SUPREME COURT OF THE STATE OF NEW YORK
ALBANY COUNTY

---------- x

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,

Plaintiffs,

-against-

ANDREW M. CUOMO, in his official capacity as Governor of the State of New York, JOHN J. FLANAGAN in his official capacity as Temporary Senate President, THE NEW YORK STATE SENATE, CARL E. HEASTIE, in his official capacity as Assembly Speaker, THE NEW YORK STATE ASSEMBLY, ERIC T. SCHNEIDERMAN, in his official capacity as Attorney General of the State of New York, THOMAS P. DiNAPOLI, in his official capacity as Comptroller of the State of New York, and JANET M. DiFIORE, in her official capacity as Chief Judge of the State of New York and chief judicial officer of the Unified Court System,

Defendants.

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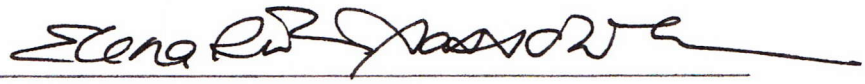
**NOTICE OF APPEAL**
**with pre-calendar statement**

Index #5122-16
RJI # 01-16-122174

PLEASE TAKE NOTICE that plaintiffs hereby appeal to the Appellate Division, Third Department, Justice Building, 5th Floor, Empire State Plaza, Albany, New York 12223, from the decision and judgment of Acting Supreme Court Justice Denise A. Hartman, dated November 28, 2017 and entered in the Albany County Clerk's Office on December 8, 2017 (Exhibit A).

Dated: White Plains, New York
January 10, 2018

Yours, etc.



ELENA RUTH SASSOWER, unrepresented plaintiff, individually & as Director of the Center for Judicial Accountability, Inc., and on behalf of the People of the State of New York & the Public Interest

10 Stewart Place, Apartment 2D-E
White Plains, New York 10603
914-421-1200
elena@judgewatch.org

TO: Albany County Clerk
Albany County Court House, Room 128
16 Eagle Street
Albany, New York 12207-1077

Attorney General Eric T. Schneiderman
The Capitol
Albany, New York 12224-0341
ATT: Assistant Attorney General Adrienne Kerwin/of Counsel

**PRE-CALENDAR STATEMENT**
**State of New York**
**Supreme Court – Appellate Division**
**Third Judicial Department**

**Albany County Index #5122-16**
**RJI #: 01-16-122174**
**Commencement Date: September 2, 2016**

1. **Case Title:**

*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,*

*-against-*

*ANDREW M. CUOMO, in his official capacity as Governor of the State of New York, JOHN J. FLANAGAN in his official capacity as Temporary Senate President, THE NEW YORK STATE SENATE, CARL E. HEASTIE, in his official capacity as Assembly Speaker, THE NEW YORK STATE ASSEMBLY, ERIC T. SCHNEIDERMAN, in his official capacity as Attorney General of the State of New York, THOMAS P. DiNAPOLI, in his official capacity as Comptroller of the State of New York, and JANET M. DiFIORE, in her official capacity as Chief Judge of the State of New York and chief judicial officer of the Unified Court System.*

2. **Parties Involved:** Set forth the full names of the original parties and any change in parties:

| **Party Name** | **Original Status** | **Appellate Status** |
|---|---|---|
| Center for Judicial Accountability, Inc. | Plaintiff | Appellant |
| Elena Ruth Sassower, individually and as Director | Plaintiff | Appellant |
| Governor Andrew M. Cuomo | Defendant | Respondent |
| Temporary Senate President John Flanagan | Defendant | Respondent |

| | | |
|---|---|---|
| New York State Senate | Defendant | Respondent |
| Assembly Speaker Carl Heastie | Defendant | Respondent |
| New York State Assembly | Defendant | Respondent |
| Attorney General Eric T. Schneiderman | Defendant | Respondent |
| Comptroller Thomas DiNapoli | Defendant | Respondent |
| Chief Judge Janet DiFiore | Defendant | Respondent |

**3. Counsel for Appellants:**
*Set forth the name, address, e-mail address, telephone number and facsimile telephone number of counsel for appellant(s).*

Plaintiffs/appellants are without counsel as, from the outset of the case to its conclusion, Judge Denise Hartman willfully failed to rule on the threshold issue of their entitlement to the Attorney General's representation/intervention pursuant to Executive Law §63.1 and State Finance Law, Article 7-A [§123-a(3); §123-c-(3); §123-d; §123-e(2)], which they sought based on their *prima facie*/summary judgment entitlement to declarations, in their favor, on the ten causes of action of their September 2, 2016 verified complaint – and on the reiterated ten causes of action of their March 29, 2017 verified supplemental complaint.

Plaintiff/appellant Elena Sassower appears herein, unrepresented, individually & as Director of the Center for Judicial Accountability, Inc., and on behalf of the People of the State of New York & the Public Interest.


Address: 10 Stewart Place, Apt. 2D-E
White Plains, New York 10603
E-Mail Address: elena@judgewatch.org
Telephone: 914-421-1200
Fax: --


**4. Counsel for Respondent(s) and Counsel for Other Parties:**
*Set forth the name, address, e-mail address, telephone number and facsimile telephone number of counsel for respondent(s) and for each other party.*

Name: Attorney General Eric T. Schneiderman
Asst. Attorney General Adrienne Kerwin, of Counsel
Address: The Capitol
Albany, New York 12224-0341
Telephone: 518-776-2580 Fax: 518-915-7738

**5. Court, Judge and County:**
*Identify the court, judge or justice, and the county from which the appeal is taken.*

Supreme Court/Albany County:
Acting Supreme Court Justice/Court of Claims Judge Denise A. Hartman

**6. Nature and Object of Action or Proceeding:**
*Concisely set forth the nature and object of the underlying action or proceeding.*

This is a citizen-taxpayer action, pursuant to State Finance Law, Article 7-A [§123, *et seq.*], brought in the public interest and on behalf of the People of the State of New York. Commenced by a September 2, 2016 verified complaint, it seeks declaratory and injunctive relief with respect to the state budget for fiscal year 2016-2017 by reason of its unconstitutionality, unlawfulness, and fraud – and additionally seeks as "other and further relief":

> "restoring public trust by referring to prosecutorial authorities the evidence particularized by this verified complaint as it establishes, *prima facie*, grand larceny of the public fisc and other corrupt acts, requiring that the culpable public officers and their agents be criminally prosecuted and removed from office, without further delay." (at p. 45, #4, underlining added, italics in the original).

By a March 29, 2017 verified supplemental complaint, plaintiffs sought comparable declaratory and injunctive relief with respect to the state budget for fiscal year 2017-2018, which replicated, virtually identically, the unconstitutionality, unlawfulness, and fraud of the fiscal year 2016-2017 state budget. Its "other and further relief" comparably requested:

> "restoring the public trust by referring to prosecutorial authorities the evidence particularized by this verified supplemental complaint as it establishes, *prima facie*, grand larceny of the public fisc and other corrupt acts, requiring that the culpable public officers and their agents be criminally prosecuted and removed from office, without further delay." (at p. 72, #4, underlining added, italics in the original).

**7. Appellate Issue(s):**
*Set forth a clear and concise statement of the issue(s) to be raised on the appeal, the grounds for reversal or modification to be advanced and the specific relief sought on the appeal.*

Identically to plaintiffs' prior two notices of appeal, dated June 10, 2017 and August 5, 2017, the overarching issue on this appeal is plaintiffs' entitlement to Judge Hartman's disqualification for actual bias born of her financial interest in the lawsuit's challenge to the constitutionality and lawfulness of judicial salary increases that have raised her salary nearly

$60,000 a year and her multitudinous personal, professional, and political relationships with defendants, as to which she not only made NO disclosure, but concealed that plaintiffs had even requested disclosure, which they did, THRESHOLD, again, and again, and again, from the outset of the lawsuit – before she had rendered a single decision – spanning to her November 28, 2017 decision & judgment, 14 months later.

As with her prior appealed-from decisions, Judge Hartman manifested her actual bias by:

> (a) concealing, *without adjudication*, the threshold integrity issues pertaining to defense counsel, the New York State Attorney General, for whom she worked for 30 years – including the current Attorney General, defendant Eric Schneiderman, and his Attorney General predecessor, the now Governor Andrew Cuomo, the first named defendant herein, who appointed her to the bench in 2015;
>
> (b) obliterating all cognizable adjudicative standards to grant defendants relief to which they were not entitled, *as a matter of law*, and to deny plaintiffs relief to which they were entitled, *as a matter of law*.

The attached analysis of Judge Hartman's November 28, 2017 decision and judgment furnishes the particulars. The record before her, from which the accuracy of the analysis is readily verified, is posted on plaintiff-appellant Center for Judicial Accountability's website, www.judgewatch.org, accessible *via* the prominent homepage link:

**CJA's Citizen-Taxpayer Actions to End NYS' Corrupt Budget "Process" and Unconstitutional "Three-Men-in-a-Room" Governance –**
A Paper Trail of Litigation Fraud by AG Schneiderman, Rewarded by Fraudulent Judicial Decisions

**8. Additional Information:**

*Please set forth any information you deem relevant to the determination of whether the matter is appropriate for a Civil Appeals Settlement Program (CASP) Conference.*

State Finance Law §123-c(4) commands that citizen-taxpayer actions be "promptly determined". The speediest way to resolve the far-reaching, constitution-vindicating issues on this appeal and prevent further dissipation and theft of billions of dollars in taxpayer monies, including from the state budget for fiscal year 2018-2019, which, replicating and reappropriating monies from the state budgets for fiscal years 2016-2017 and 2017-2018, will have to be declared unconstitutional and unlawful, (*Korn v. Gulotta*, 72 NY2d 363 (1988); New *York State Bankers Assn v. Wetzler*, 81 NY2d 98 (1993); *King v. Cuomo*, 81 NY2d 247 (1993); *Pataki v. New York State Assembly, New York State Senate/Silver v. Pataki*, 4 NY3d 75 (2004)), is *via* a settlement conference.

