March 30, 2012 Verified Complaint
CJA v Cuomo... Lippman Declaratory Judgment Action

152. Chapter 567 of the Laws of 2010 is not sufficiently-defined and provides insufficient guidance to the Commission as to the "appropriate factors" for it to consider. The statute requires the Commission to "take into account all appropriate factors, including but not limited to" six listed factors. These six listed factors are all economic and financial – and are completely untethered to any consideration as to whether the judges whose salaries are being evaluated are discharging their constitutional duty to render fair and impartial justice and afford the People their due process and equal protection rights under Article I.

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

154. The absence of such explicit factor to guide the Commission renders the statute unconstitutional, *as written*.

AS AND FOR A THIRD CAUSE OF ACTION
Chapter 567 of the Laws of 2010 is Unconstitutional, *as Applied*

155. Plaintiffs repeat, reiterate, and reallege paragraphs 1-154, with the same force and effect as if more fully set forth herein.

156. The Commissioners' willful disregard of the three threshold issues that plaintiffs identified by their August 8, 2011 and August 17, 2011 letters (Op-Report/Ex.I, Ex. J-1) as barring their consideration of judicial pay raises suffice to render their pay raise recommendations void *ab initio* – and Chapter 567 of the Laws of 2010 unconstitutional, *as applied*.

157. Each of these three threshold issues, individually, is sufficient to void the Report, on constitutional grounds.

A. As for the First Threshold Issue: Chairman Thompson's Disqualifying Self-Interest

158. The facts giving rise to Chairman Thompson's disqualification for interest – his father's pivotal role in systemic judicial corruption, involving appellate and supervisory levels and the Commission on Judicial Conduct – are particularized by plaintiffs' June 23, 2011 letter (Op-Report/Ex.B) and substantiated by the four lawsuits summarized by Plaintiff SASSOWER's December 16, 2001 draft written statement (Op-Report/Ex.F-2). Among these, plaintiff SASSOWER's lawsuit against the Commission on Judicial Conduct and Doris Sassower's lawsuit against the Commission on Judicial Conduct, each appending facially-meritorious, documented judicial misconduct complaints against Chairman Thompson's father, dismissed by the Commission, without investigation

159. Chairman Thompson's failure and refusal to rule upon the issue of his disqualification for interest, the failure and refusal of his fellow Commissioners to rule upon it, and the concealment of the very issue from the Commission's Report concedes Chairman Thompson's disqualification for interest, *as a matter of law* – and renders the Report a nullity. [See ¶97, *supra*].

160. Moreover, the Commissioners' failure to rule upon the facts giving rise to Chairman Thompson's disqualification, *to wit*, systemic judicial corruption, embracing appellate and supervisory levels and the Commission on Judicial Conduct, while not denying or disputing that these are "appropriate factors" and a constitutional bar to judicial pay raises, reinforces how completely the Commission was willing to subordinate its statutory mandate to Chairman Thompson's disqualifying self-interest.

B. As for the Second Threshold Issue: Systemic Judicial Corruption is an "Appropriate Factor" Having Constitutional Magnitude

161. Plaintiffs' constitutional analysis that systemic judicial corruption, infecting appellate and supervisory levels and the Commission on Judicial Conduct is an "appropriate factor" for the Commission's consideration, was set forth by their August 8 2011 letter (Op-Report/Ex.I) and is quoted at ¶98, *supra*. Its accuracy is reinforced by plaintiffs' further analysis of defendant UNIFIED COURT SYSTEM's memorandum of constitutional considerations, presented by their August 23, 2011 letter (Op-Report/Ex.K-1).

162. The Commissioners' failure to deny or dispute same – and their concealment of the very issue by their Report concedes it, *as a matter of law*.

C. As for the Third Threshold Issue: The Fraud and Lack of Evidence Put Forward by Judicial Pay Raise Advocates

163. Plaintiff SASSOWER's testimony before the Commission at its one and only public hearing, on July 20, 2011, alerted it to the fraud and lack of evidence in the claims of witnesses testifying in favor of judicial pay raises. Rather than afford plaintiff SASSOWER the opportunity to elaborate, even briefly, as to the "20 frauds" she stated she had listed, the Commission cut her off.

164. Plaintiff SASSOWER sufficed to identify that the judicial pay raise advocates had not furnished any evidence as to the supposed "quality" and "excellence" of New York's judges, contrasting it to the opponents of judicial pay raises who could documentarily prove the lawlessness and corruption of New York's judiciary, disentitling it to any pay raises. She herself provided such documentary proof to substantiate her assertions that the judiciary has a *modus operandi* of fraudulent judicial decisions, specifying the decisions, including of the Court of Appeals, in the three lawsuits against the Commission, *verifiable* from the two final motions in her lawsuit against the Commission, and, additionally, the Court of Appeals' February 23, 2010 decision in the judges' pay

raise lawsuits, *verifiable* from plaintiffs' July 19, 2011 letter to defendant SCHNEIDERMAN (Exhibit J).

