>
> Thank you." (capitalization and hyperlinking in the original).

19. Notwithstanding the April 13, 2022 complaint required the greatest expedition, as the challenged "ethics commission reform act of 2022" was to take effect 90 days from the April 9, 2022 date of enactment of Education, Labor, Housing, and Family Assistance Budget Bill S.8006-C/A.9006-C, JCOPE did not acknowledge receipt until April 20, 2022.

20. Upon information and belief, prior to the April 20, 2022 acknowledgment and extending through the next ten days of April, during which JCOPE held an April 26, 2022 meeting, JCOPE did not send out any 15-day letters for the April 13, 2022 complaint. According to JCOPE's "Operations Update" for April 2022, JCOPE received 17 "tips, complaints, and reports" – and sent out ZERO 15-day letters.

21. Unaware that JCOPE had sent no 15-day letters for the April 13, 2022 complaint, SASSOWER sent a May 6, 2022 e-mail to JCOPE, *cc*'ing the NYS-IG, entitled: "Setting the record straight on Executive Law §94 – as to JCOPE & CELG – & taking the emergency correcti[ve] action with respect thereto warranted by CJA's April 13, 2022 complaint (#22-052)" (Exhibit J). It stated, in its concluding paragraph:

> "Finally, to enable the 14 JCOPE commissioners to take the emergency corrective action that the April 13, 2022 complaint plainly warrants – including ensuring the earliest possible vote, upon receipt of responses from the complained-against public officers to the mandated 15-day letters, now due or coming due, for which Executive Law §94.13(a) required NO vote – I request that this e-mail be **immediately** forwarded to the 9 members whose e-mail addresses I do not have." (underlining, hyperlinking, capitalization, and bold in the original).

22. JCOPE did not respond – at least not to petitioners. Likewise, the NYS-IG did not respond – at least not to petitioners.

23. Ten days later – and more than six and a half months after petitioners had filed their November 2, 2021 complaint to NYS-IG Lang (Exhibit I), without response from her – SASSOWER sent a May 16, 2022 letter to her (Exhibit K), with a *cc* to JCOPE, inquiring as to its status, reciting pertinent facts pertaining thereto, and stating:

> "Please advise – and by no later than a week from today, May 23, 2022 – what rectifying action you will be taking with respect to my November 2, 2021 complaint and my many subsequent e-mails relating thereto that I sent you – the last being my May 6, 2022 e-mail, wherein I stated that under the new Executive Law §94 it appears that the IG will NOT have jurisdiction over the new CELG, unlike JCOPE, over which the IG does. Is that correct?" (p. 6, underlining and capitalization in the original).

24. NYS-IG Lang did not respond – at least not to petitioners. Likewise, there was no response from JCOPE – at least not to petitioners.

25. On May 24, 2022, JCOPE held a regular meeting, at which, during the public session – like at the public session of its April 26, 2022 meeting – its members and staff gave no indication of the unconstitutionality and fraudulence of the budget-enacted "ethics commission reform act of 2022" and spoke about assisting in a seamless transition to the new commission.

26. On June 6, 2022, as this petition was being finalized, SASSOWER received from JCOPE an e-mail entitled "Closing Letter". Attached was a two-sentence letter from JCOPE's Director of Investigations and Enforcement Logue. It read:

> "On April 13, 2022, the New York State Joint Commission on Public Ethics ('Commission') received a complaint submitted by you alleging misconduct by Governor Hochul, legislators and the Budget Director.
>
> This letter is to inform you that the Commission satisfied the statutory requirements of Executive Law §94(13)(a) by voting to close the matter on May 24, 2022."

CAUSES OF ACTION

AS AND FOR A FIRST CAUSE OF ACTION
Directing that the New York State Joint Commission on Public Ethics Comply with Executive Law §§94.13(a) and (b) with Respect to Petitioners' Seven Complaints – Starting with the Ministerial Act of 15-Day Letters

27. Petitioners repeat, reiterate, and reallege ¶¶1-26 herein with the same force and effect as if more fully set forth.

28. Executive Law §94.13(a) states, in mandatory terms:

> "If the commission receives a sworn complaint alleging a violation of section…seventy-four of the public officers law…by a person or entity subject to the jurisdiction of the commission including members of the legislature and legislative employees…or if the commission determines on its own initiative to investigate a possible violation, the commission shall notify the individual in writing, describe the possible or alleged violation of such laws, provide a description of the allegations against him or her and the evidence, if any, supporting such allegations…; the letter also shall set forth the sections of law alleged to have been violated and provide the person with a fifteen day period in which to submit a written response, including any evidence, statements, and proposed witnesses, setting forth information relating to the activities cited as a possible or alleged violation of law. The commission shall, within sixty calendar days after a complaint or a referral is received…, vote on whether to commence a full investigation of the matter under consideration to determine whether a substantial basis exists to conclude that a violation of law has occurred. The staff of the joint commission shall provide to the members prior to such vote information regarding the likely scope and content of the investigation, and a subpoena plan, to the extent such information is available." (underlining added)

29. Executive Law §94.13(b) states, in mandatory terms:

> "…If the commission determines at any stage that there is no violation, that any potential violation has been rectified, or if the investigation is closed for any other reason, it shall so advise the individual and the complainant, if any in writing within fifteen days of such decision. …" (underlining added).

30. Each of petitioners' seven complaints, filed with JCOPE, was sworn and alleged violations of Public Officers Law §74 by persons and entities within JCOPE's jurisdiction.

31. Consequently, as to each complaint, JCOPE was required to send out letters to the complained-against and responsible persons requesting their "written response[s]" within 15 days – a

ministerial task, requiring no vote, performed by staff, who then, upon receipt of the "written response[s]", were to present the JCOPE members with "information regarding the likely scope and content of the investigation, and a subpoena plan" so that they could vote on whether to commence a "substantial basis investigation". As to such vote, it was required to be had "within sixty calendar days" of receipt of the complaint – a time requirement that, prior to 2016, was 45 days. And, "at any stage", JCOPE was required to advise a complainant "in writing within fifteen days" if it had determined "that there is no violation, that any potential violation has been rectified, or if the investigation is closed for any other reason."

32. Upon information and belief, JCOPE did not send out 15-day letters as to any of petitioners' complaints – because, as obvious from each complaint, it knew the complained-against public officers and employees would be unable to deny or dispute any of the particularized facts as to their Public Officers Law §74 violations.

33. As 15-day letters – and the "written response[s]" thereto – are the predicates for JCOPE's votes as to " whether to commence a full investigation of the matter under consideration to determine whether a substantial basis exists to conclude that a violation of law has occurred", JCOPE could not – and did not – comply with the balance of Executive Law §94.13(a) or with Executive Law §94.13(b) as to any of petitioners' seven complaints.

34. **As to petitioners' June 27, 2013 complaint** (Exhibit G),[7] JCOPE acknowledged it by a June 28, 2013 letter – but never thereafter advised, in writing or otherwise, that its members had voted and determined that there was "no violation" or that it had been "rectified", or that JCOPE's investigation had been "closed for any other reason".

[7] The exhibits are pdfs of each complaint, with the links immediately preceding being to the record of each complaint, as posted on CJA's website.

35. **As to petitioners' December 11, 2014 complaint** (Exhibit F), JCOPE acknowledged it by a December 16, 2014 e-mail as #14-229 – but never thereafter advised, in writing or otherwise, that its members had voted and determined that there was "no violation" or that it had been "rectified", or that JCOPE's investigation had been "closed for any other reason".

36. **As to petitioners' August 31, 2020 complaint** (Exhibit E), JCOPE acknowledged it by a September 2, 2020 e-mail as #20-143 – but never thereafter advised, in writing or otherwise, that its members had voted and determined that there was "no violation" or that it had been "rectified", or that JCOPE's investigation had been "closed for any other reason".

37. **As to petitioners' March 5, 2021 complaint** (Exhibit D-1), JCOPE acknowledged it by a March 16, 2021 e-mail as #21-033 – but never thereafter advised, in writing or otherwise, that its members had voted and determined that there was "no violation" or that it had been "rectified", or that JCOPE's investigation had been "closed for any other reason".

38. **As to petitioners' November 24, 2021 complaint** (Exhibit C), JCOPE acknowledged it by a November 30, 2021 e-mail as #21-226.

(a) Thereafter, by a two-sentence December 20, 2021 letter, JCOPE Director of Investigations and Enforcement Logue baldly purported that "the Commission satisfied the statutory requirements of Executive Law §94(13)(a) by voting to close the matter on December 14, 202[1]".

(b) By a December 21, 2021 letter to Investigations and Enforcement Director Logue, SASSOWER challenged her December 20, 2021 letter, asking:

> "I don't see anything in Executive Law §94(13)(a)[fn1] using the terminology 'voting to close the matter'.
>
> Are you saying that JCOPE members voted NOT 'to commence a full investigation of the matter under consideration to determine whether a substantial basis exists to conclude that a violation of law has occurred'?
>
> If so, this required:

> • FIRST, that JCOPE staff had performed their ministerial function, based on my sworn November 24, 2021 complaint of Public Officers Law §74 violations by persons within JCOPE's jurisdiction, of sending them 15-day letters; and
>
> • SECOND, based on the written responses to the 15-day letters, that JCOPE staff had furnished the JCOPE members 'prior to such vote' with 'information regarding the likely scope and content of the investigation, and a subpoena plan, to the extent such information is available'.
>
> Did JCOPE staff perform both of these, as required by Executive Law §94.13(a)?".

(c) Investigations and Enforcement Director Logue did not respond and ignored SASSOWER's February 16, 2022 e-mail inquiring as to her response.