That defendants/respondents have no defense to the record herein, establishing that Judge Hartman's appealed-from decisions are criminal acts, each flagrantly falsifying the factual record and obliterating fundamental black-letter law – including by concealing, *without adjudication*, the threshold integrity issues pertaining to defendant Attorney General Schneiderman's duties, conflicts of interest, and litigation fraud – makes the holding of such settlement conference all the more compelled.

**9. Other Related Matters:**

*Indicate if there is another related action or proceeding, identifying and briefly describing same.*

The facts giving rise to, and additionally substantiating, this citizen-taxpayer action are chronicled and documented by plaintiffs' prior citizen-taxpayer action, commenced on March 28, 2014 in Supreme Court/Albany County (#1788–2014), the record of which is incorporated in this citizen-taxpayer action, including by plaintiffs' September 2, 2016 verified complaint (at ¶21, fn.1). The case caption is:

*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,*

*-against-*

*ANDREW M. CUOMO, in his official capacity as Governor of the State of New York, DEAN SKELOS in his official capacity as Temporary Senate President, THE NEW YORK STATE SENATE, SHELDON SILVER, in his official capacity as Assembly Speaker, THE NEW YORK STATE ASSEMBLY, ERIC T. SCHNEIDERMAN, in his official capacity as Attorney General of the State of New York, and THOMAS DiNAPOLI, in his official capacity as Comptroller of the State of New York,*

Submitted by:

Elena Ruth Sassower

Signature

Print Name: Elena Ruth Sassower
Date: January 10, 2018

**10. Attachments** **Check:**

1. Copy of ~~order or~~ judgment appealed from ✓ attached
2. Copy of ~~opinion or~~ decision. ✓ attached
   _____ does not exist
3. Copy of notice of appeal or order granting leave to appeal. _____ attached

Attach copies, not originals.

File this original form with attachments when original notice of appeal is filed in the office where the judgment or order of court of original instance is entered.

A copy of this document must be served upon all counsel and *pro se* parties.

**The Civil Appeals Settlement Program (CASP) functions independently of the appeals function of the Appellate Division, Third Department with the intent to assist the parties in pragmatically resolving their disputes by agreement. The progress of and communications of matters in CASP are not shared with the Court as part of the appeal and play no role in the Court's resolution of an appeal. The communications and opinions expressed at a CASP conference are considered confidential and may not be communicated to the Court as part of the merits of an appeal. The consideration of an appellate matter by CASP does not excuse compliance with any Appellate Division, Third Department rule concerning the timely perfection of the appeal.**

# ANALYSIS OF THE NOVEMBER 28, 2017 DECISION AND JUDGMENT OF ACTING SUPREME COURT JUSTICE DENISE A. HARTMAN

## *Center for Judicial Accountability, et al. v. Cuomo, et al.*, Albany Co. #5122-2016

This analysis constitutes a "legal autopsy"[1] of the November 28, 2017 decision and judgment of Acting Supreme Court Justice Denise A. Hartman, denying plaintiffs' June 12, 2017 order to show cause for reargument/renewal/vacatur of her May 5, 2017 decision and May 5, 2017 amended decision – which she recognized as also seeking her disqualification, which she denied – and granting defendants' July 21, 2017 cross-motion for summary judgment on plaintiffs' sixth cause of action. It follows upon plaintiffs' analyses of Judge Hartman's prior decisions – the accuracy of which neither she nor defendants ever denied or disputed. These are:

- plaintiffs' "legal autopsy"/analysis of Judge Hartman's December 21, 2016 decision, annexed as Exhibit U to their February 15, 2017 order to show cause for her disqualification for interest and for the actual bias manifested by her December 21, 2016 decision – relief her May 5, 2017 decision denied;

- plaintiffs' analysis of Judge Hartman's May 5, 2017 decision and May 5, 2017 amended decision, furnished at ¶¶5-8, 10-11 of their June 12, 2017 order to show cause for reargument/renewal/vacatur – relief her November 28, 2017 decision and judgment denied;

- plaintiffs' "legal autopsy"/analysis of Judge Hartman's June 26, 2017 decision, annexed as Exhibit I to their August 25, 2017 reply papers in further support of their June 12, 2017 order to show cause and in opposition to defendants' July 21, 2017 cross-motion.

Just as plaintiffs' prior analyses demonstrated that Judge Hartman's prior decisions were each criminal frauds, falsifying the record in all material respects to grant defendants relief to which they

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

This is set forth at the outset of plaintiffs' "legal autopsy" of Acting Supreme Court Justice Roger McDonough's decisions in their first citizen-taxpayer action (#1788-2014) – annexed as Exhibit G to their September 2, 2016 verified complaint in their second citizen-taxpayer action (#5122-2016). Neither the premise – nor the accuracy of plaintiffs' Exhibit G analysis – has ever been denied or disputed by defendants, or by Judge McDonough, the duty judge on September 2, 2016, who reviewed the verified complaint, or by Judge Hartman to whom the case was then assigned.

were not entitled, *as a matter of law*, and to deny plaintiffs relief to which they were entitled, *as a matter of law*", and that they violated a multitude of provisions of New York's Penal Law, including:

> Penal Law §175.35 ("offering a false instrument for filing in the first degree");
> Penal Law §496 ("corrupting the government") – part of the "Public Trust Act";
> Penal Law §155.42 ("grand larceny in the first degree");
> Penal Law §190.65 ("scheme to defraud in the first degree");
> Penal Law §195.20 ("defrauding the government");
> Penal Law §105.15 ("conspiracy in the second degree");
> Penal Law §20.00 ("criminal liability for conduct of another");
> Penal Law §195 ("official misconduct"),

this analysis demonstrates the same with respect to her November 28, 2017 decision, likewise, "so totally devoid of evidentiary support as to render [it] unconstitutional under the Due Process Clause" of the United States Constitution, *Garner v. State of Louisiana*, 368 U.S. 157, 163 (1961); *Thompson v. City of Louisville*, 362 U.S. 199 (1960).

The fraudulence of Judge Hartman's prior decisions is verifiable, within minutes, from plaintiffs' reply memoranda of law that were before her when she rendered them, each a "paper trail" of the record. So, here, the fraudulence of her November 28, 2017 decision is verifiable, within minutes, from plaintiffs' August 25, 2017 reply memorandum of law – a "paper trail" of the record before her.

Virtually ALL the facts, law, and legal argument presented by plaintiffs' August 25, 2017 reply memorandum of law – and by plaintiff Sassower's reply affidavit accompanying it – are omitted from Judge Hartman's November 28, 2017 decision. As for Assistant Attorney General Adrienne Kerwin's opposition to plaintiffs' June 12, 2017 order to show cause, contained within her July 21, 2017 cross-motion, the decision only minimally mentions it, without reference to its fraudulence, demonstrated, from beginning to end and in virtually every line, by plaintiffs' August 25, 2017 reply memorandum of law in support of requested threshold relief:

> (1) for sanctions, and disciplinary and criminal referrals of AAG Kerwin and those supervising her in the Attorney General's office, responsible for her litigation fraud;
>
> (2) for the disqualification of Attorney General Schneiderman, himself a defendant, from representing his co-defendants; and
>
> (3) for the Attorney General's representation of plaintiffs or intervention on their behalf, pursuant to Executive Law §63.1 and State Finance Law Article 7-A (§123 *et seq.*).

None of these three threshold issues are adjudicated by Judge Hartman's November 28, 2017 decision, which conceals them all. Ditto, the even more threshold issue presented by plaintiffs' August 25, 2017 reply memorandum of law of Judge Hartman's duty to make disclosure, absent her

disqualifying herself for demonstrated actual bias.

With respect to Judge Hartman's duty to disqualify herself or make disclosure, suffice to quote the concluding paragraph of plaintiff Sassower's August 25, 2017 reply affidavit in further support of plaintiffs' June 12, 2016 order to show cause and in opposition to AAG Kerwin's July 21, 2017 cross-motion:

> "12. Unless this Court is able to do the impossible – refute plaintiffs' record-based analyses (*see* ¶6, *supra*), particularizing with facts and law, that its December [2]1, 2016 decision, its May 5, 2017 decision and May 5, 2017 amended decision, and its June 26, 2017 decision each obliterate all cognizable adjudicative standards and flagrantly falsify the record – it must disqualify itself forthwith based on its demonstrated actual bias and vacate those decisions. Absent its doing so, it must make the disclosure as to its judicial compensation interest in the lawsuit, its relationships with defendants and personnel in the Attorney General's office, and other facts bearing upon its fairness and impartiality[fn2] that it has willfully failed and refused to make throughout the nearly full year it has had this case, all the while concealing, without adjudication, the Attorney General's litigation fraud, by its AAGs Kerwin and Lynch, which plaintiffs meticulously laid out in the record before it." (underlining in the original).

As hereinafter shown, Judge Hartman's November 28, 2017 decision conceals plaintiffs' request for disclosure – of which it makes none – and, resting on all her prior decisions,

- denies plaintiffs' June 12, 2017 order to show cause by two sentences which, in completely conclusory fashion and by concealing plaintiffs' "legal autopsy"/analyses of her prior decisions and their entire content, LIES that plaintiffs "failed to establish matters of fact or law that the Court overlooked or misrepresented that would warrant reargument, or new facts that would warrant renewal… Nor…grounds for disqualification and vacatur..." (see pp. 10-11, *infra*)

- grants AAG Kerwin's July 21, 2017 cross-motion for summary judgment on plaintiffs' sixth cause of action:

  > (1) by adhering to the LIE in her June 26, 2017 decision that plaintiffs' sub-cause E had been dismissed by her December 21, 2016 decision – such LIE having originated in AAG Helena Lynch's April 21, 2017 opposition to plaintiffs' March 29, 2017 order to show cause for summary judgment on sub-cause E, thereafter re-asserted by AAG Kerwin's July 21, 2017 cross-motion for summary judgment to defendants on sub-cause E (see pp. 12-13, *infra*);

(2) by manufacturing *sua sponte*, fraudulent argument for granting defendants summary judgment on plaintiffs' sub-cause D to replace her *sua sponte*, fraudulent argument in her June 26, 2017 decision for denying plaintiffs summary judgment on their sub-cause D (see pp. 15-22, *infra)*;

(3) by adhering to her *sua sponte*, fraudulent argument for denying plaintiffs summary judgment on their sub-causes A and B, manufactured by her June 26, 2017 decision – on which AAG Kerwin's July 21, 2017 cross-motion relied for summary judgment to defendants on sub-causes A and B (see pp. 14-15, *infra*);

(4) by adhering to her *sua sponte* argument for denying plaintiffs summary judgment on their sub-cause C, manufactured by her June 26, 2017 decision – on which AAG Kerwin's July 21, 2017 cross-motion relied for summary judgment to defendants on sub-cause C (see p. 15, *infra*).

