SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

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

Index #: 904235-22

December 16, 2022

Petitioners/Plaintiffs,

NOTICE OF APPEAL

-against-

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

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

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

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

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

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

Respondents/Defendants.

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PLEASE TAKE NOTICE that petitioners/plaintiffs hereby appeal to the Appellate Division, Third Department, at the Justice Building, 5th Floor, Empire State Plaza, Albany, New York 12223, from the "Decision, Order and Judgment" of Ulster County Supreme Court Justice David M. Gandin, dated November 23, 2022 and entered in the Albany County Clerk's Office on that date. It is attached herewith, together with petitioners' "legal autopsy"/analysis thereof.

Dated: White Plains, New York
December 16, 2022

Yours, etc.

ELENA RUTH SASSOWER, unrepresented petitioner/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: Attorney General Letitia James
The Capitol
Albany, New York 12224-0341

ATT: Assistant Attorney General Gregory Rodriguez

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

Elena Ruth Sassower, Center for Judicial Accountability, Inc., 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,

Petitioners/Plaintiffs,

-against-

New York State Joint Commission on Public Ethics, Legislative Ethics Commission, New York State Inspector General, Kathy Hochul in her official capacity as Governor of the State of New York, Andrea Stewart-Cousins in her official capacity as Temporary Senate President, New York State Senate, et al,

Respondents/Defendants.

DECISION, ORDER and JUDGMENT
Index No. 904235-22

Present:
David M. Gandin, JSC

The following papers were read and considered on this special proceeding:

1. Notice of Petition and Verified Petition with Exhibits A-M-5;
2. Verified Amendment to June 6, 2022 Petition;
3. Notice of Cross-Motion;
4. Memorandum of Law;
5. Affidavit of Emily Logue;
6. Affidavit of Leslie M. Arp;
7. Notice of Motion;
8. Memorandum of Law;
9. Affidavit in Opposition to Cross Motion and in Support with Exhibits A-D;
10. Attorney Affirmation;
11. Memorandum of Law in Reply;
12. Affidavit in Reply with Exhibits A-C-2;
13. Memorandum of Law in Reply.

This is a hybrid Article 78/declaratory judgment action. Petitioners seeks remedies in the nature of mandamus and prohibition to compel state entities to investigate and prosecute petitioners' complaints of public corruption and ethics violations in government. They also challenge as unconstitutional the Ethics Commission Reform Act of 2022 ("ECRA"), the 2022-2023 New York State budget, the 2022-2023 Legislative/Judiciary Budget Bill, various appropriations made on behalf of the judiciary within the bill, and Public Officers Law (POL) § 108(2)(b). After commencing this proceeding with the filing of their verified petition, petitioners moved for a temporary restraining order and preliminary injunction to enjoin enactment of the ECRA. Following

oral argument, the Court declined to issue a temporary restraining order and set a briefing schedule. Respondents then cross-moved to dismiss. In response, petitioners moved for sanctions, disqualification of counsel, recusal of the Court, summary judgment and other relief.

Petitioners ten causes of action center around respondent New York State Joint Commission on Public Ethics ("JCOPE") handling of various complaints petitioner Elena Sassower filed beginning in 2013 alleging breaches of public trust. The petition alleges that most recently, on or about April 13, 2022, Sassower filed a complaint with JCOPE claiming that the fiscal year 2022-2023 state budget and legislative and judiciary budget bills were unconstitutional. Sassower further claims that high-ranking public figures in state government conspired to adopt the ECRA in an effort to insulate themselves from public corruption investigations. The rationale cited in support of this assertion is petitioners' contention that once enacted, ECRA would dissolve JCOPE and in its place establish the Commission on Ethics and Lobbying in Government ("CELG"), a successor organization charged with the investigation of ethical conduct violations in government. Petitioners maintain that the jurisdiction conferred by ECRA to CELG is less than that of JCOPE and thus CELG will not be able to adequately investigate complaints of public corruption.

Petitioners further allege that JCOPE violated former Executive Law § 94(13)(a), which required JCOPE to send a letter to the complained-of subject named in a report within 15 days of receipt of such complaint. The statute stated that the letter shall set forth the sections of the law alleged to have been violated and provide a 15 day period for the subject to respond to the allegations with "evidence, statements and proposed witnesses." Petitioners maintain that JCOPE did not issue letters to the subjects named in their complaints because it "knew the ... public officers and employees would be unable to deny ... their [POL] § 74 violations." Petitioners point to the use of the word "shall" within the statute in support of their position that the statute imposes a nondiscretionary duty upon JCOPE and thus mandamus is the appropriate remedy. Lastly, petitioners contend that JCOPE's failure to issue the 15 day letters impaired its ability to properly investigate and detect procedural and substantive misconduct which renders the 2022-2023 state budget and the legislative and judiciary budget bill unconstitutional.

In support of their motion to dismiss and in opposition to the motion for a preliminary injunction, respondents contend that petitioners have failed to demonstrate a likelihood of success on the merits of their claims. Specifically, they maintain that petitioners lack standing to assert a challenge to JCOPE's purported violation of Executive Law § 94. Additionally, they maintain that several of petitioners' claims are time barred or have been rendered moot by enactment of ECRA on July 8, 2022. They further assert that mandamus and prohibition are unavailable because petitioners have not demonstrated an entitlement to a clear legal right. Lastly, they assert that petitioners' constitutional challenges to the state budget, budget bills and POL § 108(2)(b) must be dismissed as they fail to articulate allegations that, if taken as true, support their claims of unconstitutionality.

Petitioners seek recusal claiming that the Court demonstrated "actual bias" based on its denial of their July 7, 2022 application for a temporary restraining order. "A judge shall not sit as such in,

or take any part in the decision of, an action, claim, matter, motion or proceeding to which...he is interested..." Judiciary Law § 14. "Absent a legal disqualification under Judiciary Law § 14...a trial judge is the sole arbiter of recusal and his or her decision, which lies within the personal conscience of the court, will not be disturbed absent an abuse of discretion." *Kampfer v. Rase*, 56 AD3d 926 (3d Dept 2008) (internal quotation marks omitted). An allegation that a judge has previously ruled adverse to a party does not establish a statutory basis for recusal. See *Patrick UU. v. Frances VV.*, 200 AD3d 1156 (3d Dept 2021). The Court rejects petitioners' claim that it has a pecuniary interest in the outcome of this proceeding because the state budget has provisions governing judicial compensation. The same contention could be raised before any Justice of the Supreme Court presiding over this proceeding. Thus, this Court bears no unique self-interest in the outcome of this proceeding and can fairly and impartially adjudicate it on its merits. See *Ctr. for Jud. Accountability, Inc. v. Cuomo*, 167 AD3d 1406, 1408 (3d Dept 2018).