165. The Commission has not denied or disputed the significance of the evidence plaintiff SASSOWER furnished at the July 20, 2011 hearing – nor of her subsequent correspondence, laying out the succession of other frauds put forward by judicial pay raise advocates. This includes their material concealments as to the following:

> (a) that New York's state-paid judges are not civil-service government employees, but constitutional officers of New York's judicial branch;
>
> (b) that the salaries of all New York's constitutional officers have remained unchanged since 1999 – the Governor, Lieutenant Governor, Attorney General, and Comptroller, who are the constitutional officers of our executive branch – and the 62 Senators and 150 Assembly members who are the constitutional officers of our legislative branch;
>
> (c) that the compensation of New York's judicial constitutional officers is comparable, if not superior, to the compensation of New York's executive and legislative constitutional officers, with the judges enjoying incomparably superior job security;
>
> (d) that New York's executive and legislative constitutional officers have also suffered the ravages of inflation, could also be earning exponentially more in the private sector; and also are earning less than some of their government-paid staff and the government employees reporting to them;
>
> (e) that as a co-equal branch, the same standards should attach to pay increases for judges as increases for legislators and executive branch officials – *to wit*, deficiencies in their job performance and governance do not merit pay raises;
>
> (f) that outside the metropolitan New York City area, salaries drop, often markedly – as reflected by the county-by-county statistics of what New York lawyers earn – and there is no basis for judges in most of New York's 62 counties to be complaining as if they have suffered metropolitan New York City cost-of-living increases, when they have not, or to receive higher salaries, as if they have;
>
> (g) that New York judges enjoy significant "non-salary benefits";
>
> (h) that throughout the past 12 years of "stagnant" pay, New York judges have overwhelmingly sought re-election and re-appointment upon expiration of their terms – and there is no shortage of qualified lawyers eager to fill vacancies;

(i) that the median household income of New York's 19+ million people is $45,343 – less than one-third the salary of New York Supreme Court justices.

166. The Commissioners' failure to deny or dispute plaintiffs' showing – and to even identify that plaintiffs had asserted that the claims of judicial pay advocates were fraudulent and lacked evidence – concedes it, *as a matter of law*.

AS AND FOR A FOURTH CAUSE OF ACTION
The Commission's Judicial Pay Raise Recommendations are Statutorily Violative

167. Plaintiffs repeat, reiterate, and reallege paragraphs 1-166, with the same force and effect as if more fully set forth herein.

168. As particularized by plaintiffs' Opposition Report, the Commission's judicial pay raise recommendations are statutorily violative in multiple respects.

169. Each of these violations of these statutory violations are sufficient to void the judicial pay raise recommendations.

(i) ***In violation of the Commission statute***, the Commission's judicial pay raise recommendations are unsupported by any finding that current "pay levels and non-salary benefits" of New York State judges are inadequate (Op. Report, at pp. 1, 16, 31);

(ii) ***In violation of the Commission statute***, the Commission examines only judicial salary, not "compensation and non-salary benefits" (Op. Report, at pp. 18-21, 25-31);

(iii) ***In violation of the Commission statute***, the Commission does not consider "all appropriate factors" – a violation it attempts to conceal by transmogrifying the statutory language "all appropriate factors" to "a variety of factors" (Op. Report, at pp. 4-5, 21), thereby failing to even identify "appropriate factors";

(iv) ***In violation of the Commission statute***, the Commission makes no findings as to five of the six statutorily-listed "appropriate factors" it is required to consider (Op. Report, at pp. 21, 23-24);

170. The failure of the Commission's Report to identify citizen opposition to judicial pay

raises – and the basis thereof – let alone to identify that citizen opposition is an "appropriate factor" for its consideration is a further ground upon which the Report and pay raise recommendations violate the statute, *as applied*. This citizen opposition included those protesting the dire financial state of the State and the cuts made to essential governmental services and the firing of thousands of state workers, including hundreds of court employees, to save money.

171. Although the statute, *as written*, confers significant investigative powers upon the Commission and resources to enable it to examine "all appropriate factors", the Commission's near-total failure to have utilized such powers and resources is an additional ground upon which its Report and recommendations are statutorily violative, *as applied*.

172. Underlying all these violations is the Commissioners' bias and interest in securing the predetermined result of raising judicial salaries, additionally rendering its Report and recommendations statutorily violative, *as applied*.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs demand judgment against defendants as follows:

1. As to the first cause of action, a declaratory judgment pursuant to CPLR §3001 that the three government branches have unconstitutionally violated their checks-and-balances function, eviscerating the separation of powers doctrine and colluding against the People of the State by failing to protect them against unconstitutional, statutorily-violative, and fraudulent judicial pay raises.

2. As to the second cause of action, a declaratory judgment pursuant to CPLR §3001 that Chapter 567 of the Laws of 2010 is unconstitutional, *as written*, in that it violates Article XIII, §7 of the New York State Constitution and because it delegates the legislative power to a commission whose recommendations automatically become law, where the commission is of insufficient size and diversity, lacks neutrality, and lacks sufficient guidance as to constitutional considerations, *to wit,*