* * *

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**Plaintiffs' August 25, 2017 Memorandum of Law is Dispositive that Judge Hartman's November 28, 2017 Decision is a Criminal Fraud -- Beginning with its Concealment of the Four Threshold Issues She was Duty-Bound to Adjudicate, But Did Not Because Each Threshold Issue Could Only be Adjudicated in Plaintiffs' Favor**

One need only read the four-page "Introduction" to plaintiffs' 52-page August 25, 2017 reply memorandum of law to recognize why Judge Hartman's November 28, 2017 decision could not – and does not – confront it, beginning with the four threshold integrity issues it summarized pertaining to herself and the Attorney General. The "Introduction" was as follows:

> "This memorandum of law is submitted in reply to defendants' opposition to plaintiffs' June 12, 2017 order to show cause for reargument/renewal/vacatur of this Court's May 5, 2017 decision and order and May 5, 2017 amended decision and order, interposed by Assistant Attorney General Adrienne Kerwin, who identifies herself as 'of counsel' to defendant Attorney General ERIC SCHNEIDERMAN, attorney for himself and his co-defendants. As AAG Kerwin has combined her July 21, 2017 opposition with a cross-motion, this memorandum of law is also submitted in opposition thereto.
>
> AAG Kerwin's opposition/cross-motion consists of her notice of cross-motion, her affirmation, and her memorandum of law. As hereinafter demonstrated, all three are 'frauds on the court', as that term is defined[fn1] – and replicate her *modus operandi* of litigation fraud that plaintiffs chronicled by each of their five memoranda of law in their prior citizen-taxpayer action[fn2] and, in this citizen-taxpayer action, by their September 30, 2016 memorandum of law and then by their analysis of AAG Kerwin's March 22, 2017 opposition to their February 15, 2017 order to show cause for the Court's disqualification for actual bias and interest and for vacatur of its December 21, 2016 decision by reason thereof, annexed as Exhibit E to their June 12, 2017 order to show cause – the same as is now before the Court.[fn3]
>
> Plaintiff Sassower's June 12, 2017 moving affidavit herein describes the purpose of the Exhibit E analysis it annexed, stating:
>
> > '11. As the May 5, 2017 decision makes no comment or finding with respect to AAG Kerwin's March 22, 2017 opposition papers – as was its obligation to do pursuant to §100.3D(2) of the Chief Administrator's Rules Governing Judicial Conduct – annexed is plaintiffs' analysis thereof (Exhibit E), which

I wrote and to whose accuracy, both factually and legally, I swear. Chronicled therein is the flagrant fraud of AAG Kerwin's March 22, 2017 opposing affirmation and memorandum of law that the Court 'overlooked' when it 'Considered' them. Such defense fraud, to which the Court gave a 'free pass', reinforces the four threshold integrity issues highlighted by plaintiffs' Exhibit U analysis [of the Court's December 21, 2016 decision] (at pp. 3-8) and, prior thereto, by their September 30, 2016 memorandum of law (at pp. 1-6, 42-52) — beginning with the Court's duty to make disclosure of its personal and professional relationships with defendants, with AAG Kerwin, and with supervisory levels at the Attorney General's office, absent its disqualifying itself, as no lawyer would do what AAG Kerwin did by her March 22, 2017 opposition papers unless confident that a biased and self-interested court would let her get away with it.'

Fair to say that Exhibit E is the most important exhibit to plaintiffs' June 12, 2017 order to show cause – and not the least reason because it establishes that, wading through the flagrant deceits of AAG Kerwin's March 22, 2017 opposition papers, she had not denied or disputed the accuracy of plaintiffs' Exhibit U analysis of the Court's December 21, 2016 decision, upon which plaintiffs' February 15, 2017 order to show cause to disqualify the Court for actual bias was based. This sufficed to make her opposition to plaintiffs' February 15, 2017 order to show cause frivolous, *as a matter of law*, as plaintiffs' Exhibit U analysis demonstrated that the December 21, 2016 decision had:

'falsif[ied] the record in <u>all</u> material respects to grant defendants relief to which they [were] <u>not</u> entitled, *as a matter of law*, and to deny plaintiffs relief to which they [were] entitled, *as a matter of law*' (p. 1, Exhibit U to plaintiffs' February 15, 2017 order to show cause).

AAG Kerwin's July 21, 2017 opposition/cross-motion never identifies what plaintiffs' Exhibit E is – and does not contest its showing that her March 22, 2017 opposition papers had not contested the accuracy of plaintiffs' Exhibit U analysis of the Court's December 21, 2016 decision.[fn4] Nor does she take the opportunity to now contest the accuracy of plaintiffs' Exhibit U analysis – or justify how the Court's May 5, 2017 decision, in denying plaintiffs' February 15, 2017 order to show cause, could do so without denying or disputing its accuracy – indeed, by concealing its very existence. Nevertheless, she blithely purports that the Court should deny reargument/renewal of its May 5, 2017 decision and May 5, 2017 amended decision pertaining to its December 21, 2016 decision. She then takes these three fraudulent judicial decisions – all three proven as such by plaintiffs' Exhibit U analysis – and, adding to them the Court's subsequently-rendered, comparably fraudulent, June 26, 2017 decision, makes them the basis for her cross-motion.

The record herein is one of symbiosis – the Court, which has a HUGE financial interest in this citizen-taxpayer action and has relationships with defendants, especially with defendants CUOMO and SCHNEIDERMAN, under whom it worked during its 30 years in the Attorney General's office, covers up and facilitates the Attorney General's litigation fraud, by its assistant attorneys general, who, in turn, cover up for the Court's fraudulent judicial decisions.

This Court's fraud, by its June 26, 2017 decision, encompassing and building upon the frauds of its prior three decisions, is particularized by plaintiffs' analysis of the June 26, 2017 decision, annexed to plaintiff Sassower's accompanying affidavit as Exhibit I. AAG Kerwin's fraud, by her July 21, 2017 opposition/cross-motion to plaintiffs' instant order to show cause is below.

Bottom line is that the relief compelled by plaintiffs' June 12, 2017 order to show cause, beginning with adjudication of the threshold integrity issues relating to the Court and the Attorney General, identified at ¶7 of plaintiff Sassower's moving affidavit, is even more compelled by the subsequent record, of which these reply papers are a road map.

Plaintiffs' have repeatedly furnished the Court with the law pertaining to these threshold integrity issues – as recently as their May 15, 2017 memorandum of law in reply and in further support of their March 29, 2017 order to show cause, at pages 49-63 thereof under the title heading: 'PLAINTIFFS' REQUESTED AFFIRMATIVE RELIEF TO SAFEGUARD THE INTEGRITY OF THESE JUDICIAL PROCEEDINGS'. In the interest of economy, plaintiffs incorporate by reference its first two sections (at pp. 49-58):

I. The Court's First Threshold Duty:
To Disclose Facts Bearing Upon its Fairness & Impartiality

II. The Court's Second Threshold Duty:
To Ensure that the Parties are Properly Represented by Counsel,

but do repeat, *verbatim*, changing only relevant facts, its subsequent three sections (at pp. 58-63):

III. The Court's Power under 22 NYCRR §130-1.1(d) to Act 'Upon its Own Initiative' & Impose Costs & Sanctions against AAG [Kerwin] for her Frivolous Opposition Papers

IV. The Court's Mandatory Disciplinary Responsibilities under §100.3D of the Chief Administrator's Rules Governing Judicial Conduct

V. Judiciary Law §487 Provides the Court with a Further Means to Protect Itself and Plaintiffs from AAG [Kerwin's] Demonstrated Fraud and Deceit."

(plaintiffs' August 25, 2017 reply memorandum of law, "Introduction", pp. 1-4, italics, underlining, and capitalization in the original).

**The Decision's Coverpage (at p. 1)**

The decision begins with a coverpage (p. 1) containing the case caption and, beneath it, a section entitled "Appearances", the first of which is "ELENA RUTH SASSOWER", identified as "Plaintiff pro se", with an address listed as "PO Box 8101, White Plains, New York 10602".

The address is incorrect – and repeats the identical error pointed out by plaintiffs' "legal autopsy"/analysis of Judge Hartman's December 21, 2016 decision (at p. 8) and by their "legal autopsy"/analysis of her June 26, 2017 decision (at p. 7), whose repetition here is inexplicable except as a reflection that Judge Hartman was so hell-bent on "throwing" the case that she did not see fit to read either analysis.

**The Decision's Untitled Three Prefatory Paragraphs (at pp. 2-3)**

Page 2 of the decision is headed with the name "Hartman, J.", followed by three paragraphs, each suffused with fraud.

The first paragraph is four sentences (at p. 2). Unlike prior decisions which had concealed that this is a citizen-taxpayer action, the first sentence of the first paragraph identifies this, stating:

> "In this citizen-taxpayer action for declaratory and injunctive relief, pro se plaintiff Elena Ruth Sassower challenges legislation enacted in 2015 that created the Commission on Legislative, Judicial and Executive Compensation (Commission) and budget legislation for the 2016-2017 fiscal year." (at p. 2).

Plaintiff Sassower is not "pro se", she is unrepresented by counsel – and, at every juncture of the case, she and the unrepresented corporate plaintiff, Center for Judicial Accountability, Inc. (CJA), raised, as a threshold issue, their entitlement to representation by the Attorney General, pursuant to the citizen-taxpayer statute, which expressly contemplates his involvement as plaintiff, or on behalf of plaintiffs (State Finance Law §123-a(3); §123-c-(3); §123-d; §123-e(2)), as likewise pursuant to Executive Law §63.1, which predicates his representation on the "interests of the state".