Where respondents to an Article 78 proceeding move to dismiss under CPLR § 7804(f), objections in point of law are limited to threshold objections of the kind listed in CPLR § 3211(a) which are capable of disposing of the case without reaching the merits. *Matter of Hull-Hazard, Inc. v. Roberts*, 129 AD2d 348 (3d Dept 1987). Furthermore, only the petition may be considered and all of its allegations must be deemed to be true. *Mattioli v. Casscles*, 50 AD2d 1013 (3d Dept 1975).

Initially, all claims asserted on behalf of petitioner Center for Judicial Accountability, Inc. must be dismissed as it is not represented by counsel. Excluding exceptions not relevant here, a corporation must appear in a civil action by attorney. CPLR § 321(a).

With respect to Sassower's remaining claims, her first and third causes of action must be dismissed for lack of standing. To have standing to challenge a governmental action, a petitioner must show: (1) injury in fact, meaning that the petitioner will actually be harmed by the administrative action; and (2) that the alleged injury falls within the zone of interests or concerns sought to be promoted or protected by the statutory provision under which the agency has acted. *New York State Ass'n of Nurse Anesthetists v. Novello*, 2 NY3d 207, 211 (2004). "As the term itself implies, the injury [in fact] must be more than conjectural." *Id.* "Tenuous and ephemeral harm ... is insufficient to trigger judicial intervention." *Id*, at 214. Here, Sassower asserts that, by failing to send the subjects of her complaints a 15 day letter informing them of the complaints and presenting the option to submit evidence to rebut her allegations, JCOPE was denied the proof that would have substantiated her claims of public corruption. Such allegations do not constitute injury in fact. Sassower's line of reasoning contemplates hypothetical harm too remote and speculative to confer standing. Moreover, the language of the former EL§ 94(13)(a) makes clear that the provision directing JCOPE to send a letter informing a subject of a pending complaint was enacted for the protection of the subject, not the complainant. Therefore, Sassower also lacks standing as she falls outside of the class of persons sought to be protected by the statute. Similarly, the third cause of action which seeks an order directing the appointment of a ninth member to the Legislative Ethics Commission (LEC) must be dismissed as Sassower fails to demonstrate that she has or will suffer an actual, tangible injury from the vacancy on the LEC.

Sassower's second cause of action seeking mandamus to compel JCOPE to file an annual report pursuant to the former EL § 94(9)(l)(i) detailing complaints received as well as their disposition has been rendered moot by the enactment of ECRA on July 8, 2022. By Sassower's own admission, ECRA abolished JCOPE and in its place established CELG. As JCOPE no longer exists, it cannot be compelled to file an annual report. Similarly, Sassower's fourth cause of action in the nature of mandamus to compel the LEC to issue annual reports for the years 2020 and 2021 is moot as the reports have been published on the organization's official website. As further judicial determination of these issues will not affect the rights of the parties, the claims are dismissed. See *Sportsmen's Tavern LLC v. New York State Liq. Auth.*, 195 AD3d 1557 (4th Dept 2021).

Sassower's fifth cause of action in the nature of mandamus to compel the Office of the Inspector General (OIG) to investigate her allegations of public corruption in state government also lack merit. "Mandamus to compel is available only to enforce a clear legal right where the public official has failed to perform a duty enjoined by law." *Matter of Glenman Indus. & Commercial Contr. Corp. v. New York State Off. of State Comptroller*, 75 AD3d 986 (3d Dept 2010). "Thus, mandamus does not lie to enforce the performance of a duty that is discretionary, as opposed to ministerial." *New York Civ. Liberties Union v. State*, 4 NY3d 175, 184 (2005). "A discretionary act involve[s] the exercise of reasoned judgment which could typically produce different acceptable results whereas a ministerial act envisions direct adherence to a governing rule or standard with a compulsory result." *Id.*, quoting *Tango v. Tulevech*, 61 NY2d 34, 41 (1983). Contrary to Sassower's assertion, EL § 53(1) does not impose a mandatory obligation upon the OIG to investigate each and every complaint it receives. "Whether a given provision in a statute is mandatory or directory is to be determined primarily from the legislative intent gathered from the entire act and the surrounding circumstances, keeping in mind the public policy to be promoted and the results that would follow one or the other conclusion." *989 Hempstead Turnpike, LLC v. Town Bd. of Town of Hempstead*, 67 Misc 3d 1234(A), 4 (Sup Ct 2020), quoting Statutes Law § 171. Notwithstanding the legislature's use of the word "shall," the interpretation Sassower espouses would lead to an absurd result by obligating the OIG to waste time and public resources investing allegations of corruption no matter how patently devoid of merit they may be on their face. Having found the complained-of governmental actions are discretionary in nature, Sassower cannot seek enforcement through mandamus.

As a matter of law, Sassower's sixth, seventh, eighth and ninth causes of action challenging the constitutionality of ECRA, the state budget and legislative and judicial budget bill fail to state a cause of action. A legislative enactment is entitled to a "strong presumption of constitutionality and...will be declared unconstitutional by the courts only when it can be shown beyond reasonable doubt that it conflicts with the Constitution after every reasonable mode of reconciliation of the statute with the Constitution has been resorted to, and reconciliation has been found impossible". *Harkenrider v. Hochul*, 38 NY3d 494, 509 (2022) (internal quotation marks omitted). "A party mounting a facial constitutional challenge bears the substantial burden of demonstrating that in any degree and in every conceivable application, the law suffers wholesale constitutional impairment. *Moran Towing Corp. v. Urbach*, 99 NY2d 443, 448 (2003) (internal quotation marks omitted). Here, Sassower alleges both procedural and substantive illegality in the budget approval process.