(d) By a February 28, 2022 e-mail to JCOPE Chair Nieves, with *cc*'s to four other JCOPE members and requesting distribution to the rest, and *cc*'ing JCOPE staff, SASSOWER asked:

> "Did JCOPE commissioners, in fact, 'vot[e] to close' my sworn November 24, 2021 complaint on December 14 202[1]? If so, did Ms. Logue – an attorney – thereafter furnish you and the JCOPE commissioners with my rebutting December 21, 2021 letter entitled 'FOUR QUESTIONS…', detailing that 'the statutory requirements of Executive Law §94(13)(a)' could NOT have been met by such an **indefensible** disposition. …" (hyperlinking and bold in the original).

(e) There was no response from Chair Nieves, from other JCOPE members, or from JCOPE staff. Nor did they respond to petitioners' March 17, 2022 e-mail furnishing subsequent "developments" pertaining to the November 24, 2021 complaint.

39. **As to petitioners' December 17, 2021 complaint** (Exhibit B), JCOPE never sent petitioners an acknowledgment of the complaint.

(a) By e-mails dated January 18, 2022 and February 16, 2022, petitioners inquired as to whether JCOPE had sent an acknowledgment – and what number it had assigned to the complaint. JCOPE did not respond to either.

(b) By the same February 28, 2022 e-mail as above-recited pertaining to petitioners' November 24, 2021 complaint, SASSOWER asked JCOPE Chair Nieves:

> "Are you and JCOPE's other 13 commissioners aware of this unacknowledged December 17, 2021 complaint, with its

> 'BACKGROUND' section (at pp. 4-6) pertaining to my July 20, 2021 letter to JCOPE Executive Director Sanford Berland, summarizing JCOPE's corrupting of the mandatory safeguarding provisions of Executive Law §94.9(l)(i) and §94.13(a)…" (capitalization in the original).

(c) Less than an hour and a half after sending the February 28, 2022 e-mail, JCOPE Investigations and Enforcement Director Logue e-mailed a two-sentence February 28, 2022 letter to petitioners, identifying the December 17, 2021 complaint as #22-244 and stating – even more baldly than by her November 20, 2021 letter – "the Commission considered the allegations raised in the complaint and voted to close the matter on January 25, 2022."

(d) If, in fact, the Commissioners "voted to close" petitioners' December 17, 2021 complaint on January 25, 2022, as purported by the February 28, 2022 letter, the February 28, 2022 letter itself violated Executive Law §94.13(b), which requires notification to complainants "in writing within fifteen days of such decision. …" February 28, 2022 is more than twice that.

Moreover, from JCOPE's "Operations Update" for December 2021, included as part of its agenda for JCOPE's January 25, 2022 meeting, it appears that if the December 17, 2021 complaint was assigned number #21-244, it would have been AFTER that meeting, as the "Operations Update" indicates that the total number of "tips, complaints, and reports" that JCOPE received in 2021 is 243.

(e) By a March 4, 2022 e-mail to JCOPE Chair Nieves, *cc*'ing four other JCOPE commissioners and requesting distribution to the rest, and *cc*'ing JCOPE staff, SASSOWER challenged that there had, in fact, been a vote, further pointing out the prerequisite of 15-day letters for such vote:

> "Without such '15-day letters' – as to which JCOPE had NO discretion pursuant to Executive Law §94.13(a) – there could be NO 'vote' by the JCOPE commissioners – such 'vote' being for the statutory purpose of deciding 'whether to commence a full investigation of the matter…' – the preliminary investigation having been, in the first instance, by the '15-day letters' and responses thereto. Moreover, pursuant to Executive Law §94.13(a), 'prior to such vote', JCOPE staff is required to 'provide to the members… information regarding the likely scope and content of the investigation, and a subpoena plan…' – obviously developed from the responses to the '15-day letters'." (capitalization in the original).

(f) There was no response from Chair Nieves, from other commissioners, or from JCOPE staff. Nor did they respond to petitioners' March 17, 2022 e-mail furnishing subsequent "developments" pertaining to the December 17, 2021 complaint.

40. **As for petitioners' April 13, 2022 complaint** (Exhibit A-1), JCOPE acknowledged it by an April 20, 2022 e-mail as #22-052.

(a) By a June 6, 2022 letter, JCOPE Director of Investigations and Enforcement Logue purported that "the Commission satisfied the statutory requirements of Executive Law §94(13)(a) by voting to close the matter on May 24, 2022." Such repeated the phrasing of her December 20, 2021 letter pertaining to petitioners' November 21, 2021 complaint (Exhibit C) – the legitimacy of which petitioners challenged by their December 21, 2021 letter, without response from her or from JCOPE Chair Nieves or from JCOPE members to whom it was thereafter furnished.

(b) JCOPE's "Operations Update" for April 2022 – the same as had been part of the agenda of JCOPE's May 24, 2022 meeting – identifies that not a single 15-day letter was sent out by JCOPE for any of the 17 "tips, complaints, and reports" it had received in April.

41. Petitioners' entitlement to the granting of Article 78 mandamus relief to compel JCOPE's compliance with Executive Law §§93.13(a) and (b) is reinforced by the Albany County Supreme Court decisions in the Article 78 proceeding *Trump v. JCOPE* (Feb. 11, 2015) and the Article 78 proceeding *Cox v. JCOPE* (Dec. 18, 2018). The Albany Supreme Court decision in the Article 78 proceeding *Koetz v. JCOPE* (June 22, 2015) is not to the contrary.

AS AND FOR A SECOND CAUSE OF ACTION
Directing that the New York State Joint Commission on Public Ethics Comply with Executive Law §94.9(l)(i) Mandating that its Annual Reports Contain "a listing by assigned number of each complaint and referral received which alleged a possible violation within its jurisdiction, including the current status of each complaint" – Starting with its Upcoming Annual Report for 2021 and such Annual Report as it will be Rendering for 2022

42. Petitioners repeat, reiterate, and reallege ¶¶1-41 herein with the same force and effect as if more fully set forth.

43. As here relevant, Executive Law §94.9(l) states, in mandatory terms:

"The commission shall:

(l) Prepare an annual report to the governor and legislature…. Such report shall include: (i) a listing by assigned number of each complaint and referral received

which alleged a possible violation within its jurisdiction, including the current status of each complaint,…" (underlining added).

44. The salutary purpose of provision (i) – as petitioners' July 18, 2014 letter to JCOPE first identified (at p. 4) – is "to enable tracking of a given complaint and of referrals so that [] ultimate disposition of each can be established for accountability purposes". The "listing", like the annual report itself, is mandatory.

45. ALL JCOPE's annual reports, since its first in 2012 and spanning to its most recent, for 2020, have violated Executive Law §94.9(l)(i) by failing to include the required "listing". This is verifiable from JCOPE's website, posting its annual reports: here.

46. Likewise verifiable is JCOPE's refusal to rectify this violation of its statutory duty, from the first time petitioners brought it to JCOPE's attention by their above July 18, 2014 letter and repeatedly thereafter – entitling petitioners to obtain same, for each year, by Article 78 mandamus.

47. At JCOPE's May 26, 2022 meeting, Executive Director Berland stated that by "the end of the second week of June" he would have a draft of JCOPE's 2021 annual report to circulate to the members. Such report must be the first to have the "listing" mandated by Executive Law §94.9(l)(i) – which, to be compliant, would specify the "current status" of the three complaints petitioners filed with JCOPE in 2021 – and the "current status" of their three complaints prior thereto – in 2013, 2014, and 2020. Then, too, if JCOPE believes itself to be going out of existence on July 8, 2022, there must also be a report for the six months and one week of 2022, with the required "listing" including petitioners' April 13, 2022 complaint.

AS AND FOR A THIRD CAUSE OF ACTION
Directing that Temporary Senate President Stewart-Cousins and Assembly Speaker Heastie Comply with Legislative Law §80.1 and §80.4 Mandating their Joint Appointment of the Legislative Ethics Commission's Ninth Member – this being the Non-Legislative Member that Makes Non-Legislators its Majority

48. Petitioners repeat, reiterate, and reallege ¶¶1-47 herein with the same force and effect as if more fully set forth.

49. The facts and law presented by petitioners' December 17, 2021 complaint against legislators and legislative employees for subverting LEC to insulate themselves from complaints (Exhibit B) entitle petitioners to Article 78 mandamus, directing compliance by Temporary Senate President STEWART-COUSINS and Assembly Speaker HEASTIE with Legislative Law §80.1 and §80.4.

50. Legislative Law §80.1 states, in pertinent part:

> "There is established a legislative ethics commission which shall consist of nine members. Four members shall be members of the legislature and shall be appointed as follows: one by the temporary president of the senate, one by the speaker of the assembly, one by the minority leader of the senate and one by the minority leader of the assembly. The remaining five members shall not be present or former members of the legislature…, and shall be appointed as follows: one by the temporary president of the senate, one by the speaker of the assembly, one by the minority leader of the senate, one by the minority leader of the assembly, and one jointly by the speaker of the assembly and majority leader of the senate. …" (underlining added).

This duty of appointment is reinforced by Legislative Law §80.4, which states:

> "Any vacancy occurring on the commission shall be filled within thirty days by the appointing authority." (underlining added).

51. Despite the clear, unambiguous "shall" language of Legislative Law §80.1 and §80.4, LEC has been operating, since its inception in 2011, with only eight members – as "the speaker of the assembly and the majority leader of the senate" have not jointly-appointed LEC's fifth non-

legislative member. This is particularized in Section I of petitioners' December 17, 2021 complaint (Exhibit B, p. 8).