As with all her prior decisions, Judge Hartman does not identify – or adjudicate – this threshold issue anywhere, because such would require her to confront that the Attorney General's litigation fraud establishes, *prima facie*, that he has NO legitimate defense to the citizen-taxpayer action and that his

duty, pursuant to both State Finance Law, §§123 *et seq*. and Executive §63.1, is to be representing the individual and corporate plaintiffs. Indeed, as to what became of the corporate plaintiff, unrepresented by an attorney and for whom the non-attorney plaintiff Sassower could not provide representation, Judge Hartman stows it in her footnote 1:

> "Because plaintiff Sassower is not an attorney, this Court in its December 21, 2016 Decision and Order dismissed causes of action she seeks to assert on behalf of the Center for Judicial Accountability, Inc." (at p. 2)

Tellingly, this footnote 1 annotates not the above-quoted first sentence of the first paragraph of this section, but the sentence in her third paragraph (at p. 3) reading:

> "...plaintiff has asserted a sufficient nexus to the fiscal activity of the State to confer standing under State Finance Law §123-b(1)...".

This is also the only place in Judge Hartman's decision that can be construed as reflecting any aspect of plaintiffs' opposition to AAG Kerwin's cross-motion, though concealing that plaintiffs' showing entitled them to a finding that AAG Kerwin's invocation of a defense of standing was a sanctionable deceit.[2]

And, notwithstanding Judge Hartman acknowledges, by her first sentence, that this is a citizen-taxpayer action, the decision conceals her violation of the expedition commanded by State Finance Law §123-c(4),[3] being rendered 88 days after the September 1, 2017 date that plaintiffs' June 12, 2017 order to show cause and AAG Kerwin's July 21, 2017 cross-motion were fully-submitted – in other words, four weeks beyond the 60-day limit for determining motions in ordinary actions (CPLR §2219(a)) – and this on top of the fact that in signing plaintiffs' June 12, 2017 order to show cause, Judge Hartman defeated its very purpose by fixing a return date that was six weeks away – giving defendants more than twice the time they would have had had plaintiffs proceeded by a mailed notice of motion. (CPLR §2214(b)).[4]

The three remaining sentences of Judge Hartman's first paragraph (at p. 2) read:

> "In its December 21, 2016 Decision and Order, the Court granted in part defendants' pre-answer motion and dismissed nine of ten causes of action, but denied the motion

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2 *See*, fn. 6, *infra*.

3 State Finance Law §123-c(4) reads: "An action under the provisions of this article shall be heard upon such notice to such officer or employee as the court, justice or judge shall direct, and shall be promptly determined. The action shall have preference over all other causes in all courts"

4 The facts – and manipulations – pertaining to the six-week return date that Judge Hartman gave defendants in signing plaintiffs' June 12, 2017 order to show cause are recited by plaintiff Sassower's August 25, 2017 reply affidavit, at ¶¶5, 8, 9, 11.

> with respect to the cause of action challenging the 2015 legislation. On May 5, 2017, this Court issued a Decision and Order denying plaintiffs' application for disqualification and reargument, renewal, and vacatur of the Court's December 21, 2016 Decision and Order. On that same date, the Court issued an Amended Decision and Order correcting the recitation of papers considered in the December 21, 2016 Decision and Order."

The recital of these three decisions, as if legitimate, is also a deceit – as they are judicial frauds, so-established by plaintiffs' analysis of each, focally presented by their June 12, 2017 order to show cause and August 25, 2017 reply papers.

Suffice to add that Judge Hartman's assertion that her May 5, 2017 amended decision "correct[ed] the recitation of papers considered in the December 21, 2016 Decision and Order" – implying that the recitation there had been erroneous – is false. As highlighted by plaintiffs' February 15, 2017 order to show cause (at ¶7) and its annexed Exhibit U "legal autopsy"/analysis (at pp. 2, 23-24), the December 21, 2016 decision contained NO recitation of "papers considered" – a fact acknowledged by the May 5, 2017 decision itself (at p. 2).

The second paragraph (at pp. 2-3) disposes of plaintiffs' June 12, 2017 order to show cause, by four sentences, as follows:

> "Plaintiff now moves, by order to show cause, for disqualification, reargument, renewal, and vacatur of the Court's May 5, 2017 Decision and Order and the May 5, 2017 Amended Decision and Order. Once again plaintiff has failed to establish matters of fact or law that the Court overlooked or misrepresented that would warrant reargument, or new facts that would warrant renewal (*see* CPLR 2221 [d, [e]]). Nor has she established grounds for disqualification and vacatur (*see Matter of Maron v. Silver*, 14 NY3d 230, 249 [2012] [Rule of Necessity]; *Pines v. State of N.Y.*, 115 AD3d 80, 90-91 [2d Dept 2014] [same], *appeal dismissed* 23 NY3d 982 [2014]). Plaintiff's motion is therefore denied."

In other words, Judge Hartman denies plaintiffs' June 12, 2017 order to show cause in completely conclusory fashion:

- without identifying ANY of the facts, law, or legal argument presented by plaintiffs' June 12, 2017 order to show cause and August 25, 2017 reply papers;

- without identifying defendants' response thereto; and

- without identifying plaintiffs' request that she make disclosure of her financial interest and relationships with defendants, of which she made none.

As for Judge Hartman's citations to *Maron v. Silver* and *Pines v. State* for the "Rule of Necessity", which she precedes by an inferential "*see*",[5] such has no applicability to Judge Hartman's disqualification for ACTUAL bias, as manifested by each and every one her decisions; no applicability to Judge Hartman's disqualification based on her personal and professional relationships with defendants, including defendants Cuomo and Schneiderman for whom she worked in the attorney general's office; and no applicability to Judge Hartman's disqualification for the HUGE financial interest she shares with other judges – inasmuch as her May 5, 2017 decision LIES that she has NO financial interest.

The third paragraph (at p. 3), consisting of five sentences, disposes of AAG Kerwin's July 21, 2017 cross-motion, as follows:

> "Respondents, having answered, cross-move for summary judgment on the sole remaining cause of action, both for lack of standing and on the merits, and for sanctions against plaintiff. Defendants waived their right to raise standing as a defense by failing to raise it in their pre-answer motion to dismiss or answer (*see Matter of Plainview-Old Bethpage Congress of Teachers v. NY State Health Ins. Plan*, 140 AD3d 1329, 1330 [3d Dept 2016]; *Schulz v Silver*, 212 AD2d 293, 296 [3d Dept 1995]). In any event, plaintiff has asserted a sufficient nexus to the fiscal activity of the State to confer standing under State Finance Law §123-b(1) (*see Saratoga County Chamber of Commerce v Pataki*, 100 NY2d 801, 813-814 [2003]).[fn1] But, because defendants have demonstrated entitlement to judgment as a matter of law and plaintiff has not raised a material issue of fact in opposition, the motion for summary judgment is granted. The motion for sanctions, however, is denied."

Judge Hartman here conceals that AAG Kerwin's July 21, 2017 cross-motion for summary judgment was combined with her opposition to plaintiffs' June 12, 2017 order to show cause – and was fashioned throughout on falsehood and deceit, including as to standing and sanctions,[6] so-demonstrated by plaintiffs' August 25, 2017 reply/opposition papers, whose appended "legal autopsy"/analysis of Judge Hartman's June 26, 2017 decision reinforced that it was plaintiffs, not defendants, who were entitled to summary judgment on their sixth cause of action. Judge Hartman, however, makes NO mention of plaintiffs' August 25, 2017 reply/opposition papers – other than in her last page listing of "Papers Considered".

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5 The Bluebook: A Uniform System of Citation (18th ed. 2004), at p. 4: "Use see to introduce an authority that clearly supports, but does not directly state, the proposition".

6 *See*, with respect to standing, plaintiffs' August 25, 2017 reply/opposition memorandum of law, at pp. 27-29 and, with respect to sanctions, pp. 8, 9-10, 35-45.

## The Decision's So-Called "Procedural Background" (at pp. 3-4)

By a four-sentence paragraph beneath a section titled "Procedural Background", Judge Hartman disposes of sub-cause E of plaintiffs' sixth cause of action.[7] She states:

> "By Decision and Order dated December 21, 2016, as amended on May 5 2017, the Court dismissed all of the complaint's causes of action but the sixth, which challenged as unconstitutional the 2015 legislation that created the Commission on Legislative, Judicial and Executive Compensation (Commission) (L 2015, ch 60, Part E §3[5]; S4610/A6721 2015). In its Decision and Order dated June 26, 2017, the Court denied plaintiff's motion for summary judgment on the sixth cause of action. In that decision, the Court divided the sixth cause of action into six sub-causes, labelled A-E. As the Court held, the law of the case disposes of Sub-Cause E – allegations that the budget bill that created the Commission was procured by fraud and in violation of due process failed to state a cause of action. The remaining sub-causes must also be resolved in favor of defendants."

This so-called "Procedural Background" is materially false. The sixth cause of action of plaintiffs' September 2, 2016 verified complaint (¶¶59-68), preserved by Judge Hartman's December 21, 2016 decision, contained five sections. Plaintiffs moved for summary judgment on all five by their March 29, 2017 order to show cause – and AAG Lynch, in the absence of any defense, purported by her April 21, 2017 opposition papers that the December 21, 2016 decision had preserved only the first and third sections – a fraud exposed by plaintiffs' May 15, 2017 reply memorandum of law (at pp. 16-18).

By her June 26, 2017 decision, Judge Hartman denied plaintiffs' March 29, 2017 order to show cause without identifying ANY of the facts, law, or legal argument presented therein or by their May 15, 2017 reply papers. The decision did not "divide" the sixth cause of action into six sub-causes. It simply substituted the nomenclature of sub-causes for sections, of which there were five, not six, denominated A-E. And, in the complete absence of any grounds for denying plaintiffs summary judgment on their sub-cause E, adopted AAG Lynch's deceit that it had not been preserved by the December 21, 2016 decision, stating:

> "The final allegation in plaintiff's sixth cause of action is that the budget bills creating the Commission were enacted fraudulently and in violation of due process. These allegations have already been rejected by the Court in its Amended Decision and Order dated December 21, 2016." (June 26, 2017 decision, at p. 10).