Sassower's challenge to the constitutionality of "three people in the room" budget negotiations has previously been rejected by the Appellate Division, Third Department. See *Ctr. for Jud. Accountability, Inc.*, supra. To the extent that she asserts that the budget was unconstitutionally enacted, the petition makes only conclusory, unsupported allegations that unnamed members of the legislature violated various provisions of the state constitution. Moreover, "[t]he manner in which bills are voted out of committee is entirely determined by internal rules of proceedings, which article III, § 9 of the Constitution vests in each house of the Legislature." *Urban Justice Ctr. v. Pataki*, 38 AD3d 20, 30 (1st Dept 2006). "[I]t is not the province of the courts to direct the legislature how to do its work, particularly when the internal practices of the Legislature are involved." *Id.*, at 27 (internal quotation marks omitted). With respect to Sassower's substantive challenges to specific approvals for funding contained within the state budget and budget bills and the methodology employed to arrive at those figures, no court may substitute its judgment for that of the legislature in this regard. *Id.*, quoting *Saxton v. Carey*, 44 NY2d 545, 549 (1978) ("It is not 'a proper function of the courts to police the degree of itemization necessary in the State budget,' a task for which the courts 'are neither constituted, suited, nor, indeed, designed,' but rather 'is a decision which is best left to the Legislature'").

Finally, Sassower's tenth cause of action seeking to invalidate POL § 108(2)(b) as unconstitutional on its face and in its application must be dismissed. In support of her claims, Sassower merely asserts that the law conflicts with Art. 3, § 10 of the state constitution. Her pleadings fail to allege non-speculative facts legally sufficient to overcome the strong presumption of constitutionality of the statute. "The performance of legislative function requires the private, candid exchange of ideas and points of view among members of each political party concerning the public business to come before legislative bodies." *Urban Justice Center*, at 31. In this spirit, private discussions between members of the state legislature concerning the state budget are not violative of the state constitution or the Open Meetings Law. For similar reasons, Sassower's "as-applied" challenge to the statute fails as the petition lacks an analysis of facts specific to her particular claims to determine whether the application of a statute deprived her of a protected right. See *Field Day, LLC v. County of Suffolk*, 463 F3d 167 (2d Cir 2006). Wherefore, it is

ORDERED that respondents' motion is granted and that the petition is dismissed. It is further

ORDERED that petitioners' cross-motion is denied.

The foregoing constitutes the decision and order of the Court. The signing of this decision and order shall not constitute entry or filing under CPLR §2220. Counsel is not relieved from the applicable provisions of that rule regarding notice of entry.

Dated: November 23, 2022
Kingston, New York

ENTER:

DAVID M. GANDIN, J.S.C.

11/23/2022

Pursuant to CPLR §5513, an appeal as of right must be taken within thirty (30) days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty (30) days thereof.

ANALYSIS OF THE NOVEMBER 23, 2022 "DECISION, ORDER AND JUDGMENT" OF ULSTER COUNTY SUPREME COURT JUSTICE DAVID M. GANDIN

Center for Judicial Accountability, et al. v. JCOPE, et al.,
Albany Co. #904235-2022

This analysis is a "legal autopsy"[1] of the November 23, 2022 "DECISION, ORDER and JUDGMENT" of Ulster County Supreme Court Justice David M. Gandin, filed six times on the NYSCEF docket (#111, #112, #113, #114, #115, #116).

As hereinafter shown, Justice Gandin knew himself to be without jurisdiction pursuant to Judiciary Law §14 by reason of his financial and other interests, but, rather than acknowledging and confronting that issue – and his bias resulting from same – he flagrantly corrupted the judicial process, in tandem with the State Attorney General, a respondent, representing herself and her fellow respondents.[2] The result is a decision that cannot be justified, is "so totally devoid of evidentiary support as to render [it] unconstitutional under the Due Process Clause"[3] of the United States Constitution and New York State Constitution, and is a criminal act, violating a succession of provisions of New York's Penal Law, including:

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

The most cursory examination of the case record, posted on NYSCEF, establishes this resoundingly – and the best starting place for that examination is petitioners' 29-page, single-spaced "legal autopsy"/analysis of the Attorney General's cross-motion to dismiss the petition (#88). The only reference to it, by Justice Gandin's decision, is by his page 1 recital of "papers…read and considered" which lists "9. Affidavit in Opposition to the Cross Motion and in Support with Exhibits

[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)).

[2] For simplicity, the parties to this Article 78 proceeding/declaratory judgment action/citizen-taxpayer action are here referred to as petitioners and respondents, rather than petitioners-plaintiffs and respondents-defendants. Likewise, the verified petition-complaint is here referred to as the petition.

[3] *Garner v. State of Louisiana*, 368 U.S. 157, 163 (1961); *Thompson v. City of Louisville*, 362 U.S. 199 (1960).

A-D". Exhibit A is the "legal autopsy"/analysis of the cross-motion.

Suffice to here quote the introductory preface of the Exhibit A "legal autopsy"/analysis, where, beneath the quote:

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

petitioners stated:

> "In this major lawsuit, with ten causes of action exposing the corruption of New York's public protection/ethics entities, enabling and abetting the corruption of New York state governance involving an 'off the constitutional rails' state budget and massive larceny of taxpayer monies, including by pay raises to New York's state judicial, executive, and legislative constitutional officers based on 'false instrument' reports, Respondent Attorney General Letitia James, a pay raise beneficiary, is representing herself and her nine co-respondents. Appearing for her, 'of Counsel', is Assistant Attorney General Gregory Rodriguez, whose August 18, 2022 cross-motion (##79-82) to dismiss the June 6, 2022 verified petition is not just frivolous, but a 'fraud on the court',[fn] fashioned, from beginning to end, on knowingly false and misleading factual assertions, material omissions,[fn] and on law that is inapplicable, misstated, or both.
>
> Such litigation fraud repeats AAG Rodriguez' comparable litigation fraud by his June 27, 2022 motion to dismiss the petition (##50-58), already demonstrated by petitioners' June 28, 2022 opposing affidavit (##61-64). It additionally follows upon the fraudulent advocacy of his colleague, Assistant Attorney General Stacey Hamilton, at the July 7, 2022 oral argument on petitioners' order to show cause for a TRO/preliminary injunction (##66-72), of which AAG Rodriguez was furnished notice and the transcript proof.[fn] That the Court permitted this prior litigation fraud, indeed rewarded it, has plainly emboldened Attorney General James and her subordinates to do the same a third time, secure in the belief that the Court, being a pay raise beneficiary itself, will allow them to get away with everything."