52. Petitioners' March 4, 2022 e-mail alerted JCOPE to the unchanged situation, in its last sentence reading:

> "By the way, as of this date – 2-1/2 months after filing with JCOPE my December 17, 2021 complaint – the Legislative Ethics Commission is still without its required ninth, non-legislative member and, once again, scores of thousands of dollars in fraudulent 'reappropriations' for the Legislative Ethics Commission have been popped into the FY2022-23 legislative/judiciary budget bill (#S.8001/A.9001 – at pp. 37-41)."

53. It is now more than three months after that March 4, 2022 e-mail, and as reflected by LEC's "Members" page of its website, LEC continues to be without its jointly-appointed ninth member – this being the non-legislative member that makes non-legislators LEC's majority.

AS AND FOR A FOURTH CAUSE OF ACTION
Directing that the Legislative Ethics Commission Comply with the Mandatory Requirements of Legislative Law §80.7(l) Pertaining to its Annual Reports – Starting with Rendering Annual Reports for 2020 and 2021

54. Petitioners repeat, reiterate, and reallege ¶¶1-53 herein with the same force and effect as if more fully set forth.

55. Legislative Law §80.7(l) states, in pertinent part:

> "The Commission shall:
> …
> (l) Prepare an annual report to the governor and legislature summarizing the activities of the commission during the previous year and recommending any changes in the laws governing the conduct of persons subject to the jurisdiction of the commission, or the rules, regulations and procedures governing the commission's conduct. Such report shall include: (i) a listing by assigned number of each complaint and report received from the joint commission on public ethics which alleged a possible violation within its jurisdiction, including the current status of each complaint…" (underlining added).

56. Despite the clear, unambiguous "shall" language of Legislative Law §80.7(l), LEC has, since its inception in 2011, violated Legislative Law §80.7(l) in multiple respects – and this is particularized by Section II of petitioners' December 17, 2021 complaint (Exhibit B, pp. 8-11).

57. Moreover, it now appears, based on the SENATE's non-response and the ASSEMBLY's March 23, 2022 response to petitioners' March 16, 2022 FOIL request for LEC's 2020 and 2021 annual reports, that not only is there no LEC annual report for 2020, but none for 2021.

58. LEC's seemingly non-existent 2020 and 2021 annual reports must be its first to be fully compliant with Legislative Law §80.7(l) – and that relief is here sought by Article 78 mandamus.

AS AND FOR A FIFTH CAUSE OF ACTION
Directing that the New York State Inspector General Comply with the Mandates of Executive Law Article 4-A and its own Policy and Procedure Manual, Violated by its Handling of Petitioners' November 2, 2021 Complaint – and Declaring the Provision of the Policy and Procedure Manual that Allows the Inspector General to Take "No Action" on Complaints involving "Covered Agencies" to be Violative of Executive Law §53.1 and Void

59. Petitioners repeat, reiterate, and reallege ¶¶1-58 herein with the same force and effect as if more fully set forth.

60. Executive Law Article 4-A charges the NYS-IG with a sweeping good-government, public integrity function, stating, by its §53, in mandatory terms:

"The state inspector general shall have the following duties and responsibilities:

1. receive and investigate complaints from any source, or upon his or her own initiative, concerning allegations of corruption, fraud, criminal activity, conflicts of interest or abuse in any covered agency;

2. inform the heads of covered agencies of such allegations and the progress of investigations related thereto, unless special circumstances require confidentiality;

3. determine with respect to such allegations whether disciplinary action, civil or criminal prosecution, or further investigation by an appropriate federal, state or local agency is warranted, and to assist in such investigations; …"

61. To discharge these "duties and responsibilities", Executive Law §54 gives the NYS-IG great powers, also stated in mandatory "shall" language – as, for instance, that it "shall have the power to:

> "require any officer or employee in a covered agency to answer questions concerning any matter related to the performance of his or her official duties…. The refusal of any officer or employee to answer questions shall be cause for removal from office or employment or other appropriate penalty". (Executive Law §54.5)

62. In written testimony submitted to the Senate Committee on Ethics and Internal Governance for its August 25, 2021 hearing on "New York State's System of Ethics Oversight and Enforcement", then NYS-IG Letizia Tagliafierro described how complaints are handled, stating:

> "The Inspector General's Case Management Unit (CMU) is responsible for receiving and processing complaints and allegations made to the Offices of the Inspector General. The CMU fields all complaints and then reviews and processes each to determine jurisdiction. Each complaint is logged in to a centralized database and then addressed and/or investigated by investigative and legal staff. The CMU may also refer matters to other agencies as appropriate and supports the investigative work of the entire office. …
>
> If a specific matter falls outside of the office's jurisdiction (i.e., a federal or local government agency), the CMU will advise the complainant of such and will make a referral to the proper entity to review their matter. Some complaints are ultimately determined to be best handled by the executive agency or authority complained of and are therefore referred to those entities to address via existing internal processes. However, even in these cases the Office of the Inspector General tracks and monitors each referral to ensure that the agency/authority responds in an appropriate manner. … The CMU classifies each complaint into one of 22 categories…"

This largely repeated, *verbatim*, text in the NYS-IG's annual report for 2020, which her written testimony identified, with hyperlinking, to be its "inaugural annual report".

63. Based thereon, petitioners made a November 3, 2021 FOIL request to the NYS-IG for, *inter alia*,

> (1) the Office of the Inspector General's written procedures for intake, processing, and tracking complaints…;
>
> (2) records reflecting when the Office of the Inspector General first promulgated such written procedures for intake, processing, and tracking complaints and all subsequent modifications and refinements – and, if such promulgated procedures were not in place in July 2013, records reflecting the procedures at that time;
>
> (3) all records available to me pertaining to the complaint I filed with the Office of the Inspector General, *via* its website, on July 11, 2013 against the 2011 Commission on Judicial Compensation…and against the Division of the Budget, specifying Director Robert Megna…. The print-out I made at that time of my completed complaint form is attached – and the referred-to webpage from which the July 11, 2013 complaint is accessible is here: http://www.judgewatch.org/web-pages/judicial-compensation/ny-inspector-general.htm."

64. The NYS-IG's response, on December 7, 2021, included three pages from its Policy and Procedure Manual, declaring a policy, stated in mandatory terms: "The Office of the New York State Inspector General…shall conduct all investigations, examinations and reviews in a professional manner" (underlining added) – and describing its Case Management Unit "CMU" as "responsible for OIG quality control". Among its tasks, set forth in mandatory terms:

> "The CMU shall prepare an electronic binder and a paper binder, which shall be distributed on a weekly basis to the Inspector General and all members of the Case Review Panel ('CRP'). The binder shall consist of all complaints received in the prior week, as well as outstanding matters from prior weekly CRP meetings (i.e., matters placed in 'Preliminary Investigation' status by the CRP to determine additional facts before CRP decision made, etc.)" (underlining added).

65. According to the Policy and Procedure Manual, it is the Case Review Panel ("CPU") – consisting of the "Executive Deputy Inspector General, the Chief Deputy Inspector General, and the Deputy Inspectors General" – that makes the decisions with respect to complaints – and this, too,

is stated in mandatory "shall" terms – as, likewise, the responsibility of CMU "for updating the OIG case management system to reflect the disposition of each complaint":

> "B. The CRP shall discuss each new complaint and make a determination as to the actions to be taken. The CMU Chief or CMU-designated staff shall document the actions taken by the CRP for entry into OIG's case management system. The determinations that may be taken are:
>
> 1) No Action: …
> 2) Referral: …
> 3) Preliminary Investigation ('PI'): …
> 4) Investigation: …
>
> C. Upon completion of the CRP meeting, CMU staff is responsible for updating the OIG case management system to reflect the disposition of each complaint. …" (underlining of "shall" added).

66. Petitioners' November 2, 2021 six interrelated complaints to NYS-IG Lang against "covered agencies" (Exhibit I) – like their July 11, 2013 two interrelated complaints to her NYS-IG predecessor against "covered agencies" (Exhibit H) – were each within the NYS-IG's jurisdiction and, as such, Executive Law Article 4-A mandated investigative and referral actions.

67. Nevertheless, as with their July 11, 2013 complaints, petitioners received no communication from the NYS-IG in response to their November 2, 2021 complaints – not even an acknowledgment. Consequently, SASSOWER made a February 16, 2022 FOIL request to the NYS-IG seeking, *inter alia*:

> "all records pertaining to the 'professional manner' in which the IG's office has handled my November 2, 2021 complaint, consistent with its Policy and Procedure Manual (Policy # 0101)". (hyperlinking in the original).

68. The NYS-IG responded, on March 22, 2022, with exactly two records responsive to SASSOWER's request for "all records": a one-page November 3, 2021 "Complaint Intake Form" and an undated, untitled one-page chart, neither remotely reflecting any kind of "professional manner" by which the November 2, 2021 complaints had been handled.

69. Presumably, the "Complaint Intake Form" is the initial record, as it bears an "Intake/Date" of "Wed. 11/3/2011".

70. Among its numerous facial deficiencies are those in the section entitled "Administrative Information", which has a blank where the "Date:" should be – and is likewise blank with regards to "Violations: __"; "OSIG:__"; "To Chief Investigator:__"; "Approved: Chief of Investigations:__". It responds with "< None>" for "Assigned to Investigator:" and also responds "< None>" for "Assigned to Investigative Attorney:". It then concludes by a "Recommendation" of "NA", as to which it states: "Explanation – OIG cc'd on complaint, redundant to send to JCOPE".