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[7] Plaintiffs' sub-cause E is entitled "Chapter 60, Part E of the Laws of 2015 is Unconstitutional because Budget Bill #S4610-A/A.6721-A was Procured Fraudulently and Without Legislative Due Process" (September 2, 2016 verified complaint, ¶68).

Plaintiffs responded, by their "legal autopsy"/analysis of the June 26, 2017 decision – annexed as Exhibit I to their August 25, 2017 reply/opposition – as follows (at p. 24):

> "This is outright fraud. The December 21, 2016 decision does not 'reject[]' sub-cause E – and Judge Hartman does not identify where and by what language her December 21, 2016 decision does so. Indeed, her summarizations of her December 21, 2016 decision, at the outset of the June 26, 2017 decision (at p. 2) and at the outset of her May 5, 2017 decision (at p. 1), also do not purport that the sixth cause of action was not fully preserved by her December 21, 2016 decision. That she here makes such bald claim is completely contrived – and replicates AAG Lynch's deceit, by her April 21, 2017 opposition papers, that only the first and third of the sub-causes had been preserved, exposed by pages 16-18 of plaintiffs' May 15, 2017 reply memorandum of law, to which Judge Hartman makes no reference. Such deceit is because – as the allegations of sub-cause E plainly reveal – plaintiffs' have a summary judgment entitlement to a declaration of unconstitutionality based thereon."

The accuracy of this was not denied or disputed by AAG Kerwin, who chose not to interpose reply papers. And Judge Hartman's November 28, 2017 decision does not deny or dispute its accuracy either. Rather, by this paragraph of "Procedural Background", she conceals that her euphemistically described "law of the case" is her December 21, 2016 decision; that it did not dismiss plaintiffs' sub-cause E as having "failed to state a cause of action"; and that the record establishes plaintiffs' entitlement to summary judgment, *as a matter of law*, on their sub-cause E: AAG Kerwin having furnished NO evidence to substantiate the bald denials of her answer and, by her litigation fraud, reinforcing that she has NONE.

The decision then continues with a further paragraph (at p. 4), seemingly still part of "Procedural Background", consisting of two generic sentences about the "strong presumption of the constitutionality of legislative enactments". These sentences materially replicate what the June 26, 2017 decision had recited (at p. 5) under its title heading "Motion for Summary Judgment".

The November 28, 2017 decision presents no comparable "Summary Judgment" title heading. Nor does it recite the threshold procedural standards governing summary judgment, enunciated by the "Summary Judgment" section of the June 26, 2017 decision, *to wit*:

> "The party moving for summary judgment bears the burden of submitting evidence in admissible form demonstrating entitlement to judgment as a matter of law. Once the moving party has met its burden, the burden shifts to the party opposing summary judgment to submit evidence in admissible form that establishes that a material issue of fact exists (*Nomura Asset Capital Corp. v. Cadwalader, Wickersham & Taft LLP*, 26 NY3d 40, 49 [2015]; *Staunton v. Brooks*, 129 AD3d 1371, 1372 [3d Dept 2015])."

Instead, the decision directly proceeds (at pp. 5-10) to three section headings for sub-causes A-D of plaintiffs' sixth cause of action, all seemingly part of "Procedural Background". None of these three sections furnish content consistent with the above-quoted procedure for granting summary judgment – a procedure that would have enabled the decision to substantiate the conclusory claim in its untitled prefatory third paragraph (at p. 3) that "defendants have demonstrated entitlement to judgment as a matter of law and plaintiff has not raised a material issue of fact in opposition" – a claim without the slightest basis in the record.

**The Decision's "Sub-Causes A & B – Improper Delegation of Authority Claims" (at pp. 5-6)**

The deceit of Judge Hartman's three paragraphs pertaining to sub-causes A and B of plaintiffs' sixth cause of action begins with her section heading title "Sub-Causes A & B – Improper Delegation of Authority Claims", as the issue is NOT "Improper Delegation", but delegation that is unconstitutional, violating separation of powers and the presentment clause.[8]

> "As a general rule, the lawmaking powers conferred upon the Senate and Assembly are exclusive, and the Legislature may neither abdicate its constitutional powers and duties nor delegate them to others."
>
> ...
>
> "In the enactment of delegative statutes certain formalities must be met which are second only to the requirement that the function itself be one which is susceptible of delegation."
>
> McKinney's Consolidated Laws of New York Annotated, Book 1: Statutes, Chapter 1, §3 "Delegation of legislative power" (underlining added).

Because Judge Hartman has no answer to the separation of powers, presentment clause violations of sub-cause A (¶¶61-62), nor to the insufficiency of "safeguarding" provisions, which is sub-cause B (¶¶63-65), she combines these separate sub-causes – just as she had by her June 26, 2017 decision (at pp 5-7) under a materially different, but more accurate, section heading: "Sub-Causes A and B – Separation of Powers Claims". She then conceals ALL the allegations of these two separate sub-causes. Thus, she does not identify the specific delegation of legislative power which sub-cause A particularizes as unconstitutional, this being the "force of law" power of the Commission's judicial salary recommendations, superseding existing law – nor any of the facts, law, or legal argument furnished by plaintiffs in substantiation. Nor does she identify any of the deficiencies identified by sub-cause B as rendering the statute unconstitutional, over and above its unconstitutional delegation,

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[8] Plaintiffs' sub-cause A is entitled "Chapter 60, Part E of the Laws of 2015 Unconstitutionally Delegates Legislative Power by Giving the Commission's Judicial Salary Recommendations 'the Force of Law'" (September 2, 2016 verified complaint, ¶¶61-62, underlining added). Sub-cause B is entitled "Chapter 60, Part E of the Laws of 2015 Unconstitutionally Delegates Legislative Power Without Safeguarding Provisions" (September 2, 2016 verified complaint, ¶¶63-65, underlining added).

*to wit*, the inadequacy of such statutory "safeguards" as the Commission's membership and the six enumerated factors the Commission is mandated to evaluate in making its salary recommendations.

AAG Kerwin's July 21, 2017 cross-motion for summary judgment had also concealed ALL the allegations of sub-causes A and B and materially rested on Judge Hartman's June 26, 2017 decision – but all this is concealed by the November 28, 2017 decision. Likewise, the ENTIRETY of plaintiffs' rebuttal by their August 25, 2017 memorandum of law (at pp. 28-32), and encompassing their "legal autopsy"/analysis of the June 26, 2017 decision, whose pages 16-20 rebutted Judge Hartman's denial of summary judgment to plaintiffs on sub-causes A and B.

It is because plaintiffs' August 25, 2017 rebuttal so resoundingly established no basis for anything but summary judgment to plaintiffs on their sub-causes A and B that the three paragraphs that Judge Hartman offers up (at pp. 5-6) consist, virtually entirely, of selective quotations and paraphrasing of the statute and generic, unresponsive citations. This includes her bald citation (at p. 6) to "*McKinney v. Commr. of the N.Y State Dept. of Health*, 41 AD3d 252, 253 [1st Dept 2007], lv denied 9 NY3d 815 [2007], appeal dismissed 9 NY3d 891 [2007]" for the proposition "Enabling statutes even broader than this one have been found constitutional" and "*compare St. Joseph's Hospital v Novello*, 43 AD3d 139 [4th Dept 2007] [declining to address constitutionality of delegation of authority that allowed for de facto legislative veto]" – nowhere addressing plaintiffs' showing that these decisions establish their summary judgment entitlement, demonstrated by: (1) the very allegations of their sub-causes A and B (¶¶390-391, 393, 394-395); (2) their September 30, 2017 reply memorandum of law (at pp. 29-31); (3) their May 15, 2017 reply memorandum of law (at p. 21); and (4) their "legal autopsy"/analysis of the June 26, 2017 decision (pp. 16-20), on which their August 25, 2017 memorandum of law additionally relied (pp. 28-32).

**The Decision's "Sub-Cause C – New York Constitution Article XIII, Section 7"**
**(at p. 7)**

Judge Hartman's single paragraph under this heading, granting summary judgment to defendants on sub-cause C of plaintiffs' sixth cause of action,[9] rests on her unspecified "earlier decision" – this being her June 26, 2017 decision, in which her argument was entirely *sua sponte*, having not been advanced by defendants – a fact pointed out by plaintiffs' "legal autopsy"/analysis (at pp. 20-21), furnished by their August 25, 2017 opposition/reply.

**The Decision's "Sub-Cause D – Article VII, Sections 2, 3, and 6"**
**(at pp. 7-9)**

Notwithstanding the five paragraphs under this subheading, only one actually disposes of sub-cause D of plaintiffs' sixth cause of action.[10]

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9 Plaintiffs' Sub-cause C is entitled "Chapter 60, Part E of the Laws of 2015 Violates Article XIII, §7 of the New York State Constitution" (September 2, 2016 verified complaint, ¶66).

10 Plaintiffs' sub-cause D is entitled "Chapter 60, Part E of the Laws of 2015 Violates Article VII, §6 of

The first two paragraphs recite the allegations of sub-cause D in a general, truncated fashion. The third paragraph then states (at pp. 8-9):

> "Assuming without deciding justiciability (*see Pataki v. N.Y. State Assembly*, 4 NY3d 75, 97 [2004]; *Saxton v Carey*, 44 NY2d 545, 549-551 [1978]), this sub-cause must also be denied. With regard to timeliness, Article VII, Section 3 allows the submission of budget bills 'at any time' with the consent of the Legislature. Although no formal consent appears in the record, the Legislature's consideration and passage of the bill is effective consent in itself. In any event, the 30-day timeframe appears to be precatory, not mandatory. Unlike, for instance, Article III, Section 14, which states that '[n]o bill shall be passed or become a law unless it has been printed and upon the desk of the members, in its final form, at least three calendar legislative days prior to its final passage,' Article VII, Section 6 contains no such mandatory language (*cf.* (*Maybee v State*, 4 NY3d 415, 419-421 [2005] [holding that rationale underlying a Governor's statement of necessity to allow a bill to be passed without being before the Legislature for three days is not susceptible to judicial review]). Nor does the Commission bill violate Article VII, Section 6 of the State Constitution. The creation of the Commission relates specifically to items of appropriation in the 2015 budget for judicial and legislative pay and is not 'essentially non-budgetary' (*Pataki*, 4 NY3d at 98-99; *see Schuyler v S. Mall Constructors*, 32 AD2d 454 [3d Dept 1969])."