Based on this Exhibit A "legal autopsy"/analysis (#88), petitioners simultaneously filed a September 15, 2022 motion for the relief to which it entitled them (#93):

> "1. pursuant to 22 NYCRR §130-1.1 *et seq.*, imposing costs and maximum sanctions upon Respondent Attorney General Letitia James, her culpable attorney staff, and culpable respondents for their August 18, 2022 dismissal cross-motion and June 27, 2022 dismissal motion, signed by 'of Counsel' Assistant Attorney General Gregory Rodriguez, Esq.– both not merely frivolous, but frauds on the Court;

2. pursuant to Judiciary Law §487(1), making such determination as would afford petitioners treble damages in a civil action against Respondent Attorney General James, her culpable attorney staff, and culpable respondents based on their August 18, 2022 dismissal cross-motion, June 27, 2022 dismissal motion, and, additionally, the fraud committed, on their behalf, by Assistant Attorney General Stacey Hamilton by her July 7, 2022 oral argument in opposition to petitioners' order to show cause for a TRO/preliminary injunction;

3. pursuant to 22 NYCRR §100.3D(2), referring Respondent Attorney General James, her culpable attorney staff, and culpable respondents to:

(a) appropriate disciplinary authorities for their knowing and deliberate violations of New York's Rules of Professional Conduct for Attorneys and, specifically, Rule 3.1 'Non-Meritorious Claims and Contentions'; Rule 3.3 'Conduct Before A Tribunal'; Rule 8.4 'Misconduct'; Rule 5.1 'Responsibilities of Law Firms, Partners, Managers and Supervisory Lawyers'; and Rule 5.2 'Responsibilities of a Subordinate Lawyer';

(b) appropriate criminal authorities for their Judiciary Law §487 'misdemeanor', and for their knowing and deliberate violations of penal laws, including, Penal Law §496 'corrupting the government'; Penal Law §195 'official misconduct'; Penal Law §175.35 'offering a false instrument for filing in the first degree'; Penal Law §195.20 'defrauding the government'; Penal Law §190.65: 'scheme to defraud in the first degree'; Penal Law §155.42 'grand larceny in the first degree'; Penal Law §105.15 'conspiracy in the second degree'; Penal Law §20 'criminal liability for conduct of another';

4. pursuant to Executive Law §63.1 and Rule 1.7 of the New York Rules of Professional Conduct proscribing conflicts of interest, disqualifying Respondent Attorney General James from representing her co-respondents and requiring appointment of independent, outside counsel to determine 'the interest of the state' pursuant to Executive Law §63.1 – and petitioners' entitlement to representation;

5. pursuant to CPLR §3211(c), granting summary judgment to petitioners on the ten causes of action of their June 6, 2022 verified petition/complaint and September 1, 2022 verified amendment thereto – starting with the sixth cause of action for a declaration that the 'ethics commission reform act of 2022' is unconstitutional, unlawful and void, as it was enacted in violation of mandatory provisions of the New York State Constitution, statutes, legislative rules, and caselaw;

6. pursuant to CPLR §2214(c), directing respondents to furnish the Court with the papers specified by petitioners' June 28, 2022 notice and September 3, 2022 notice – or, alternatively, pursuant to CPLR §3124, compelling respondents'

compliance to those same two notices, as embodied by petitioners' September 15, 2022 notice for production and inspection pursuant to CPLR §3120;

7. for such other and further relief as may be just and proper and, particularly, if the foregoing is denied:

(a) disclosure by the Court, pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct, of its financial and other interests in this case, giving rise to its actual bias, as recited by petitioner's July 6, 2022 affidavit in support of their order to show cause, and further manifested by the Court's oral decision at the July 7, 2022 argument of petitioners' order to show cause for a TRO/preliminary injunction;

(b) transferring/removing this case to federal court, including pursuant to Article IV, §4 of the United States Constitution: 'The United States shall guarantee every State in this Union a Republican Form of Government', inasmuch as this Court and every justice and acting justice of the Supreme Court of the 62 counties of New York State are divested of jurisdiction to hear the case pursuant to Judiciary Law §14 because of their direct financial and other interests and 'rule of necessity' cannot be invoked by reason thereof – or, alternatively, certifying the question to the Appellate Division, Third Department or to the New York Court of Appeals."

This September 15, 2022 notice of motion (#93) is listed by the decision's first page recital of "papers…read and considered" as "7. Notice of Motion" . Petitioners' accompanying memorandum of law supporting each of the motion's seven branches is "8. Memorandum of Law" (#94).

The entirety of what Justice Gandin discloses about the content of petitioners' above-quoted motion is in his decision's first paragraph following the listing of "papers…read and considered" (at pp. 1-2), where he states:

"…Respondents then cross-moved to dismiss. In response, petitioners moved for sanctions, disqualification of counsel, recusal of the Court, summary judgment and other relief." (underlining added).

Concealing that the referred-to "counsel" is Attorney General James and that the requested "sanctions" are against her, her culpable staff, and her fellow respondents, the decision also conceals all the facts and law giving rise to the motion. This includes pertaining to the seventh branch of "other and further relief as may be just and proper", which the decision transmogrifies as "recusal of the Court".

As to the record with respect to petitioners' September 15, 2022 motion, the decision makes ZERO findings of fact and conclusions of law. This, notwithstanding Justice Gandin's duty was to do so – and petitioners had done ALL the "heavy lifting" for him by their October 4, 2022 reply affidavit

(#104) and reply memorandum of law (#110) – the last two "papers" listed by his decision as having been "read and considered".