71. There is no indication as to whose "Recommendation" the indicated "NA" is, how it is explained by the "Explanation", or to whom the "NA" "Recommendation" would be furnished for determination thereof – and if a determination was, in fact, thereafter made.

72. As for the meaning of "NA", it is presumably the "No Action" option specified by the Policy and Procedure Manual as meaning: "There will not be any investigative activity in response to the complaint."

73. This "No Action" option from the Policy Procedure Manual is in clear violation of the NYS-IG's mandatory duty, pursuant to Executive Law §53.1, to "investigate complaints from any source…concerning allegations of corruption, fraud, criminal activity, conflicts of interest or abuse in any covered agency". It must be stricken as overbroad – relief petitioners here seek, as only where a complaint does not pertain to a "covered agency" would "No Action" be permissible. However, the NYS IG's Policy and Procedure Manual not only fails to provide such clarifying definition, it affirmatively makes it appear that "No action" is its own permissible determination,

unbounded by any standard and unconnected to "Non-Jurisdictional Correspondence ('Dead') Complaints".

74. As for the chart, it is undated, has no title heading to explain what it is, and does not identify the "CMU Emloyee" (sic) filling it out other than by the initials "SG". It identifies an "Intake #11032021-007" that is different from the "File Number: 2662-089-2021" on the "Complaint Intake Form", which is apparently not the "Case Number" as the column for that information is blank in the chart. According to the Policy and Procedure Manual (IB), "No investigation will be initiated until a complaint is assigned a case number, unless prior approval by an OIG Executive Staff is obtained.".

75. The last column of the chart is entitled "Final Decision" and beneath it is typed: "EM to draft and finalize a letter and then CMU will get it out". There is no indication who made this "Final Decision", when it was made, who "EM" is, what the content of the letter was to be, and to whom it was to be sent. And, just as the "Complaint Intake Form" ends with a "Recommendation", but no indication of any determination thereon, so the chart does not indicate that the letter to be drafted, finalized, and sent, was, in fact, drafted, finalized and sent.

76. Neither the "Complaint Intake Form" nor the chart can be deemed compliance by the NYS-IG with its duties and responsibilities, mandated by Executive Law Article 4-A, or with its own Policy and Procedure Manual – and this was so stated by SASSOWER's May 16, 2022 letter to NYS-IG Lang (Exhibit K), inquiring about the status of the complaint and closing, as follows:

> "Clear from your 'Policy and Procedures Manual' for complaints – and, of course, Executive Law Article 4-A (§§51-55) – is that your IG's Office has flagrantly violated its mandatory protocols and statutory duties with respect to my November 2, 2021 complaint, just as your IG predecessors did with respect to my July 11, 2013 complaint, doubtlessly with comparable protocols in place – as to which my November 2, 2021 complaint sought your investigation and corrective steps, explicitly to avoid your repetition.

> Who is responsible for this? There would seem to be only two possibilities. Either you directed your high-ranking staff comprising your Case Review Panel to violate the IG's 'Policy and Procedures Manual' and Executive Law Article 4-A with respect to my November 2, 2021 complaint or such violations were done by the intake and investigative staff of the CMU unit, acting rogue, and without your knowledge and that of supervisory, managerial staff, which I would find hard to believe. Either way, at whatever level the misconduct occurred, those knowledgeable of my November 2, 2021 complaint and of the steady stream of my related subsequent e-mails, which, pursuant to protocol, were required to have been entered into the 'J: Drive', were violating Executive Law §55 'Responsibilities of covered agencies, state officers and employees', reading:
>
> > '1. Every state officer or employee in a covered agency shall report promptly to the state inspector general any information concerning corruption, fraud, criminal activity, conflicts of interest or abuse by another state officer or employee relating to his or her office or employment…. The knowing failure of any officer or employee to so report shall be cause for removal from office or employment or other appropriate penalty…'"

77. NYS-IG Lang did not respond – reflective that she cannot defend and refuses to rectify her violations of the mandatory provisions of Executive Law Article 4-A and of the policy and procedures of her Manual. Such mandatory provisions – including with respect to Executive Law §55 – are here sought to be enforced by CPLR Article 78. The declaration and voiding of the "No Action" provision of the Policy and Procedure Manual is here sought by CPLR §3001,[8] if not additionally by the certiorari relief CPLR Article 78 provides.

[8] CPLR §3001 entitled "Declaratory judgment" reads in pertinent part:

> "The supreme court may render a declaratory judgment having the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy whether or not further relief is or could be claimed. If the court declines to render such a judgment it shall state its grounds…."

AS AND FOR A SIXTH CAUSE OF ACTION
Declaring Unconstitutional, Unlawful, and Void Part QQ of Education, Labor, Housing, and Family Assistance Budget Bill #S.8006-C/A.9006-C – the "ethics commission reform act of 2022" – Enacted in Violation of Mandatory Provisions of the New York State Constitution, Statutes, Legislative Rules, and Caselaw

78. Petitioners repeat, reiterate, and reallege ¶¶1-77 herein with the same force and effect as if more fully set forth.

79. Petitioners' April 13, 2022 complaint (Exhibit A-1) – to which NYS-IG was *cc*'d – was a sworn complaint against persons within JCOPE's jurisdiction, alleging violations of Public Officers Law §74. As such, pursuant to Executive Law §94.13(a), JCOPE's duty – involving no discretion and requiring no vote – was to have notified the complained-against persons by letter, affording each "a fifteen day period in which to submit a written response, including any evidence, statements, and proposed witnesses, setting forth information relating to the activities cited as a possible or alleged violation of law."

80. Had JCOPE sent 15-day letters with respect to petitioners' April 13, 2022 complaint – as it was ministerially required to have done – it would already know from such "written response[s]" as it received that Part QQ of Education, Labor, Housing, and Family Assistance Budget Bill S.8006-C/A.9006-C, repealing the Executive Law §94 that had established JCOPE and replacing it with a new Executive Law §94 establishing CELG, was enacted in violation of mandatory provisions of the New York State Constitution, statutes, legislative rules, and caselaw – and that its duty was to take IMMEDIATE, EMERGENCY ACTION to secure a declaration to that effect, VOIDING what had become Part QQ of Chapter 56 of the Laws of 2022. Especially was this compelled as petitioners had shown that motivating the repeal/replace of Executive Law §94 was the self-interest of Governor HOCHUL and SENATE and ASSEMBLY in eliminating the integrity-

fostering mandatory provisions of Executive Law §94.13(a), §94.13(b), and §94.9(l)(i), which a "substantial basis investigation" would have further corroborated.[9]

81. In pertinent part, petitioners' April 13, 2022 complaint (Exhibit A-1, p. 10) states:

> "Unlike the legislative/judiciary budget bill – which is an appropriation bill – the education, labor, health, and family assistance budget bill is not. It makes substantive policy that Governor Hochul could not constitutionally introduce pursuant to Article VII – and which, in fact, she had furnished only as proposed legislation. It became an introduced budget bill by fraud of the Legislature. I identified this in the three-minute testimony I read at the Legislature's January 25, 2022 'public protection' budget hearing – and the written copy I submitted gave the specifics in its footnote 1, stating:
>
> > 'The mechanics of this fraud – and the unconstitutionality of the insertion of non-fiscal policy into the budget – were dissected by my March 18, 2020 letter to then Governor Cuomo, which I simultaneously furnished to the Legislature – and identified in the 62 grand jury/public corruption complaints I filed with New York's 62 district attorneys pertaining to the FY2020-21 budget. …'
>
> My March 25, 2022 e-mail to the legislators further underscored the importance of this March 18, 2020 letter, as likewise the unconstitutionality of 'three people in a room' budget deal-making – which is how Part QQ thereafter came to be inserted into S.8006-C/A.9006-C."

82. The March 18, 2020 letter (Exhibit A-5) is the starting point for the declaration that Part QQ was unconstitutionally enacted – and petitioners' April 13, 2022 complaint (Exhibit A-1) is not the first time that JCOPE had the duty to verify its truth. The March 18, 2020 letter was part of Petitioners' March 5, 2021 complaint to JCOPE (Exhibit D-1), by way of their June 4, 2020 grand jury/public corruption complaint to Albany County District Attorney Soares and June 13, 2020 grand

[9] The salutary "shall" provisions of Executive Law §94, enforceable by mandamus, which "the ethics commission reform act of 2022" wipe, trace back to at least the "Ethics in Government Act of 1987" and the New York State Ethics Commission, insofar as the requirement of 15-day letters and notification to the complainant of dismissal of a complaint. As for annual reports that are required to itemize, by assigned number, each complaint and referral received and the status of each, such "shall" provision appears to have preceded the Commission on Public Integrity enacted by the Public Employee Ethics Reform Act of 2007 (PEERA). CJA's webpage for this petition includes a "RESOURCE" section with pertinent bill jackets and consolidated laws.

jury/public corruption complaint to Montgomery County District Attorney Kelli McCoski, furnished as exhibits. Had JCOPE issued 15-day letters for the March 5, 2021 complaint – as it was ministerially required to do – it would already have "written response[s]" from which to verify the truth of the March 18, 2020 letter – and, with it, of the unconstitutionality of "three persons in a room", behind-closed-doors, budget deal-making, eviscerating, in one fell swoop, Article VII, §3 and §4, Article IV, §7, and Article III, §10 of the New York State Constitution – for which the March 18, 2020 letter (at p. 2) gave the substantiating citations to the record on appeal of petitioners' challenge to the constitutionality and lawfulness of the state budget by their citizen-taxpayer actions (Exhibit A-5).[10]

83. So, too, had JCOPE issued 15-day letters for petitioners' August 31, 2020 complaint (Exhibit E) – itself hyperlinking (at p. 3) to petitioners' June 4, 2020 grand jury/public corruption complaint to D.A. Soares – it would have had, more than six months before their March 5, 2021 complaint, "written response[s]" establishing the truth of the March 18, 2020 letter.