Aside from being materially <u>different</u> from Judge Hartman's June 26, 2017 decision denying plaintiffs summary judgment on sub-cause D, which, as detailed by plaintiffs' "legal autopsy"/analysis (at pp. 21-23), was completely *sua sponte* and fraudulent, this paragraph – essentially abandoning the deceits of the June 26, 2017 decision – is also *sua sponte* and completely fraudulent.

<u>As to justiciability</u>, Judge Hartman does not decide it because, as reflected by *Winner v. Cuomo*, 176 AD2d 60 (3rd Dept. 1992), and *Pataki v. Assembly*, 4 NY3d 75 (2004), cited and quoted in plaintiffs' sub-cause D (at p. 62), as well as *Saxton v Carey*, 44 NY2d 545, 551 (1978), and a host of other cases including *Korn v Gulotta*, 72 NY2d 363, 369-370 (1988); *New York Bankers Assn v. Wetzler*, 81 NY2d 98, 102 (1993); and *King v. Cuomo*, 81 NY2d 247, 251 (1993), plaintiffs' challenges based on Article VII, §3 and §6 are justiciable.

**<u>As to the violation of Article VII, §3</u>**, Judge Hartman states (at p. 8) that the record before her contains "no formal consent". Yet, rather than acknowledging that such PRECLUDES summary judgment to defendants, she purports – *unsupported by any law* – that "consideration and passage of the bill is effective consent" – completely ignoring that the facts in the record PRECLUDE "effective consent", *as a matter of law*. These are the facts detailed by sub-cause E (¶¶413-423) as to the fraud

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the New York State Constitution – and, Additionally, Article VII, §§2 and 3" (September 2, 2016 verified complaint, ¶67).

by which Budget Bill #S4610-A/A.6721-A was introduced and enacted – facts unrefuted by defendants – and which, by the particulars and evidence recited, are clearly irrefutable and dispositive of plaintiffs' entitlement to summary judgment on sub-cause E,[11] as well as on sub-cause D pertaining to the Article VII, §3 violation.

Having neither "formal consent", nor "effective consent" – in other words, in the complete absence of the "consent" requisite to defeating plaintiffs' entitlement to summary judgment on sub-cause D based on violation of Article VII, §3 – Judge Hartman offers up the deceit that consent is not necessary because "the 30-day timeframe appears to be precatory, not mandatory" (at p. 8). This is utterly false. The definition of precatory is "a wish or advisory suggestion which does not have the force of a demand or a request which under the law must be obeyed"[12]. There is nothing in the 30-day time frame of Article VII, §3 that fits that description – as Judge Hartman may be presumed to know in not quoting or analyzing the pertinent text of Article VII, §3, which is clear and unambiguous. It reads:

> "At the time of submitting the budget to the legislature the governor shall submit a bill or bills containing all the proposed appropriations and reappropriations included in the budget and the proposed legislation, if any, recommended therein.
>
> The governor may at any time within thirty days thereafter and, with the consent of the legislature, at any time before the adjournment thereof, amend or supplement the budget and submit amendments to any bills submitted by him or her or submit supplemental bills."

The meaning of "shall" is mandatory:

> "The courts ordinarily…view the word 'shall' as an indication of the mandatory character of the provision." 20 New York Jurisprudence 2nd, §39: "Provision as mandatory or directory".

Were the second sentence to be only "precatory", it would undo the mandatory nature of the first sentence AND render meaningless the distinction in the second sentence for the Governor's amending and supplementing before and after the 30 days.

> "The starting point for any constitutional question must be the language of the constitution itself. The same general rules that govern the construction and

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11 McKinney's Consolidated Laws of New York Annotated, Book 1: Statutes – Chapter 2, §11: "Legislative procedure generally": "…the Constitution not only permits, but it requires an examination into the procedure followed in the consideration of a bill.", citing *Franklin Nat. Bank of Long Island v Clark*, 1961, 26 Misc.2d 724, 212 N.YS.2d 942, motion denied 217 N.Y.S.2d 615.

12 *See* also Black's Law Dictionary (eighth edition: 2004): "requesting, recommending, or expressing a desire for action, but usu. in a nonbinding way".

interpretation of statutes and written instruments generally apply to, and control in, the interpretation of written constitutions.
... there is no room for application of rules of construction so as to alter a constitutional provision that is not ambiguous..."
20 New York Jurisprudence 2nd, §17 "Mode of construction: applicability of principles of statutory construction"

"...When the language of a constitutional provision is plain and unambiguous, full effect should be given to the intention of the framers as indicated by the language employed and approved by the people. ....

The courts should not permit explicit language of the constitution to be rendered meaningless, and, in its construction of clear constitutional and statutory provisions, a court may not read out any requirement.", 20 New York Jurisprudence 2nd, §25 "Conformity to language";

"It is a well-settled rule, in accord with obvious good sense, that in construing the language of the constitution, the courts should give the language its ordinary, natural, plain meaning. The words of the constitution must be taken to mean what they most directly and aptly express in their usual and popular significance...It is not allowable to interpret what has no need of interpretation or, when the words have a definite precise meaning, to go elsewhere in search of conjecture in order to restrict or extend the meaning." 20 New York Jurisprudence 2nd, §27 "Ordinary meaning";

"In dealing with constitutional language, the courts are not inclined to adopt technical or strained constructions. Neither will they give to the language of the constitution a construction that leads to manifestly unintended results or makes a constitutional provision absurd. .." 20 New York Jurisprudence 2nd, §29 "Strained interpretations; absurd results"

In lieu of any recitation of the principles governing interpretation of constitutional provisions, or any textual analysis of Article VII, §3, or any citation to caselaw or treatise authority for the seemingly first-ever proposition that "the 30-day timeframe appears to be precatory", Judge Hartman substitutes (at pp. 8-9) a truncated quote of a completely separate constitutional provision, Article III, §14, quoting the beginning language of its first sentence as to its mandatory three-day aging requirement for bills, but not the balance, which sets forth the requisite for dispensing with it:

"unless the governor, or the acting governor, shall have certified, under his or her hand and the seal of the state, the facts which in his or her opinion necessitate an immediate vote thereon, in which case it must nevertheless be upon the desks of the members in final form, not necessarily printed, before its final passage".

She then crowns her expurgation of Article III, §14 with the assertion "Article VII, Section 6 contains no such mandatory language", when at issue is Article VII, §3 – whose own language is no

less mandatory, so-revealed by its language, which she has not fully quoted and textual analysis she has not furnished.

As for her concluding citation (at p. 9), in a parenthesis, and by a *cf.*,[13] to *Maybee v. State*, it has relevance ONLY to Article III, §14. Indeed, for *Maybee* to be relevant to Article VII, §3, it would have to stand for the proposition that Article III, §14 is not violated when there is NO message of necessity for a bill enacted without being on legislators' desk for three days – which it does NOT – and that the omission of a message of necessity for such bill is NOT justiciable – which it does NOT.

**As to the violation of Article VII, §6**, Judge Hartman disposes of it (at p. 9) in two conclusory sentences: the first simply declaring no violation, with the second purporting, without specificity, that "The creation of the Commission relates specifically to items of appropriation in the 2015 budget for judicial and legislative pay". This is false – and Judge Hartman conspicuously does not identify where in the budget the purported "items of appropriation" might be found. There are no such "items of appropriation", none were alleged by defendants, and sub-cause D, by its ¶407, contains the admission of the six legislative defendants who sponsored A.7997 that there was "no appropriation in the budget bill relating to the salary commission" – quoting their introducers' memorandum to A.7997, as follows:

> "Article VII, Section 6 of the New York State Constitution states in relevant part that '(n)o provision shall be embraced in any appropriation bill unless it relates specifically to some particular appropriation in the bill,' yet there was no appropriation in the budget bill relating to the salary commission. Thus, this legislation was improperly submitted and considered by the legislature as an unconstitutional rider to a budget bill."

Judge Hartman's citations to *Pataki*, 4 NY3d at 98-99, and *Schuyler v S. Mall Constructors*, 32 AD2d 454 [3d Dept 1969], reinforce the violation of Article VII, §6 which the six legislative defendants themselves revealed.

Having no facts and no law for granting summary judgment to defendants on sub-cause D, either as to their Article VII, §3 violation or their Article VII, §6 violation, Judge Hartman then whips out "prudential considerations", stating, as follows, in a three-sentence paragraph (at p. 9):

> "Prudential considerations further weigh against invading the province of the Governor and Legislature. '[T]he consequences of judicial second-guessing of the Governor's and the Legislature's choice' to create the Commission by budget bill outside the 30-day window could be 'draconian' (*Maybee*, 4 NY3d at 420; *see Schulz v. State*, 81 NY2d 336, 348-349 [1993]). If the Court 'accepted plaintiff's argument

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[13] According to The Bluebook: A Uniform System of Citation (18th ed. 2004, p. 47), *cf.* means: "Cited authority supports a proposition different from the main proposition but sufficiently analogous to lend support. Literally, '*cf.*' means 'compare.' The citation's relevance will usually be clear to the reader only if it is explained. Parenthetical explanations, however brief, are therefore strongly recommended."

> here, any statute, no matter how important to the state,' would be subject to invalidation if passed under similar circumstances (*Maybee*, 4 NY3d at 420)."

This is a conclusory deceit. Judge Hartman does not assert that a declaration striking down the commission statute as violative of Article VII, § 3 would be "draconian", but only that it "could be 'draconian". She provides not a single fact in substantiation and, indeed, its consequences would be beneficial to everyone except those whose "gravy train" of larcenous salary increases would come to an end: Judge Hartman, her judicial brethren, and district attorneys whose salaries are linked to judicial salaries. The sixth, seventh, and eighth causes of action of plaintiffs' September 2, 2017 verified complaint (¶¶59-68; ¶¶69-76; ¶¶77-80) furnish a multitude of grounds mandating invalidation of the statute – as to which the record establishes plaintiffs' entitlement to summary judgment on all three causes, *as a matter of law*.[14]

Judge Hartman then finishes off with a further paragraph (at pp. 9-10) – seemingly embracing the entirety of plaintiffs' sixth cause of action, not just its sub-cause D:

> "Finally, the particular circumstances of this case also counsel restraint. Plaintiff did not commence this action until September 2016, well after the Commission bill was signed by the Governor in April 2015, the Commission issued its Final Report on Judicial Compensation on December 24, 2015, and its recommendations took on the force of law on April 1, 2016. While the Court recognizes that invalidation of the Commission and of the raises that followed is precisely the relief plaintiff seeks, the relief she requests in her sixth cause of action must be denied (*see Schulz*, 81 NY2d 336, 348-349 [1993])."