Here's the "Introduction" to petitioners' reply memorandum of law and its first section pertaining to their Exhibit A "legal autopsy"/analysis, providing Justice Gandin with the shocking state of the record in clear, easy-to-verify fashion:

> "This memorandum of law is submitted in reply to respondent Attorney General James' September 29, 2022 opposition to petitioners' September 15, 2022 motion for sanctions, summary judgment, and other relief. Consisting of an opposing affirmation (#98) and opposing memorandum of law (#99) by Assistant Attorney General Gregory Rodriguez, appearing 'of Counsel', both his affirmation and memorandum rest on brazen fraud and deceits – essentially the same as fill his September 29, 2022 reply affirmation (#101) and reply memorandum of law (#102) to petitioners' September 15, 2022 opposition to his August 18, 2022 cross-motion to dismiss the verified petition.
>
> The overarching fraud is that petitioners' September 15, 2022 motion is conclusory and unsupported – and that respondents' August 18, 2022 cross-motion is unrebutted. This, AAG Rodriguez accomplishes by concealing, *in toto*, the content of petitioners' analysis of the August 18, 2022 cross-motion. The analysis is Exhibit A (#88) to petitioners' September 15, 2022 affidavit (#87) in opposition to the cross-motion (#79) and in support their motion (#93).
>
> Because essentially ALL seven branches of petitioners' September 15, 2022 motion rest on the analysis, it is specified by their notice of motion from among the exhibits to their September 15, 2022 affidavit.
>
> The state of the record with respect to the analysis – and with respect to the September 15, 2022 affidavit of which it is part and petitioners' September 15, 2022 memorandum of law based thereon (#94) – mandates the granting of all the relief the notice of motion seeks.
>
> No fair and impartial tribunal could hold otherwise, let alone in a case of such magnitude and significance to 'the People of the State of New York & the Public Interest', on whose behalf petitioners expressly act.

THE RECORD WITH RESPECT TO PETITIONERS' ANALYSIS OF RESPONDENT ATTORNEY GENERAL JAMES' AUGUST 18, 2022 DISMISSAL MOTION

AAG Rodriguez' opposing affirmation (#98) makes no mention, at all, of petitioners' analysis of the cross-motion (#88) and asserts, at ¶3, that 'Petitioners failed to submit either facts or law to rebut' the cross-motion. As for his opposing memorandum of law (#99), it relegates the analysis to its last Point (at pp. 7-8), its Point VI, which reads, in its entirety:

'Point VI
PETITIONERS' SUBMISSION ENTITLED 'ANALYSIS
OF THE AUGUST 18, 2022 CROSS-MOTION OF RESPONDENT
ATTORNEY GENERAL LEITITA JAMES' SHOULD BE STRICKEN

> 'On September 15, 2022, Petitioners filed several documents purportedly in opposition to Respondents' Cross-Motion to Dismiss and in support of Petitioners' Notice of Motion for Sanctions and other relief. NYCEF Nos. 87, 88, 93, 94. Included in Petitioners' submission is a document entitled 'Analysis of the August 18, 2022 Cross-Motion of Respondent Attorney General Letitia James.' NYCEF No. 88. This document is single-spaced and consists of 29 pages and contains approximately 13,000 words. *Id.* First, this document was not brought pursuant to any rule of the New York State Civil Practice Law and Rules and, therefore, should be stricken by the Court. Second, 22 NYCRR §202.8-b of the Uniform Civil Rules for the Supreme Court & County Court, entitled 'Length of Papers' states that: 'Unless otherwise permitted by the court: (i) affidavits, affirmations, briefs and memorandum of law in chief shall be limited to 7,000 words each.' Therefore, since Petitioners' submission is almost double that allowed under the uniform rules, it should be stricken."

In other words, AAG Rodriguez does not deny or dispute – let alone reveal – any of the content of the analysis and purports it should be stricken by concealing that it is an exhibit to petitioners' September 15, 2022 affidavit. Certainly exhibits are permissible under the CPLR and no word limit is imposed upon them by 22 NYCRR §208.8-b.

Notably, in his reply memorandum of law (#102, at pp. 2-3), AAG Rodriguez replicates this Point VI virtually *verbatim*, except that he adds two final sentences reading:

> 'In any event, Respondents fully stand by their submission in support of their cross-motion to dismiss and the arguments contained therein. Therefore, Respondents' cross-motion to dismiss should be granted.' (at p. 3).

His reply affirmation (#101, ¶5) replicates this Point VI also, adding at ¶6:

> 'Respondents fully stand by their submission in support of their cross-motion to dismiss and the showing contained therein, and, notwithstanding Petitioners' continued insults and offensive claims made against defense counsel, Petitioners have failed to rebut this showing. Therefore, Respondents' cross-motion should be granted.' (underlining added).

> This is flagrant LIE. The analysis (#88) completely rebuts respondents' August 18, 2022 cross-motion, demonstrating it to be founded, throughout, on fraud, perjury, and total annihilation of litigation standards. For AAG Rodriguez to pretend the contrary and 'fully stand by' the August 18, 2022 cross-motion – which he presumably does with the knowledge and approval of his superiors in the AG's office, including respondent AG James and her co-respondents – not only reinforces petitioners' entitlement to the granting of all branches of their September 15, 2022 motion, but, as to the first branch, mandates imposition of an additional $40,000 in maximum sanctions pursuant to 22 NYCRR §130.1-1 *et seq.* – $10,000 for each of the four 'frivolous' September 29, 2022 filings signed by AAG Rodriguez (#98, #99, #101, #102)." (petitioners' October 4, 2022 reply memorandum of law (#110, at pp. 1-3, hyperlinking, underlining, italics, and capitalization in the original, bold removed from title headings).

Without contesting the accuracy of the above summarizing recitation in this final "paper" before him Justice Gandin's decision dismisses the petition by replicating the frauds of AAG Rodriguez' dismissal cross-motion – thereupon making a further mockery of the record by his ordering paragraphs (at p. 5), flipping who made the cross-motion and who made the motion:

> "ORDERED that respondents' motion is granted and that the petition is dismissed. It is further
>
> ORDERED that petitioners' cross-motion is denied."

* * *

A Table of Contents follows for further particulars of the calculated frauds infusing the whole of the decision, from beginning to end.