84. Petitioners' March 18, 2020 letter – written exactly a month after the Court of Appeals rendered the last of its five orders denying review of their second citizen-taxpayer action – is, therefore, not part of that record. That record, however, is focal to each of petitioners' complaints to JCOPE, starting with their August 31, 2020 complaint (Exhibit E) – which, had JCOPE sent 15-day letters as to it and as to petitioners' next three complaints (Exhibit D-1, Exhibit C, and Exhibit B), would have produced "written response[s]" corroborative of the truth of all four complaints as to the flagrant unconstitutionality of the state budget that, on April 8, 2022, by Education, Labor, Housing, and Family Assistance Budget Bill S.8006-C/A.9006-C, would became the vehicle for the

[10] Exhibit A-5 is the cited ninth cause of action of petitioners' September 2, 2016 verified complaint of their second citizen-taxpayer action (¶¶81-84 [R-115]) and its incorporated sixteenth cause of action of their March 23, 2016 verified second supplemental complaint in their first citizen-taxpayer action (¶¶458-470 [R.214-219]).

"ethics commission reform act of 2022" – the subject of petitioner's April 13, 2022 complaint (Exhibit A-1).

85. The declaration here sought is obtainable by CPLR §3001, State Finance Law §123-b and §123-e,[11] if not additionally by the certiorari relief CPLR Article 78 provides.

AS AND FOR A SEVENTH CAUSE OF ACTION
Declaring Unconstitutional, Unlawful, and Void the FY2022-23 State Budget, Enacted in Violation of Mandatory Provisions of the New York State Constitution, Statutes, Legislative Rules, and Caselaw

86. Petitioners repeat, reiterate, and reallege ¶¶1-85 herein with the same force and effect as if more fully set forth.

87. Petitioners' April 13, 2022 complaint (Exhibit A-1) – to which the NYS-IG was *cc*'d – particularized the flagrant violations of the New York State Constitution and statutory and legislative rule provisions committed by Governor HOCHUL, her complained-against Division of the Budget Director Mujica, and the SENATE and ASSEMBLY pertaining to the FY2022-23 state budget. These were furnished by: (a) SASSOWER's linked January 22, 2022 written statement in

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[11] State Finance Law §123-b entitled "Action for declaratory and equitable relief" reads, as here relevant:

> "1. Notwithstanding any inconsistent provision of law, any person, who is a citizen taxpayer, whether or not such person is or may be affected or specially aggrieved by the activity herein referred to, may maintain an action for equitable or declaratory relief, or both, against an officer or employee of the state who in the course of his or her duties has caused, is now causing, or is about to cause a wrongful expenditure, misappropriation, misapplication, or any other illegal or unconstitutional disbursement of state funds or state property…".

State Finance Law §123-e entitled "Relief by the court" reads, as here relevant:

> "1. The court may grant equitable or declaratory relief, or both, including, but not limited to: enjoining the activity complained of; restitution to the state of those public funds disbursed or public property alienated; in the case of public property wrongfully alienated, compelling payment of the full market value; a declaration that a proposed disbursement or

support of oral testimony (Exhibit A-2) and written oral testimony (Exhibit A-3) presented for the Legislature's January 25, 2022 "public protection" budget hearing; and (b) her linked March 25, 2022 e-mail sent to the 25 legislators who were present for the testimony, plus 16 others including Temporary Senate President STEWART-COUSINS and Assembly Speaker HEASTIE (Exhibit A-4), listing their specific violations subsequent to January 25, 2022, as follows:

> (1) orchestrated meetings of the 70-plus Senate and Assembly committees having NO agenda of discussion and vote on the FY2022-23 budget bills, such as amendments thereto;
>
> (2) failed to establish a budget conference committee or subcommittees to reconcile the different Senate and Assembly versions of the budget bills, as amended and voted-upon by their members, so that the amended bills could become 'law immediately without further action by the governor', consistent with New York's constitutional scheme of a rolling budget, enacted budget bill, by budget bill (Article VII, §4);
>
> (3) failed to promulgate the schedule required by Legislative Law §53, entitled 'Budget review process', and Legislative Law §54-a, entitled 'Scheduling of legislative consideration of budget bills', reinforced by §1 of Senate-Assembly Joint Rule III of its Permanent Rules, requiring, within 10 days after the governor's submission of her budget, that they promulgate, either jointly or separately, 'a schedule for the specific budget-related actions of each house' – failing even to do so after my February 16, 2022 FOIL request;
>
> (4) in violation of all legitimate legislative process, allowed eight of Governor Hochul's so-called budget bills, excepting her Legislative/Judiciary Budget Bill #S.9001/A.8001 and Debt Services Budget Bill #S.9002/A.8002, to be 'amended' by staff – *to wit*, by Assembly staff on Saturday, March 12th and by Senate staff on Sunday, March 13th – and in ways proscribed by Article VII, §4;
>
> (5) concealed the Legislature's constitutional, statutory, and legislative rule violations pertaining to the FY2022-23 budget by fraudulent and deceitful one-house budget resolutions, publicly released on Sunday, March 13th – for vote, the next day, by legislators – each resolution embodying its own set of the fraudulently 'amended' eight budget bills, plus, unamended, the Governor's Legislative/Judiciary Budget

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alienation of property would be illegal; and such other and further relief as to the court may seem just and proper."

Bill #S.9001/A.8001, retaining all the larcenies to which I alerted you by my testimony, and the unamended Debt Service Bill #S.9002/A.8002;

(6) convened a 14-member General Budget Conference Committee on March 14th, immediately following party-line passage of the one-house budget resolutions – not reconvened since because it is sham 'window-dressing';

(7) announced the appointment of ten budget conference subcommittees on March 15th, with meetings that day – the 'Public Protection/Criminal Justice/Judiciary' Budget Conference Subcommittee among them – none of which have reconvened since, because they are sham 'window-dressing';

(8) are now engaged in behind-closed-doors, 'three person in a room', budget deal-making with Governor Hochul – the flagrant unconstitutionality of which is proven by the ninth cause of action of CJA's second citizen-taxpayer action and the record thereon. Such record, summarized by my analysis of the Appellate Division, Third Department's fraudulent December 27, 2018 'memorandum and order' (at pp. 27-28), was furnished to the New York Court of Appeals by my March 26, 2019 letter in support of plaintiffs' appeal of right – and its accuracy as to that ninth cause of action and everything else is uncontested." (hyperlinking and underlining in the original).

and (c) by the April 13, 2022 complaint itself, itemizing further violations that had been committed subsequent to this March 25, 2022 e-mail, as follows (Exhibit A-1, p.3):

- no subsequent meetings of the Legislature's General Budget Conference Committee or of its ten budget conference subcommittees;

- unabated behind-closed-doors, 'three people in a room' budget deal-making between Temporary Senate President Stewart Cousins, Assembly Speaker Heastie, and Governor Hochul;

- the emergence, on April 8, 2022, of nine Senate-Assembly budget bills, 'amended' by the 'three people in the room'. Among these, the budget bill for education, labor, health, and family assistance, S.8006-C/A.9006-C, to which they had inserted Part QQ, the so-called 'ethics commission reform act of 2022';

- the rushing of the nine 'three people in the room'-'amended' budget bills to immediate legislative passage, *via* messages of necessity."

88. Had JCOPE sent 15-day letters with respect to petitioners' April 13, 2022 complaint – as it was ministerially required to have done – it would already know, from such "written response[s]" as it received, that the FY2022-23 state budget was enacted in flagrant violation of mandatory safeguarding provisions of the New York State Constitution, statutes, legislative rules, and caselaw – and that its duty was to take IMMEDIATE, EMERGENCY action to secure a declaration to that effect, so that Governor HOCHUL and the SENATE and ASSEMBLY could take prompt steps to enact a constitutionally-conforming, law-abiding state budget.

89. As stated by the Court of Appeals in *Korn v. Gulotta*, 72 N.Y.2d 363, 372-373 (1988), in unequivocal, mandatory terms:

> "A budget is a statement of the financial position of the government, for a definite period of time, based upon an estimate of proposed expenditures and anticipated revenues…The method by which public budgets are prepared is governed by the State Constitution and the applicable State statutes. The requirements contained in those documents are not particularly burdensome and permit the executive and the legislative officials considerable freedom of action in implementing governmental operations and programs and providing for the revenues to fund them. The legal requirements they contain, however, are grounded in the general principles of fiscal responsibility and the accountability that underpins the regulation of all public conduct and they must be followed." (underlining added).

90. The declaration here sought is obtainable by CPLR §3001, State Finance Law §123-b and §123-e, if not additionally by the certiorari relief CPLR Article 78 provides.

AS AND FOR A EIGHTH CAUSE OF ACTION
Declaring Unconstitutional and Larcenous Legislative/Judiciary Budget Bill S.8001-A/A.9001-A, Enacted in Violation of Mandatory Provisions of the New York State Constitution, Statutes, Legislative Rules, and Caselaw

91. Petitioners repeat, reiterate, and reallege ¶¶1-90 herein with the same force and effect as if more fully set forth.

92. Petitioners' April 13, 2022 complaint (Exhibit A-1) – to which the NYS IG was *cc*'d – particularized specific larcenies of Legislative/Judiciary Budget Bill #S.8001-A/A.9001-A – **both before and after** the unamended bill popped out from behind-closed doors, "amended" by the "three persons in a room".