This factual recitation infers, without so-stating and by citing *Schulz*, that plaintiffs did not timely commence their litigation challenge and are barred by laches. This is completely false. On March 31, 2015, the date Budget Bill #S.4610/A.6721 was introduced, amended, and passed by the Senate, and in the wee morning hours of April 1, 2015, passed by the Assembly – repealing Chapter 567 of the Laws of 2010 that had created the Commission on Judicial Compensation and replacing it with a materially identical statute creating the Commission on Legislative, Judicial and Executive Compensation – plaintiffs already had a citizen-taxpayer action, which they had commenced on March 28, 2014, challenging Chapter 567 of the Laws of 2010 and the August 29, 2011 report the Commission on Judicial Compensation had rendered. On September 22, 2015, by opposition/cross-motion papers[15], they sought a summary judgment declaration of unconstitutionality as to Chapter

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[14] Judge Hartman's fraudulent dismissal of plaintiffs' seventh and eight causes of action on the *sua sponte* ground that the Commission on Legislative, Judicial and Executive Compensation was not a party – for which she furnished neither law nor argument – is highlighted at p. 16 of plaintiffs' "legal autopsy"/analysis of her December 21, 2016 decision and further particularized at pp. 9-10 of plaintiffs' "legal autopsy"/analysis of her June 26, 2017 decision.

[15] *See* plaintiffs' September 22, 2015 memorandum of law (at p. 48) and plaintiff Sassower's September 22, 2015 affidavit (at ¶8).

567 of the Laws of 2010, identifying that it had been repealed and replaced by the materially identical Chapter 60, Part E of the Laws of 2015. In further support of their summary judgment entitlement, plaintiffs' November 5, 2015 reply papers[16] furnished the introducers' memorandum to A.7997, the bill to amend Chapter 60, Part E, of the Laws of 2015, by, *inter alia*, removing the "force of law" aspect of the commission's salary recommendations – and furnishing, additionally, citation to, and quotation from, the New York City Bar's *amicus curiae* brief to the Court of Appeals in *McKinney v. Commissioner of the State of New York Department of Health* (15 Misc. 3d 743 (S.Ct. Bronx 2006), affm'd 41 A.D.3d 252 (1st Dept. 2007), appeal dismissed, 9 NY3d 891 (2007), appeal denied, 9 NY3d 815; motion granted, 9 NY3d 986), as to the unconstitutionality of the similar "force of law" provision in Chapter 63, Part E, of the Laws of 2005. At that point, the Commission on Legislative, Judicial and Executive Commission was already in violation of Chapter 60, Part E of the Laws of 2015 – its full complement of seven members not having been appointed until October 31, 2015. Three weeks later, on November 30, 2015, at the Commission on Legislative, Judicial and Executive Compensation's one and only hearing on judicial compensation, plaintiff Sassower, in support of her testimony, handed up the pertinent lawsuit papers to establish plaintiffs' summary judgment entitlement to declarations of unconstitutionality with respect to Chapter 567 of the Laws of 2010 – whose effect would be the voiding of Chapter 60, Part E, of the Laws of 2015. The Commission ignored and concealed the entirety of plaintiff Sassower's testimony in rendering its December 24, 2015 report, and materially rested on the Commission on Judicial Compensation's August 29, 2011 report to recommend its own further "force of law" judicial salary increases. Immediately, plaintiffs sought oversight from defendant Chief Judge (nominee) DiFiore and, thereafter, the legislative defendants and, in the complete absence of any oversight, on March 23, 2016, brought an emergency order to show cause, with TRO, to enjoin disbursement of monies to pay for the "force of law" judicial salary increases for fiscal year 2016-2017 recommended by the December 24, 2015 report, stating:

> "3. ... 'the force of law' judicial salary increases recommended by the Commission on Legislative, Judicial and Executive Compensation suffer from the identical constitutional and statutory violations as 'the force of law' judicial salary increases recommended by the Commission on Judicial Compensation.
>
> 4. It would be wasteful to bring a separate citizen taxpayer action when the facts and law are identical – and when any such separate citizen-taxpayer action would doubtless be assigned to the Court as a related proceeding."[17] (underlining in the original).

In support, plaintiffs furnished a March 23, 2016 second supplemental verified complaint pertaining to fiscal year 2016-2017, which they sought leave to file. Despite plaintiffs' entitlement, *as a matter of law*, to the TRO relief requested, Judge McDonough denied same – and then delayed decision on

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[16] *See* plaintiffs' November 5, 2015 reply/opposition memorandum of law (at pp. 19-25) and plaintiff Sassower's November 5, 2015 reply/opposing affidavit, at ¶¶3-8.

[17] *See* plaintiffs' March 23, 2016 emergency order to show cause, with TRO, at ¶3.

the fully-submitted order to show cause until July 15, 2016, when he denied it, in its entirety, in the same decision as denied, in its entirety, plaintiffs' September 22, 2015 cross-motion. The fraudulence of this decision, which Judge McDonough corrected by an August 1, 2016 amended decision, was demonstrated by plaintiffs' "legal autopsy"/analysis thereof, annexed as Exhibit G to their September 2, 2016 verified complaint commencing the second citizen-taxpayer action – a complaint whose sixth causes of action (¶¶59-68) rests on the thirteenth cause of action of the March 23, 2016 verified second supplemental complaint (¶¶385-423), annexed thereto as Exhibit A.

**The Decision's Ordering Paragraphs**
**(at p. 10)**

Judge Hartman's decision concludes with four ordering paragraphs – the third being misleading and fourth being fraudulent.[18]

The third ordering paragraph, "ORDERED that summary judgment is granted in favor of defendants", is overbroad. Judge Hartman granted defendants' cross-motion for summary judgment on plaintiffs' sixth cause of action – with this limited to sub-causes A-D because sub-cause E was allegedly dismissed by her December 21, 2016 decision for failure to state a cause of action.

As for the fourth ordering paragraph,

> "ORDERED AND ADJUDGED AND DECLARED that plaintiff has not demonstrated that the Laws of 2015, ch 60, Part E §3 [5], which created the Commission on Legislative, Judicial & Executive Compensation, is facially unconstitutional",

it is fraudulent. Plaintiffs demonstrated their entitlement to declarations that Chapter 60, Part E of the Laws of 2015 is unconstitutional, *as written* and by its introduction and enactment, by sub-causes A, B, D, and E of their sixth cause of action, if not also by their sub-cause C.

**The Decision's CPLR §2219(a) Recitation of "Papers Considered"**
**(at p. 11)**

Justice Hartman ends her decision by a CPLR §2219(a) listing of "Papers Considered". No fair and impartial tribunal could have "Considered" the listed papers and rendered the November 28, 2017 decision. As hereinabove demonstrated, it is a judicial fraud, proven, *readily*, by those very "Papers Considered".

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[18] As to the first ordering paragraph: "ORDERED that plaintiff's motion for disqualification, reargument, renewal and vacatur is denied", Judge Hartman identifies the disqualification sought as part of the first and second branches of plaintiffs' June 12, 2017 order to show cause, but not the disclosure also sought by the first branch – which she has implicitly denied.

As to the second ordering paragraph: "ORDERED that defendants' motion for sanctions is denied", Judge Hartman fails to identify that defendants' motion was actually a cross-motion, dated July 21, 2017.

STATE OF NEW YORK
SUPREME COURT — COUNTY OF ALBANY

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

Plaintiffs,

-against-

ANDREW M. CUOMO, in his official capacity as Governor of the State of New York, JOHN J. FLANAGAN in his official capacity as Temporary Senate President, THE NEW YORK STATE SENATE, CARL E. HEASTIE, in his official capacity as Assembly Speaker, THE NEW YORK STATE ASSEMBLY, ERIC T. SCHNEIDERMAN, in his official capacity as Attorney General of the State of New York, THOMAS P. DINAPOLI, in his official capacity as Comptroller of the State of New York, and JANET M. DIFIORE, in her official capacity as Chief Judge of the State of New York and chief judicial officer of the Unified Court System,

Defendants.

**DECISION AND JUDGMENT**

Index No. 5122-16
RJI No. 01-16-122174



APPEARANCES:

ELENA RUTH SASSOWER
Plaintiff pro se
PO Box 8101
White Plains, New York 10602

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Adrienne J. Kerwin, AAG, of Counsel
Attorney for Defendants
The Capitol
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Hartman, J.

In this citizen-taxpayer action for declaratory and injunctive relief, pro se plaintiff Elena Ruth Sassower challenges legislation enacted in 2015 that created the Commission on Legislative, Judicial & Executive Compensation (Commission) and budget legislation for the 2016-2017 fiscal year. In its December 21, 2016 Decision and Order, the Court granted in part defendants' pre-answer motion and dismissed nine of ten causes of action, but denied the motion with respect to the cause of action challenging the 2015 legislation. On May 5, 2017, this Court issued a Decision and Order denying plaintiff's application for disqualification and reargument, renewal, and vacatur of the Court's December 21, 2016 Decision and Order. On that same date, the Court issued an Amended Decision and Order correcting the recitation of papers considered in the December 21, 2016 Decision and Order.

Plaintiff now moves, by order to show cause, for disqualification, reargument, renewal, and vacatur of the Court's May 5, 2017 Decision and Order and the May 5, 2017 Amended Decision and Order. Once again plaintiff has failed to establish matters of fact or law that the Court overlooked or misrepresented that would warrant reargument, or new facts that would warrant renewal (*see* CPLR 2221 [d, [e]]). Nor has she established grounds for disqualification and vacatur (*see Matter of Maron v Silver*, 14 NY3d 230, 249 [2010] [Rule of Necessity]; *Pines v State of N.Y.*, 115 AD3d 80, 90-91

[2d Dept 2014] [same], *appeal dismissed* 23 NY3d 982 [2014]). Plaintiff's motion is therefore denied.