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* * *

PAGE 1 – the caption

This was objected to by petitioners' November 25, 2022 letter to Justice Gandin (#117), requesting its correction and stating:

> "This is the same incorrect caption as the Court used for its only prior written decision, dated July 18, 2022, which it filed on July 20, 2022 (#76).
>
> Each incorrect caption repeats my name, so that it appears twice – the first time as the lead petitioner/plaintiff, when I am the second, AFTER the Center for Judicial Accountability, Inc. – so-reflected by our initiating June 6, 2022 petition/complaint (#1) and all our subsequent filings[fn].
>
> The consequence is that should the decision be published, it will appear with the incorrect shortened case caption, *Sassower, et al. v. JCOPE, et al.*, rather than *Center for Judicial Accountability, Inc., et al. v. JCOPE, et al*.
>
> Please correct same so that this does not happen." (hyperlinking, capitalization, and italics in the original).

There was no response to the letter – and the caption has remained unchanged.

Such caption is additionally objectionable because, by its truncating of the respondents, it has eliminated Attorney General James, thereby concealing that she was a respondent, representing herself and the other respondents, as would have been obvious had the decision anywhere identified respondents' attorney, which it does not do. Indeed, nowhere in the decision's six pages is the Attorney General even mentioned – reflective that Justice Gandin cannot confront the threshold issues petitioners raised, with fact and law, pertaining to the duties and function of that office and Attorney General James' violations thereof with respect to this lawsuit.

PAGE 1 – "The following papers were read and considered on this special proceeding"

> "The following papers were read and considered on this special proceeding:
>
> "1. Notice of Petition and Verified Petition with Exhibits A-M-5;
> 2. Verified Amendment to June 6, 2022 Petition;
> 3. Notice of Cross-Motion;
> 4. Memorandum of Law;
> 5. Affidavit of Emily Logue;
> 6. Affidavit of Leslie M. Arp;
> 7. Notice of Motion;
> 8. Memorandum of Law;
> 9. Affidavit in Opposition to Cross-Motion and in Support with Exibits A-D;

10. Attorney Affirmation;
11. Memorandum of Law in Reply;
12. Affidavit in Reply with Exhibits A-C-2;
13. Memorandum of Law in Reply."

This is the recital required by CPLR §2219(a) – and its list of 13 "papers" is sequentially misleading and materially incomplete, obscured by the failure to include NYSCEF docket numbers, the dates of the "papers", whether they are petitioners' or respondents', and what motion numbers, if any, have been designated for them.

As illustrative, the first entry misleadingly combines two separate "papers", listing first the "Notice of Petition". This notice of petition, dated June 23, 2022, is #46 on the NYSCEF docket, followed by #47, petitioners' June 23, 2022 moving affidavit that accompanied it. The second "paper" of this combined first entry is "Verified Petition with Exhibits A-M-5". The verified petition, signed and verified on June 6, 2022, is #1 on the NYSCEF docket, with its exhibits docketed on NYSCEF as ##2-30.

The NYSCEF docket reflects that the June 23, 2022 notice of petition was designated "Motion #2" – and that two weeks later, on July 6, 2022, upon petitioners filing a proposed order to show cause (#66), it was also designated as "Motion #2", after Justice Gandin signed it on July 7, 2022 and signed it again, as amended, on July 8, 2022 (#75). The decision, however, does not include the order to show cause and its July 6, 2022 moving affidavit (#67) and five exhibits (##68-72) as among the "the "papers…read and considered" – notwithstanding AAG Rodriguez' August 18, 2022 cross-motion was a cross-motion to it.

It seems reasonable to surmise that the decision's recasting of AAG Rodriguez' cross-motion as a motion is connected with its omitting of the order to show cause from its "papers…read and considered".[4]

PAGE 1 – first paragraph (& continuing to Page 2)

summary of petition & course of the proceedings

> "This is a hybrid Article 78/declaratory judgment action. Petitioners seek remedies in the nature of mandamus and prohibition to compel state ethics entities to investigate and prosecute petitioners' complaints of public corruption and ethics violations in government. They also challenge as unconstitutional the Ethics Commission Reform Act of 2022 ('ECRA'), the 2022-2023 New York State budget, the 2022-2023 Legislative/Judiciary Budget Bill, various appropriations made on

[4] Perhaps it is part of this manipulation that the decision's listed "papers" only recite two of AAG Rodriguez' four filings on September 29, 2022 pertaining to his cross-motion and petitioners' motion, *to wit*, "10. Attorney Affirmation" and "11. Memorandum of Law in Reply". His four NYSCEF filing are #98, #99, #101, and #102 – and the fraudulence of all four are highlighted by the above-quoted extract of petitioners' October 4, 2022 reply memorandum of law (at pp. 5-7, *supra*).

> behalf of the judiciary within the bill, and Public Officers Law (POL) §108(2)(b). After commencing this proceeding with the filing of their verified petition, petitioners moved for a temporary restraining order and preliminary injunction to enjoin enactment of the ECRA. Following oral argument, the Court declined to issue a temporary restraining order and set a briefing schedule. Respondents then cross-moved to dismiss. In response, petitioners moved for sanctions, disqualification of counsel, recusal of the Court, summary judgment and other relief."

This paragraph is materially false and misleading:

- It here conceals, as the decision does throughout, that this "hybrid" lawsuit is also a citizen-taxpayer action — replicating, even more dramatically, the deceit of AAG Rodriguez' cross-motion, which had confined itself to obscuring that the "hybrid" includes a citizen taxpayer action. As pointed out by petitioners' Exhibit A "legal autopsy"/analysis (#88, pp. 7, 12, 14-15), the two-fold reason for AAG Rodriguez doing this was because the citizen-taxpayer action statute contemplates the Attorney General as plaintiff or acting on behalf of a plaintiff and, further, because it confers standing to petitioners;

- It incorrectly states that petitioners seek prohibition – replicating the same from AAG Rodriguez' cross-motion, the erroneousness of which petitioners' Exhibit A "legal autopsy"/analysis had pointed out (#88, p. 19);

- It here conceals, as the decision does throughout, that petitioners expanded their requested Article 78 mandamus pertaining to their complaints to encompass the further Article 78 provision (CPLR §7803(3)) as to whether JCOPE's and the Inspector General's handling of their complaints "was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion" – an expansion made by their September 1, 2022 verified amendment to their petition (#84), the same as the decision lists as "2. Verified Amendment to June 6, 2022 Petition";