93. As for the specific larcenies of Governor HOCHUL's unamended Legislative/Judiciary Budget Bill #S.8001/A.9001, they were identified by SASSOWER's linked January 22, 2022 written statement in support of testimony for the Legislature's January 25, 2022 "public protection" budget hearing (Exhibit A-2), *to wit*:

> - the scores of millions of dollars of uncertified so-called 'reappropriations' for the Legislature that were not in the Legislature's budget request – that were popped into an out-of-sequence mistitled section of Hochul's Legislative/Judiciary budget bill (at pp. 31-65, 66), which "do NOT meet the definition of 'reappropriation' in her Division of the Budget's own 'Terminology Guide'";
>
> - the scores of millions of dollars of 'reappropriations' for the Judiciary (at pp. 24-30), not part of the Judiciary's budget narrative or tables, and, in particular, the "addition of a significant number of new 'reappropriations' whose specificity makes evident that they do not meet the definition for 'reappropriation' in the Division of the Budget's 'Terminology Guide'";
>
> - the embedded pay raises for New York's judges – the product of the two "false instrument" reports: the August 29, 2011 report of the Commission on Judicial Compensation and the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation;
>
> - the embedded pay raises for legislators – the product of the "false instrument" December 10, 2018 report of the Committee on Legislative and Executive Compensation."

94. As for the specific larcenies of the "three person in the room"-amended Legislative/Judiciary Budget Bill #S.8001-A/A.9001-A , they were particularized by the April 13, 2022 complaint itself (Exhibit A-1, pp. 4-9), including, as follows:

> "all changes were to the bill's §1 (pp. 1-11), which are appropriations for the Legislature.

These changes were NOT to eliminate the fraud and larceny of the first two 'Personal Service' items for the Senate (p. 2):

> 'For payment of salaries to members, 63,
> pursuant to section five of the legislative law……6,930,000
>
> For payment of allowances to members
> designated by the temporary president,
> pursuant to the schedule of such allowances
> set forth in section 5-a of the legislative law……1,289,500'

Nor were they to eliminate the fraud and larceny of the first two 'Personal Service' items for the Assembly (p. 3):

> 'Members, 150, payment of salaries
> pursuant to section five of the legislative law..……..16,500,000
>
> For payment of allowances to members
> designated by the speaker pursuant to
> the provisions of section 5-a of the legislative law..…1,592,500'

This, notwithstanding I had pointed out, repeatedly, and for years:[fn1]

- that Legislative Law §5 and §5-a were both superseded by the December 10, 2018 report of the Committee on Legislative and Executive Compensation;

- that even were the December 10, 2018 report not the criminal fraud it was <u>proven</u> to be by CJA's July 15, 2019 analysis, the report eliminated all but 15 of the 160 Legislative Law §5-a allowances, making the $1,289,500 appropriation for Senate allowances, instead of the $185,000 it should have been, <u>a $1,104,500 larceny</u>, and making the $1,592,500 appropriation for Assembly allowances, instead of the $239,500 it should have been, <u>a $1,353,000 larceny</u>.[fn2]

"[fn1] This includes by my March 5, 2021 complaint (at pp. 2-3), referred-to and linked by my January 22, 2022 written statement for the Legislature's January 25, 2022 'public protection' budget hearing."

"[fn2] These are the <u>six allowances in the Senate, whose total cost is $185,000</u>: (1) for the Temporary Senate President ($41,500); (2) for the Deputy Majority Leader ($34,000); (3) for the Minority Leader ($34,500); (4) for the Deputy Minority Leader ($20,500); (5) for the Finance Committee Chair ($34,000); and (6) for the Finance Committee Ranking Member ($20,500). And the <u>nine allowances in the Assembly, whose total cost is $239,500</u>: (1) for the Assembly Speaker ($41,500); (2) for the Assembly Majority Leader ($34,500); (3) for the Speaker *Pro Tempore* ($25,000); (4) for the Minority Leader ($34,500); (5) for the Minority Leader *Pro Tempore* ($20,500); (6) for the Ways & Means Committee Chair

The 'three people in the room' left intact this $2,457,500 larceny in §1[fn3] – 'amending' §1 for purposes of stealing more money. Thus, they increased, by $2,467,286, appropriations for 'Personal service-regular' and added a $2,000,000 appropriation for a 'COMMISSION ON LONG ISLAND POWER AUTHORITY', 'pursuant to section 83-n of the legislative law'. The specifics are as follows:

…

As for the unmarked $2,467,286 increases in §1 for Senate and Assembly 'personal service', they are outright larcenies – not the least reason because §4 of the original bill already gave the Legislature scores of millions of dollars of supposed 'reappropriations'. With the exception of the 'amended' bill's increase of $3,045 for the Office of Lieutenant Governor and the appropriation of $2,000,000 for an apparently new Commission on Long Island Power Authority, ALL the other §1 increases in the 'amended' bill are to units within the Legislature to which §4 of the original bill 'reappropriated' a huge stockpile of 'personal service' monies – all retained in the 'amended' bill.

Illustrative is the increase of $4,180 in appropriations for 'personal service-regular' for the Legislative Ethics Commission, notwithstanding the original bill listed the following 'reappropriations' for it (pp. 37-41):

…

My December 17, 2021 complaint against legislators and legislative employees pertaining to the Legislative Ethics Commission identified (at p. 4) that:

> 'LEC is one of the vehicles through which, year after year, the Legislature steals taxpayer monies *via* legislative 'reappropriations', contained in an out-of-sequence mistitled section at the back of the legislative/judiciary bills'.

The complaint's IV (at pp. 12-13) set forth the particulars of past years, both as to appropriations for the Legislative Ethics Commission and its 'reappropriations', under the title heading: 'Legislators and Legislative Employees Have Permitted LEC's Annual Reports to Omit all Information about the LEC Budget, thereby Concealing that It is Rigged and a Vehicle for Legislative Larceny'.[fn4]

Not until January 18, 2022 did Governor Hochul introduce the FY2022-23 legislative/judiciary budget bill – and my March 17, 2022 e-mail updated you about it, stating that it contained, in addition to the LEC's uncertified budget, 'scores of thousands of dollars in fraudulent supposed LEC 'reappropriations' (at pp. 37-41)', which the March 14, 2022 one-house Senate and Assembly budget resolutions had

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($34,000); (7) for the Ways & Means Committee Ranking Member ($20,500); (8) for the Codes Committee Chair ($18,000); (9) for the Codes Committee Ranking Member ($11,000)."

"[fn3] Likewise, they left intact the comparable larceny in §4, 'reappropriating' such allowances from 2021, 2020, and 2019 (at pp. 32-33, 35-36)."

maintained intact.

> I now hereby formally supplement my December 17, 2021 complaint to so-include – and to encompass the further larceny and fraud committed by the April 8, 2022 "amended" Legislative/Judiciary Budget Bill S.8001-A/A.9001-A – the handiwork of the "three people in the room". (underlining and hyperlinking in the original).

95. Had JCOPE sent 15-day letters for petitioners' April 13, 2022 complaint – as it was ministerially required to have done – it would already know, from such "written response[s]" as it received, that the larcenies petitioners had specified were just that – and that its duty was to take IMMEDIATE, EMERGENCY action to secure a declaration to that effect and enjoin disbursements of the appropriations and reappropriations of Legislative/Judiciary Budget Bill #S.8001-A/A.9001-A accordingly.

96. The declaration here sought is obtainable by CPLR §3001, State Finance Law §123-b and §123-e, if not additionally by the certiorari relief CPLR Article 78 provides.

AS AND FOR A NINTH CAUSE OF ACTION
Declaring Unconstitutional, Larcenous, and Void the FY2022-23 Appropriations for the New York State Commission on Judicial Conduct, the New York State Inspector General, the Appellate Division Attorney Grievance Committees, and the Unified Court System's Inspector General – Based on the Evidence of their Flagrant Corruption in Handling Complaints, Furnished by Petitioners at the Legislature's January 25, 2022 "Public Protection" Budget Hearing and Again by their March 25, 2022 E-Mail

97. Petitioners repeat, reiterate, and reallege ¶¶1-96 herein with the same force and effect as if more fully set forth.

98. At the SENATE and ASSEMBLY's January 25, 2022 "public protection" budget hearing (Exhibit A-3), SASSOWER stated that "the unconstitutionality, fraud, and larceny of the state budget have been enabled and perpetuated by New York's corrupt 'public protection' entities, funded in the budget'". She specified, as "a prime example", the Commission on Judicial Conduct – and additionally cited "the Judiciary's attorney grievance committees, the Judiciary's Inspector General, the

Joint Commission on Public Ethics, the Legislative Ethics Commission, and the State Inspector General." In substantiation, she furnished the evidence: the record of the many complaints she had filed with these entities, concerning the budget – and the pay raises – accessible from what she identified as a specially-created webpage of CJA's website, for which she supplied the link.

99. In the absence of response, SASSOWER furnished the evidence again by her March 25, 2022 e-mail to the 25 legislators who had been present for her testimony on January 25, 2022, plus 16 more, including all in leadership, most importantly, Temporary Senate President STEWART-COUSINS and Assembly Speaker HEASTIE (Exhibit A-4).

100. There was no response – reflective that they could not respond, without conceding the truth of SASSOWER's evidentiary presentations that all these "public protection" ethics entities are corrupt facades – and not because of inadequacies in the laws pertaining to them, but because those who run them flagrantly disregard conflict of interest rules and violate their duties.

