

Sep 2, 2016 verified complaint  
CIA v. Cuomo... DiFiore (Citizen-Taxpayer  
action #2)

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

~~76. Plaintiffs' showing is set forth by the incorporated Exhibit A: ¶¶445-452. It is accurate, true, and correct in all material respects.~~



AS AND FOR AN EIGHTH CAUSE OF ACTION

**The Commission's Violations of Express Statutory Requirements  
of Chapter 60, Part E, of the Laws of 2015 Renders its Judicial Salary  
Increase Recommendations Null and Void**

77. Plaintiffs repeat, reiterate, and reallege ¶¶ 1-76 herein with the same force and effect as if more fully set forth.

78. Plaintiffs' eighth cause of action herein is the fifteenth cause of action of their March 23, 2016 verified second supplemental complaint in their prior citizen-taxpayer action, Exhibit A: ¶¶453-457. It is accurate, true, and correct in all material respects.

79. A further "appropriate factor" that the Commission failed to "take into account", in violation of §2, ¶3 of the Commission statute, is the statutory link between judicial salaries and district attorneys, plainly impacting upon "the state's ability to fund increases in compensation and non-salary benefits" – one of the six factors enumerated by §2, ¶3 of the Commission statute.

80. The Commission's disregard of this "appropriate factor" for its consideration was not inadvertent. Plaintiffs' advocacy alerted the Commissioners to the statutory link between judicial salaries and district attorney salaries and its financial impact to the state.<sup>3</sup>

<sup>3</sup> Plaintiffs' October 27, 2011 opposition report (at p. 24); the video of plaintiff Sassower's testimony before the Legislature at its February 6, 2013 "public protection" budget hearing, accessible from the links plaintiffs furnished.

March 23, 2016 verified second supplemental complaint  
CNA v Cuomo... (Citizen-Taxpayer action #1)

~~452. The Commission's failure to meaningfully elicit citizen input – and to address the citizen opposition to judicial salary increases and its basis that it had before it – renders its December 24, 2015 Report unconstitutional, as a matter of law.<sup>35</sup>~~



**AS AND FOR A FIFTEENTH CAUSE OF ACTION**

**The Commission's Violation of Express Statutory Requirements of Chapter 60, Part E, of the Laws of 2015 Renders their Judicial Salary Increase Recommendations Null & Void**

453. Plaintiffs repeat, reiterate, and reallege ¶¶1-452, with the same force and effect as if more fully set forth herein.

454. The Commission on Legislative, Judicial and Executive Compensation violated Chapter 60, Part E, of the Laws of 2015 in multiple respects:

(i) in violation of §2, ¶¶1, 2(a), the Commission examined only judicial salary, not “compensation” apart from salary, and not “non-salary benefits”;

(ii) in violation of §2, ¶¶1, 2(a), the Commission made no finding and furnished no evidence that current “compensation and non-salary benefits” or “pay levels and non-salary benefits” of New York State judges are inadequate;

(iii) in violation of §2, ¶3, the Commission did not “take into account all appropriate factors”, such as systemic judicial corruption and citizen opposition – and made no claim that it had;

(iv) in violation of §2, ¶3, the Commission did not “take into account three of the six enumerated “appropriate factors”.

455. Each of these statutory violations is particularized by plaintiffs' 12-page “Statement of Particulars in Further Support of Legislative Override of the ‘Force of Law’ Judicial Salary Increase Recommendations, Repeal of the Commission Statute, Etc.” (Exhibit 40), which plaintiffs January 15, 2015 letter to defendants FLANAGAN and HEASTIE furnished those defendants and

<sup>35</sup> “It is basic that an ‘act of the legislature is the voice of the People speaking through their representatives. The authority of the representatives in the legislature is a delegated authority and it is wholly derived from and dependent upon the Constitution’ (*Matter of Sherrill v O'Brien*, 188 NY 185, 199).”, *New York State Bankers Association, Inc. v. Wetzler*, 91 N.Y.2d 98, 102 (1993) (underlining added).

the chairs and ranking members of the Legislature’s “appropriate committees” (Exhibit 39). Individually and collectively, these statutory violations are sufficient to void the judicial salary increase recommendations of its December 24, 2015 Report, *as a matter of law*.

456. The Commission’s foregoing statutory violations do not exhaust all its statutory violations which additionally include:

(i) in violation of §2, ¶1, the Commission was not “established” “commencing June 1, 2015”. Instead, the Commission’s four appointing authorities delayed their appointments, with defendant Cuomo’s appointments not until almost four months later, October 30, 2015. The result was that the Commission did not have the statutorily-contemplated six months to discharge its duties with respect to “judges and justices of the state-paid courts of the unified court system”. Instead, it had but two months, further reduced by the holiday season;

(ii) in violation of §3, ¶2, requiring that the Commission be “governed by articles 6, 6-A and 7 of the public officers law”, it failed to furnish records it was duty-bound to disclose under Public Officers Law, Article VI [Freedom of Information Law [FOIL] (see accompanying folder);

(iii) in violation of §3, ¶¶2, 5, and 6, the Commission did not utilize the significant investigative powers and resources available to it to discharge its statutory-mandate.

457. Underlying all these statutory violations was the Commissioners’ bias and interest in securing the predetermined result of increasing judicial salary levels, additionally rendering its Report and recommendations unconstitutional, *as applied*.