- It here conceals, as the decision does throughout, that petitioners' challenge to the constitutionality of ECRA pertains to its enactment through the budget;

- It here conceals, as the decision does throughout, that petitioners' challenge to the FY 2022-2023 state budget and its bills includes their violations of mandatory statutory and legislative rule provisions, controlling caselaw, and fraud;

- It falsely implies that petitioners are only challenging appropriations for the Judiciary in the Legislative/Judiciary budget bill, when, in fact, their challenges to legislative appropriations are more focal and include those for respondent Legislative Ethics Commission – so-reflected by their April 13, 2022 complaint to JCOPE (#2) and their eighth cause of action based thereon (#1, at ¶¶91-96);

- It is false and misleading by its two sentences:

> "After commencing this proceeding with the filing of their verified petition, petitioners moved for a temporary restraining order and preliminary injunction to enjoin enactment of the ECRA. Following oral argument, the Court declined to issue a temporary restraining order and set a briefing schedule."

Petitioners never moved "to enjoin enactment of the ECRA", but, rather, moved, by order to show cause, simultaneous with the filing of their verified petition, on June 7, 2022, to enjoin the already-enacted ECRA from taking effect on July 8, 2022. The odyssey of their efforts is recited by their June 23, 2022 moving affidavit to their June 23, 2022 notice of petition #47, which, in the absence of responsiveness by Justice Gandin to a record establishing petitioners' entitlement to the granting of a TRO/preliminary injunction, *as a matter of law*, impelled them to bring an order to show cause to enforce their rights, reciting the facts pertaining to Justice Gandin in their July 6, 2022 moving affidavit (#67). Both the June 23, 2022 notice of petition #46 and the order to show cause that Justice Gandin signed at the July 7, 2022 oral argument (#75) included, in addition to the requested hearing on their TRO/preliminary injunction entitlement and reiteration of the mandamus and declaratory relief sought by their petition's ten causes of action, requests for resolution of threshold issues pertaining to removal/transfer of the case to federal court by reason of the Judiciary Law §14 disqualification for interest of all Supreme Court justices, divesting them of jurisdiction – and pertaining to petitioners' entitlement to the Attorney General's representation pursuant to Executive Law §63.1 and the citizen-taxpayer statute.

PAGE 2 – first full paragraph

summary of the petition

> "Petitioners ten causes of action center around respondent New York State Joint Commission on Public Ethics ('JCOPE') handling of various complaints petitioner Elena Sassower filed beginning in 2013 alleging breaches of public trust. The petition alleges that most recently, on or about April 13, 2022, Sassower filed a complaint with JCOPE claiming that the fiscal year 2022-2023 state budget and legislative and judiciary budget bills were unconstitutional. Sassower further claims that high-ranking public figures in state government conspired to adopt the ECRA in an effort to insulate themselves from public corruption investigations. The rationale cited in support of this assertion is petitioners' contention that once enacted, ECRA would dissolve JCOPE and in its place establish the Commission on Ethics and Lobbying in Government ('CELG'), a successor organization charged with the investigation of ethical conduct violations in government. Petitioners maintain that the jurisdiction conferred by ECRA to CELG is less than that of JCOPE and thus CELG will not be able to adequently investigate complaints of public corruption."

This paragraph is materially false and misleading:

- Petitioners' "various complaints" to JCOPE were seven complaints, all annexed to the petition (#2, #8, #9, #10, #13, #14, #15), and their basis was not unspecified "breaches of the public trust", but violations of Public Officers Law §74 pertaining to conflicts of interest by public officers and employees within JCOPE's jurisdiction.

- The "most recently" filed of petitioners' complaints was not "on or about" April 13, 2022, but on April 13, 2022 (#2) – and its particulars were presented by the prefatory "Factual Allegations" section of the petition (#1, ¶¶16-26).

- The April 13, 2022 complaint was not confined to a "claim" that the FY2022-23 state budget and legislative/judiciary budget bills were "unconstitutional", as if the petition did not also claim that they violated statutes and legislative rules, were larecenous, and the product of fraud – and that propelling same were conflicts of interest proscribed Public Officers Law §74.

- It conceals that ECRA's enactment was part of the FY2022-2023 state budget – and that such was the basis for petitioners' challenge to it by their sixth cause of action (#1, ¶¶78-85);

- It misstates the "rationale" as to how ECRA would insulate "high-ranking public figures in state government…from public corruption investigations". The petition did not "maintain that the jurisdiction conferred by ECRA to CELG is less than that of JCOPE and thus CELG will not be able to adequately investigate complaints of public corruption". Rather, the petition asserted that ECRA eliminated from the JCOPE statute salutary mandatory provisions enforceable by Article 78/mandamus pertaining to complaints, *to wit*, of Executive Law §94.13(a) and Executive Law §94.9(l)(i) (#1, ¶¶ 6, 17).

PAGE 2 – second full paragraph

summary of petition's first cause of action

> "Petitioners further allege that JCOPE violated former Executive Law §94(13)(a), which required JCOPE to send a letter to the complained-of subject named in a report within 15 days of receipt of such complaint. The statute stated that the letter shall set forth the sections of the law alleged to have been violated and provide a 15 day period for the subject to respond to the allegations with 'evidence, statements and proposed witnesses.' Petitioners maintain that JCOPE did not issue letters to the subjects named in their complaints because it 'knew the ..public officers and employees would be unable to deny…their [POL] §74 violations.' Petitioners point to the use of the word 'shall' within the statute in support of their position that the statute imposes a nondiscretionary duty upon JCOPE and thus mandamus is the appropriate remedy. Lastly, petitioners contend that JCOPE's failure to issue the 15 day letters impaired its ability to properly investigate and detect procedural and substantive misconduct which renders the 2022-2023 state budget and the legislative and judiciary budget bill unconstitutional."

This paragraph, pertaining to petitioners' first cause of action (#1, ¶¶27-41), is materially false and misleading:

- It conceals petitioners' amendment to their first cause of action (#84), expanding it beyond mandamus to include whether JCOPE's handling of their complaints and failure to issue 15-day letters "was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion".