101. In enacted State Operations Budget Bill #S.9000-E/A.8000-E, the appropriations for the Commission on Judicial Conduct (p. 498) are $7,189.000; the appropriations for the State Inspector General (p. 494) are $8,189,000. No appropriations were made for JCOPE, but, rather for CELG (p. 224) in the amount of $7,594,000 – which are available to JCOPE's continuing operations, so-identified at JCOPE's May 24, 2020 meeting.[12]

102. In enacted Legislative/Judiciary Budget Bill #S.9001-A/A.8001-A, there is no line item for the Appellate Division's "Attorney Discipline Program" which "provides funding to support the Attorney Grievance Committees and attorney disciplinary proceedings". The Judiciary's FY2022-23 budget identifies the appropriations (pp. 122-124) to be: $16,711,146. There is no line item for the Unified Court System's Inspector General, whose funding the Judiciary's budget never identifies.

[12] The State Operations Budget Bill (at p. 558) also appropriates $1,750,000 for the newly-established, yet to be fully appointed and operational Commission on Prosecutorial Conduct – which, in pertinent part, was modeled after the Commission on Judicial Conduct.

103. It is unconstitutional – and a larceny of taxpayer monies – for taxpayers to fund ethics entities which are NOT doing the job for which they are paid – and which these entities conceal by false pretenses, including in support of their funding requests – as, for example, Commission on Judicial Conduct Administrator/Counsel Robert Tembeckjian, in testifying, as the second witness, at the Legislature's January 25, 2022 "public protection" budget hearing, and Chief Administrative Judge Lawrence Marks, testifying as the first witness, and, as usual, touting Chief Judge DiFiore's "Excellence Initiative".

104. The Senate and Assembly by their leadership, members, and pertinent committees – the Senate Committee on Ethics and Internal Governance, the Assembly Committee on Ethics and Guidance, the Senate Committee on Investigations and Government Operations, the Assembly Committee on Governmental Operations, the Assembly Committee on Oversight, Analysis, and Investigation, the Senate and Assembly Judiciary Committees, the Senate and Assembly Committees on Corporations, Authorities, and Commissions, the Senate and Assembly Codes Committees – have long been knowledgeable that the New York State system of ethics oversight and enforcement is sham window-dressing, but have either refused to engage in any examination of the problem, at all – or in any examination that is not rigged, as was the case with the two Senate hearings in 2021, staged by Senate Ethics and Internal Governance Chair Alessandra Biaggi and Senate Finance Committee Chair Liz Krueger, at which petitioners were not permitted to testify (Exhibits L-1, L-2, L-3, L-4, L-5, L-6) and whose December 17, 2021 report on the first hearing, thus far its only report, omitted petitioners' written statement in support of testimony (Exhibit L-1) and written testimony (Exhibit L-2), because, as evident therefrom, they were dispositive and devastating.

105. The declaration here sought is obtainable by CPLR §3001, State Finance Law §123-b and §123-e, if not additionally by the certiorari relief CPLR Article 78 provides.

AS AND FOR A TENTH CAUSE OF ACTION
Declaring Unconstitutional, *as Written and as Applied*, Public Officers Law §108.2(b) – Violating Article III, §10 of the New York State Constitution & Legislative Rules Consistent Therewith – by Exempting the Legislature from the Open Meetings Law to Enable it to Discuss "Public Business" in Closed-Door Party Conferences – Rather than Openly in Committees and on the Senate and Assembly Floor

106. Petitioners repeat, reiterate, and reallege ¶¶1-105 herein with the same force and effect as if more fully set forth.

107. In petitioners' March 25, 2022 e-mail to 41 legislators (Exhibit A-4) – evidentiarily substantiating their April 13, 2022 complaint – SASSOWER stated:

> "As I believe that neither the Senate Finance Committee, nor the Assembly Ways and Means Committee, nor the Senate Committee on Budget and Revenues discussed Governor Hochul's purported FY2022-23 budget bills at committee meetings – nor any other Senate or Assembly Committees – I assume you discussed my testimony about the fraudulent introduction of the Governor's 'Article VII' legislation as budget bills at **the Senate and Assembly majority and minority conferences, which, in violation of Article III, §10 of the New York State Constitution, you hold behind closed doors**. If not, I request that you do so, IMMEDIATELY. My testimony is above-attached and linked here and here." (capitalization and hyperlinking in the original, bold added).

108. Article III, §10 of the New York State Constitution reads, in pertinent part:

> "Each house of the legislature shall keep a journal of its proceedings, and publish the same, except such parts as may require secrecy. The doors of each house shall be kept open, except when the public welfare shall require secrecy."

109. In flagrant violation of Article III, §10 – and legislative rules pursuant thereto: Senate Rule X, §1 ("Open doors. The doors of the Senate shall be kept open"), Senate Rule VII, §2 ("Open Meetings of Standing Committees"), Assembly Rule II, §1 ("A daily stenographic record of the proceedings of the House shall be made and copies thereof shall be available to the public"), Assembly Rule IV, §2(d) ("All standing committee meetings shall be open to representatives of the news media and general public") – the SENATE and ASSEMBLY engage in behind-closed-doors

majority and minority conferences to discuss "public business" – such as the state budget, legislation, and oversight issues – and do so, so as to NOT publicly discuss and debate them at committee meetings and on the Senate and Assembly floor, or, if so, only in a perfunctory, grand-standing way.

110. Upon information and belief, the SOLE justification of the SENATE and ASSEMBLY for excluding the public from their behind-closed-doors discussion of "public business" in their majority and minority conferences is Public Officers Law §108.

111. Entitled "Exemptions", Public Officers Law §108 is part of Article VII "The Open Meetings Law" and reads, in pertinent part:

> "Nothing contained in this article shall be construed as extending the provisions hereof to… 2. a. deliberations of political committees, conferences and caucuses. b. for purposes of this section, the deliberations of political committees, conferences and caucuses means a private meeting of members of the senate or assembly of the state of New York, or of the legislative body of a county, city, town or village, who are members or adherents of the same political party, without regard to (i) the subject matter under discussion, including <u>discussions of public business</u>, (ii) the majority or minority status of such political committees, conferences and caucuses or (iii) whether such political committees, conferences and caucuses invite staff or guests to participate in their deliberations". (underlining added).

112. Such statutory provision – Public Officers Law §108.2(b) – as relates to the SENATE and ASSEMBLY, is flagrantly unconstitutional, *as written* , as NO statutory provision can override a constitutional provision. The openness of SENATE and ASSEMBLY proceedings is mandated by Article III, §10 of the New York State Constitution and does not rest on or depend on anything "contained" in the Open Meetings Law article.

113. Upon information and belief, Public Officers Law §108 was enacted without ANY discussion of, let alone citation to, Article III, §10 of the New York State Constitution – and without ANY legitimate legislative process. The facts pertaining thereto are set forth by petitioners' March 9, 2017 e-mail to the Committee on Open Government's then executive director in support of a

request for an advisory opinion as to the constitutionality of Public Officers Law §108.2(b) as pertains to the legislature (Exhibit M-1); was reiterated by petitioners' September 16, 2019 e-mail to the Committee on Open Government's assistant director (Exhibit M-2); and, thereafter, by petitioners' January 13, 2020 e-mail to its new and still current executive director (Exhibit M-4). None denied or disputed the facts, law, and legal argument therein presented as to the unconstitutionality of Public Officers Law §108, *as written* or *as applied* (Exhibit M-3, Exhibit M-5).

114. Petitioners' presentation of facts, law, and legal argument is true and correct – and dispositive of their entitlement to the declaratory relief herein sought pursuant to CPLR §3001 – and, all the more so, as the challenge to Public Officers Law §108, *as written* and *as applied*, in petitioners' second citizen-taxpayer action, as part of its fifth cause of action, was completely ignored both by the respondents therein and the court, because, as was obvious, they had NO defense to it.[13]

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[13] The fifth cause of action of the September 2, 2016 verified complaint in petitioners' second citizen-taxpayer action rested on the twelfth cause of action of their March 23, 2016 second supplemental complaint in their first citizen-taxpayer action, which identified at (¶¶364-365) [R-178-179] that not only are the one-house budget resolutions "the product of the closed-door majority political conferences of each house" and additionally unconstitutional by reason thereof, but that such conferences are a standard feature of how the legislature operates and key to its dysfunction, quoting the 2010 Pace Law Review article "*Albany's Dysfunction Denies Due Process*" (Vol 30, p. 965).

Seemingly unaware of Article III, §10 of the New York State Constitution, among other flagrant legislative violations, the article stated: "the court should declare unconstitutional the provision of the Open Meetings law that allows for the discussion of public business in the privacy of legislative political conferences" (at p. 992), describing the situation as follows:

> "the fundamental problem with New York's legislative process is the domination by majority leadership.[fn] Such domination requires both committees and chamber consideration to be moribund, but leaders need some forum for communicating with members. This is the purpose of the closed, unrecorded, political conferences, most importantly those held by the majority party, which are typically led by the chamber leader. It is in these conferences—and only in these conferences—that bills are presented, discussed in earnest, and voted on. Without a majority vote of the majority party, no bill goes to the floor for final consideration. Conversely, virtually every bill that goes to the floor is passed.[fn] The conferences' privacy is

PRAYER FOR RELIEF

WHEREFORE, petitioners seek mandamus and declarations as follows:

1. As to the first cause of action, directing that the Joint Commission on Public Ethics comply with Executive Law §§94.13(a) and (b) with respect to petitioners' seven complaints – starting with the ministerial act of 15-day letters;

2. As to the second cause of action, directing that the Joint Commission on Public Ethics comply with Executive Law §94.9(l)(i) mandating that its annual reports contain "a listing by assigned number of each complaint and referral received which alleged a possible violation within its jurisdiction, including the current status of each complaint" – starting with its upcoming annual report for 2021 and such annual report as it will be rendering for 2022;

3. As to the third cause of action, directing that Temporary Senate President Andrea Stewart-Cousins and Assembly Speaker Carl Heastie comply with Legislative Law §80.1 and §80.4 mandating their joint appointment of the Legislative Ethics Commission's ninth member – this being the non-legislative member that makes non-legislators its majority;

4. As to the fourth cause of action, directing that the Legislative Ethics Commission comply with Legislative Law §80.7(l) pertaining to its annual reports — starting with rendering annual reports for 2020 and 2021;

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to cover the fact that the discussions concern the politics of bills and not their substance…." (at pp. 997-998).