Respondents, having answered, cross-move for summary judgment on the sole remaining cause of action, both for lack of standing and on the merits, and for sanctions against plaintiff. Defendants waived their right to raise standing as a defense by failing to raise it in their pre-answer motion to dismiss or answer (*see Matter of Plainview-Old Bethpage Congress of Teachers v NY State Health Ins. Plan*, 140 AD3d 1329, 1330 [3d Dept 2016]; *Schulz v Silver*, 212 AD2d 293, 296 [3d Dept 1995]). In any event, plaintiff has asserted a sufficient nexus to the fiscal activity of the State to confer standing under State Finance Law § 123-b (1) (*see Saratoga County Chamber of Commerce v Pataki*, 100 NY2d 801, 813–814 [2003]).[1] But because defendants have demonstrated entitlement to judgment as a matter of law and plaintiff has not raised a material issue of fact in opposition, the motion for summary judgment is granted. The motion for sanctions, however, is denied.

**Procedural Background**

By Decision and Order dated December 21, 2016, as amended on May 5, 2017, the Court dismissed all of the complaint's causes of action but the sixth,

[1] Because plaintiff Sassower is not an attorney, this Court in its December 21, 2016 Decision and Order dismissed causes of action she seeks to assert on behalf of the Center for Judicial Accountability.

which challenged as unconstitutional the 2015 legislation that created the Commission on Legislative, Judicial & Executive Compensation (Commission) (L 2015, ch 60, Part E § 3 [5]; S4610/A6721 2015). In its Decision and Order dated June 26, 2017, the Court denied plaintiff's motion for summary judgment on the sixth cause of action. In that decision, the Court divided the sixth cause of action into six sub-causes, labelled A–E. As the Court held, the law of the case disposes of Sub-Cause E—allegations that the budget bill that created the Commission was procured by fraud and in violation of due process failed to state a cause of action. The remaining sub-causes must also be resolved in favor of defendants.

The issues plaintiff raises must be viewed through the lens of the strong presumption of the constitutionality of legislative enactments. Where, as here, a plaintiff makes a facial challenge to a legislative enactment, that enactment will not be held unconstitutional unless the plaintiff demonstrates with "proof beyond a reasonable doubt" that "no set of circumstances exists under which the [enactment] would be valid" (*Moran Towing Corp. v Urbach*, 99 NY2d 443, 448 [2003] [internal citations and quotation marks omitted]; *see Local Govt. Assistance Corp. v Sales Tax Asset Receivable Corp.*, 2 NY3d 524, 535 [2004]; *Hunter v Bd. of Supervisors*, 21 AD3d 622, 624 [3d Dept 2005]).

Sub-Causes A & B—Improper Delegation of Authority Claims

Plaintiff alleges in Subcauses A and B that the 2015 legislation unconstitutionally delegates legislative authority to the Commission. Although "the Legislature cannot pass on its law-making functions to other bodies[,] there is no constitutional prohibition against the delegation of power, with reasonable safeguards and standards, to an agency or commission to administer the law as enacted by the Legislature" (*Boreali v Axelrod*, 71 NY2d 1, 10 [1987]).

As defendants argue, the Commission's enabling legislation contains both standards and reasonable safeguards. The legislation provides a specific task to the Commission and defined guidelines for it to consider in furtherance of that task. It directs the Commission to "examine, evaluate and make recommendations with respect to adequate levels of compensation" for judges and members of the Legislature. The Commission must

> "take into account . . . overall economic climate; rates of inflation; changes in public-sector spending; the levels of compensation and non-salary benefits received by executive branch officials and legislators of other states and of the federal government; the levels of compensation and non-salary benefits received by professionals in government, academia and private and nonprofit enterprise; and the State's ability to fund increases in compensation and non-salary benefits."

(L 2015, ch 60, Part E § 2 [3]). The Commission must also have access to and use court and agency data (L 2015, ch 60, Part E § 3 [5]). Finally, the legislation gives the Legislature and Governor an opportunity to veto the recommendations before they take on the force of law by following the usual constitutional process for enacting a statute (L 2015, ch 60, Part E § 3 [7]). This constitutes "adequate guidance" (*see Matter of Retired Public Employees Assn. v Cuomo*, 123 AD3d 92, 97 [3d Dept 2014]).

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

Sub-Cause C—New York Constitution Article XIII, Section 7

Plaintiff alleges that the State Constitution forbids the increase of judicial and legislative salaries during the term for which the judge or legislator was elected. As the Court noted in its earlier decision, although the Constitution does forbid increases for legislators during the term for which they were elected, it contains no such prohibition against increases in judges' salaries. Rather, the provision that applies to judicial salaries expressly forbids decreases but does not mention increases (*Compare* Article VII, § 7 *with* Article VI, § 25 [a]). Thus, the Court needs to look no further than the plain text of the State Constitution to dispose of plaintiff's argument with respect to the judiciary. And as the Court previously held with respect to legislative raises, plaintiff cannot prove that "no set of circumstances exists under which the Act would be valid" because the Commission has not recommended any pay raise for legislators (*see Moran Towing*, 99 NY2d at 448 [internal quotation marks omitted]).

Sub-Cause D—Article VII, Sections 2, 3, and 6

Plaintiff alleges that the budget bills resulting in the enactment of the law creating the Commission (S4610/A6721 2015) violated New York State Constitution Article VII, Sections 2, 3, and 6. When the Governor submits a budget to the Legislature, he must also submit bills containing all appropriations and proposed legislation (*see* NY Const Art VII, § 3). The

Governor may submit supplemental budget bills and amendments "within thirty days" of submitting the budget and, "with the consent of the legislature, at any time before the adjournment thereof" (*id.*). "No provision shall be embraced in any appropriation bill submitted by the governor or in such supplemental appropriation bill unless it relates specifically to some particular appropriation in the bill" (NY Const Art VII, § 6).

Plaintiff argues that the bill creating the Commission must be invalidated because it was not introduced by the Governor and was not submitted within the prescribed 30-day window. Plaintiff also argues that the bill establishing the Commission violated the requirement that items in appropriation bills relate specifically to an appropriation in the bill.

Assuming without deciding justiciability (*see Pataki v N.Y. State Assembly*, 4 NY3d 75, 97 [2004]; *Saxton v Carey*, 44 NY2d 545, 549-551 [1978]), this sub-cause of action must be denied. With regard to timeliness, Article VII, Section 3 allows the submission of budget bills "at any time" with the consent of the Legislature. Although no formal consent appears in the record, the Legislature's consideration and passage of the bill is effective consent in itself. In any event, the 30-day timeframe appears to be precatory, not mandatory. Unlike, for instance, Article III, Section 14, which states that "[n]o bill shall be passed or become a law unless it has been printed and upon the desks of the members, in its final form, at least three calendar legislative days prior to its

final passage," Article VII, Section 6 contains no such mandatory language (*cf.* (*Maybee v State*, 4 NY3d 415, 419-421 [2005] [holding that rationale underlying a Governor's statement of necessity to allow a bill to be passed without being before Legislature for three days is not susceptible to judicial review]). Nor does the Commission bill violate Article VII, Section 6 of the State Constitution. The creation of the Commission relates specifically to items of appropriation in the 2015 budget for judicial and legislative pay and is not "essentially non-budgetary" (*Pataki*, 4 NY3d at 98-99; *see Schuyler v S. Mall Constructors*, 32 AD2d 454 [3d Dept 1969]).

Prudential considerations further weigh against invading the province of the Governor and Legislature. "[T]he consequences of judicial second-guessing of the Governor's and the Legislature's choice" to create the Commission by budget bill outside the 30-day window could be "draconian" (*Maybee*, 4 NY3d at 420; *see Schulz v State*, 81 NY2d 336, 348-349 [1993]). If the Court "accepted plaintiff's argument here, any statute, no matter how important to the state," would be subject to invalidation if passed under similar circumstances (*Maybee*, 4 NY3d at 420).

Finally, the particular circumstances of this case also counsel restraint. Plaintiff did not commence this action until September 2016, well after the Commission bill was signed by the Governor in April 2015, the Commission issued its Final Report on Judicial Compensation on December 24, 2015, and

its recommendations took on the force of law on April 1, 2016. While the Court recognizes that invalidation of the Commission and of the raises that followed is precisely the relief plaintiff seeks, the relief she requests in her sixth cause of action must be denied (*see Schulz*, 81 NY2d 336, 348-349 [1993]).

Accordingly, it is

**ORDERED** that plaintiff's motion for disqualification, reargument, renewal, and vacatur is denied;

**ORDERED** that defendants' motion for sanctions is denied;

**ORDERED** that summary judgment is granted in favor of defendants; and

**ORDERED AND ADJUDGED AND DECLARED** that plaintiff has not demonstrated that the Laws of 2015, ch 60, Part E § 3 [5], which created the Commission on Legislative, Judicial & Executive Compensation, is facially unconstitutional.

This constitutes the Decision and Judgment of the Court. The original Decision and Judgment is being transmitted to defendant's counsel. All other papers are being transmitted to the County Clerk for filing. The signing of this Decision and Judgment does not constitute entry or filing under CPLR 2220 or 5016 and counsel is not relieved from the applicable provisions of those rules

respecting filing and service.

Dated: Albany, New York
November 28, 2017

Denise A. Hartman
Acting Justice of the Supreme Court

Papers Considered

1. Order to Show Cause Dated June 16, 2017 and Moving Affidavit, with Exhibits A–G
2. Defendants' Affirmation in Opposition to Plaintiff's Order to Show Cause and in Support of Defendants' Cross-Motion, with Exhibits A–AA
3. Defendants' Memorandum of Law in Opposition to Plaintiff's Order to Show Cause and in Support of Defendants' Cross-Motion
4. Plaintiff's Letter Dated July 27, 2017
5. Plaintiff's Affidavit in Reply and in Opposition, with Exhibits H–J
6. Plaintiff's Memorandum of Law in Reply and in Further Support