5. As to the fifth cause of action, directing that the New York State Inspector General comply with the mandates of Executive Law Article 4-A and its own Policy and Procedure Manual, violated with respect to petitioners' November 2, 2021 complaint – and declaring the provision of the Policy and Procedure Manual that allows the Inspector General to take "no action" on complaints involving "covered agencies" to be violative of Executive Law §53.1 and void;

6. As to the sixth cause of action, declaring unconstitutional, unlawful, and void Part QQ of Education, Labor, Housing, and Family Assistance Budget Bill #S.8006-C/A.9006-C – the "ethics commission reform act of 2022" – enacted in violation of mandatory provisions of the New York State Constitution, statutes, and legislative rules, and caselaw;

7. As to the seventh cause of action, declaring unconstitutional, unlawful, and void the FY2022-23 New York state budget, enacted in violation of mandatory provisions of the New York State Constitution, statutes, legislative rules, and caselaw;

8. As to the eighth cause of action, declaring unconstitutional, unlawful, larcenous, and void Legislative/Judiciary Budget Bill #S.8001-A/A.9001-A, enacted in violation of mandatory provisions of the New York State Constitution, statutes, legislative rules, and caselaw;

9. As to the ninth cause of action, declaring unconstitutional, larcenous, and void the FY2022-23 appropriations for the New York State Commission on Judicial Conduct, the New York State Inspector General, the Appellate Division attorney grievance committees, and the Unified Court System's Inspector General and – based on the evidence of their flagrant corruption in handling complaints, furnished by petitioners at the Legislature's January 25, 2022 "public protection" budget hearing and again by their March 25, 2022 e-mail;

10. As to the tenth cause of action, declaring unconstitutional, *as written and as applied*, Public Officers Law §108.2(b), violating Article III, §10 of the New York State Constitution and legislative rules consistent therewith, by exempting the Legislature from the Open Meetings Law to enable it to discuss "public business" in closed-door party conferences, rather than openly in committees and on the Senate and Assembly floor;

11. Such other and further relief as may be just and proper, and specifically:

i. referring respondents to the Public Integrity Section of the U.S. Department of Justice's Criminal Division for investigation and prosecution of their public corruption, obliterating constitutional, lawful governance and stealing taxpayer monies, documentarily-established by petitioners' interrelated complaints to the New York State Joint Commission on Public Ethics, to the Legislative Ethics Commission, to the New York State Inspector General, to the New York State Commission on Judicial Conduct, to the Appellate Division attorney grievance committees, and to the Unified Court System's Inspector General, among other ethics oversight and enforcement entities;

ii. $100 motion costs to respondent-appellants pursuant to CPLR §8202.

ELENA RUTH SASSOWER

Sworn to before me this
6th day of June 2022
(78th anniversary of D-Day)

Notary Public

Bridget A. Degnan
Notary Public, State of New York
No. 04DE6246735
Qualified in Westchester County
Commission Expires August 15, 2023

VERIFICATION

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss:

I am the individual petitioner/plaintiff in the within Article 78 proceeding/declaratory judgment/citizen-taxpayer action, and director of the corporate petitioner/plaintiff, CENTER FOR JUDICIAL ACCOUNTABILITY, INC. I have written the annexed verified petition/complaint and attest that same is true and correct of my own knowledge, information, and belief, and as to matters stated upon information and belief, I believe them to be true.

ELENA RUTH SASSOWER

Sworn to before me this
6th day of June 2022
(78th anniversary of D-Day)

Notary Public

Bridget A. Degnan
Notary Public, State of New York
No. 04DE6246735
Qualified in Westchester County
Commission Expires August 15, 2023

TABLE OF EXHIBITS

Exhibit A-1: Petitioners' April 13, 2022 complaint to JCOPE – *cc* to NYS-IG

Exhibit A-2: (linked) Petitioners' January 22, 2022 written statement in support of oral testimony at the Legislature's January 25, 2022 "public protection" budget hearing

Exhibit A-3: (linked) Petitioners' January 25, 2022 (written) oral testimony at the Legislature's January 25, 2022 "public protection" budget hearing

Exhibit A-4: (linked) Petitioners' March 5, 2022 e-mail to legislators – "NYS BUDGET: What findings of fact & conclusions of law did you make regarding my testimony at the Jan 25, 2022 'public protection' budget hearing?"

Exhibit A-5: (linked) Petitioners' March 18, 2020 letter to Governor Cuomo, etc., with its annexed August 21, 2013 letter to Governor Cuomo, etc.

Exhibit A-6: (linked) Petitioners' ninth cause of action of their 2nd citizen-taxpayer action with its incorporated sixteenth cause of action of their 1st citizen-taxpayer action

Exhibit B: Petitioners' December 17, 2021 complaint to JCOPE – *cc* to NYS-IG

Exhibit C: Petitioners' November 24, 2021 complaint to JCOPE
with its enclosure:
Petitioners' November 24, 2021 complaint
to NYS Commission on Judicial Conduct

Exhibit D-1: Petitioners' March 5, 2021 complaint to JCOPE
with its enclosures:
Ex. A: Petitioners' June 4, 2020 grand jury/public corruption complaint to Albany County District Attorney Soares;
Ex. B: Petitioners' June 13, 2020 grand jury/public corruption complaint to Montgomery County District Attorney McCoski;
Ex. C-1: D.A. Soares' June 27, 2020 letter;
Ex. C-2: D.A. McCoski's August 20, 2020 letter

Exhibit D-2: (linked) Petitioners' February 11, 2021 complaint against AG James, etc. to Appellate Division attorney disciplinary committees

Exhibit D-3: (linked) Petitioners' February 7, 2021 complaint
to New York State Commission on Judicial Conduct

Exhibit E: Petitioners' August 31, 2020 complaint to JCOPE

Exhibit F: Petitioners' December 11, 2014 complaint to JCOPE
with its enclosures:
Ex. A: Petitioners' July 11, 2014 letter to the "three men in the room"
(attachments omitted)
Ex. B: Petitioners' July 18, 2014 letter to JCOPE
Ex. C: NYC Bar Association's July 9, 2014 letter
to Governor Cuomo & Legislative Leaders

Exhibit G: Petitioner's June 27, 2013 complaint to JCOPE
with its enclosure:
Petitioners' April 15, 2013 public corruption complaint
to SDNY U.S. Attorney Preet Bharara

Exhibit H: Petitioners' July 11, 2013 complaint to NYS-IG
constituting two interrelated complaints against "covered agencies"

Exhibit I: Petitioners' November 2, 2021 complaint to NYS-IG Lang
"ENABLING YOU TO FAITHFULLY DISCHARGE THE DUTIES
OF YOUR OFFICE", constituting six interrelated complaints against
"covered agencies"

Exhibit J: Petitioners' May 6, 2022 e-mail to JCOPE – *cc* to NYS IG
"Setting the record straight on Executive Law §94 – as to JCOPE & CELG –
& taking the emergency correcti[ve] action with respect thereto warranted by
CJA's April 13, 2022 complaint (#22-052)"

Exhibit K: Petitioners' May 16, 2022 letter to NYS-IG Lang – *cc* to JCOPE
"(1) Accounting for, and rectifying, your Office's flagrant violations
of its 'Policy and Procedure Manual' and Executive Law Article 4-A
with regard to CJA's Nov. 2, 2021 complaint vs JCOPE, etc.;
(2) Confirmation that you will not have jurisdiction over CELG,
pursuant to the newly-enacted Executive Law §94, in contrast to
your jurisdiction over JCOPE, pursuant to the current Executive Law §94"

Exhibit L-1: Petitioners' July 9, 2021 written statement in support of oral testimony at the July 12, 2021 Senate hearing on "New York State's System of Ethics Oversight and Enforcement"

Exhibit L-2: Petitioners' July 12, 2021 written testimony in lieu of oral testimony

Exhibit L-3: Petitioners' November 8, 2021 e-mail requesting to testify at the December 9, 2021 Senate hearing on "New York State's System of Ethics Oversight and Enforcement"

Exhibit L-4: Petitioners' November 15, 2021 e-mail requesting to testify at the December 9, 2021 Senate hearing

Exhibit L-5: Petitioners' November 30, 2021 e-mail requesting to testify at the December 9, 2021 Senate hearing

Exhibit L-6: December 9, 2021 e-mail from Senate Committee on Ethics & Internal Governance Chair Biaggi's Chief of Staff

Exhibit M-1: Petitioners' March 9, 2017 e-mail to Committee on Open Government

Exhibit M-2: Petitioners' Sept. 16, 2019 e-mail to Committee on Open Government

Exhibit M-3: Assistant Director's September 30, 2019 e-mail

Exhibit M-4: Petitioners' January 13, 2020 e-mail to Committee on Open Government

Exhibit M-5: Executive Director's February 12, 2020 e-mail