- It falsely implies, by its last sentence, that petitioners contended that JCOPE's failure to send out 15 day letters for their complaints "impaired its ability to properly investigate" – when petitioners never contended that JCOPE investigated their complaints, period;

- It falsely purports that petitioners contend that because JCOPE failed to issue 15 day letters "the 2022-2023 state budget and the legislative and judiciary budget bill [are] unconstitutional" – which they did not and would not as it is bizarre nonsense.

PAGE 2 – third full paragraph

summary of respondents' dismissal "motion"

> "In support of their motion to dismiss and in opposition to the motion for a preliminary injunction, respondents contend that petitioners have failed to demonstrate a likelihood of success on the merits of their claims. Specifically, they maintain that petitioners lack standing to assert a challenge to JCOPE's purported violation of Executive Law §94. Additionally, they maintain that several of petitioners' claims are time barred or have been rendered moot by enactment of ECRA on July 8, 2022. They further assert that mandamus and prohibition are unavailable because petitioners have not demonstrated an entitlement to a clear legal right. Lastly, they assert that petitioners' constitutional challenge to the state budget, budget bills and POL §108(2)(b) must be dismissed as they fail to articulate allegations that, if taken as true, support their claims of unconstitutionality." (underlining added).

The decision here flips respondents' dismissal cross-motion (#79) into a motion – and because it does not follow this paragraph with any paragraph pertaining to petitioners' rebuttal – let alone that petitioners had reinforced same with a motion (#93) – implies that respondents' grounds for dismissal are unrebutted and legitimate, rather than based on flagrant concealment and falsification of the petition's allegations and controlling law, so-demonstrated by petitioners' Exhibit A "legal autopsy"/analysis (#88) – to which respondents had no defense other than by further litigation fraud, particularized by petitioners' October 4, 2022 reply papers (#104, #110).

Nor does the decision identify that petitioners had also responded to the dismissal cross-motion by their amendment to their petition (#84), expanding its Article 78 mandamus relating to their first and third causes of actions to include, as Article 78 provides, the question as to whether the handling of

their complaints "was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion" (CPLR §7803(3)) – and that respondents' only response, by a footnote, was further fraud, exposed by petitioner's October 4, 2022 reply memorandum of law (#110 , at fn. 5).

PAGE 2 – last paragraph (& continuing to PAGE 3)

no basis for judicial disqualification

> "Petitioners seek recusal claiming that the Court demonstrated 'actual bias' based on its denial of their July 7, 2022 application for a temporary restraining order. 'A judge shall not sit as such in, or take any part in the decision of, an action, claim, matter, motion or proceeding to which…he is interested…' Judiciary Law §14. 'Absent a legal disqualification under Judiciary Law §14…a trial judge is the sole arbiter of recusal and his or her decision, which lies within the personal conscience of the court, will not be disturbed absent an abuse of discretion.' *Kampfer v. Rase*, 56 AD3d 926 (3d Dept 2008) (internal quotation marks omitted). An allegation that a judge has previously ruled adverse to a party does not establish a statutory basis for recusal. See *Patrick UU. v. Frances VV.*, 200 AD3d 1156 (3d Dept 2021). The Court rejects petitioners' claim that it has a pecuniary interest in the outcome of this proceeding because the state budget has provisions governing judicial compensation. The same contention could be raised before any Justice of the Supreme Court presiding over this proceeding. Thus, this Court bears no unique self-interest in the outcome of this proceeding and can fairly and impartially adjudicate it on its merits. See *Ctr for Judicial Accountability, Inc. v. Cuomo*, 167 AD3d 1406, 1408 (3d Dept 2018)." (hyperlinks added).

This paragraph is utterly false and misleading:

- Petitioners did not seek Justice Gandin's recusal, but, rather, by the seventh branch of their September 15, 2022 motion for "other and further relief" sought disclosure germane to that issue (#93) – also doing the same by the "other and further relief" third branch of their "July 7, 2022 application for a temporary restraining order", this being their order to show cause for a TRO/preliminary injunction (#75), which the decision omits from its page 1 listing of "papers…read and considered";

- Justice Gandin's actual bias was already demonstrated PRIOR to petitioners' "July 7, 2022 application for a temporary restraining order" – and so reflected by the seventh branch of their September 15, 2022 motion, identifying the particulars as having been set forth by their July 6, 2022 affidavit in support of their order to show cause for a TRO/preliminary injunction (#67), which Justice Gandin has not confronted;

- It conceals all the facts particularized by petitioners' September 15, 2022 affidavit in support of the seventh branch of their motion as to Justice Gandin's actual bias at the July 7, 2022

oral argument pertaining to the TRO and, additionally, pertaining to the Attorney General (#87, pp. 3-5), which Justice Gandin has not confronted;

- It conceals all the law and legal argument particularized by petitioners' September 15, 2022 memorandum of law pertaining to the seventh branch of their motion (#94, pp. 14-17) – below quoted, in full, with its footnotes;

- It falsely states that petitioners had claimed that Justice Gandin's "interest in the outcome of this proceeding" was because "the state budget has provisions governing judicial compensation", when it is because the complaints to JCOPE and the Inspector General that are the subject of the first and fifth causes of action all involve the commission-based 'force of law' judicial pay raises that have unlawfully and by-fraud boosted Justice Gandin's salary by approximately $80,000 per year, the Judiciary's own budget, and the New York State Commission on Judicial Conduct;

- It conceals that "rule of necessity", which Justice Gandin impliedly invokes to dispose of his "legal disqualification under Judiciary Law §14", cannot be invoked because it requires jurisdiction, which Judiciary Law §14 divests from him;

- It LIES that Justice Gandin "can fairly and impartially adjudicate [this proceeding] on its merits", when his decision making this declaration obliterates ALL standards and falsifies the record, further establishing his actual bias, arising from his interest;

- It conceals that the cited "*Ctr for Judicial Accountability, Inc. v. Cuomo*, 167 AD3d 1406, 1408 (3d Dept 2018)" is a judicial fraud, so-demonstrated by the EVIDENCE in the record – summarized by petitioners' October 4, 2022 reply memorandum of law (#110, at pp. 5-6) – the last "paper…read and considered" listed by the decision's page 1. Its record citations were as follows:

    - page 22 of the [Exhibit A 'legal autopsy'/analysis (#88), furnishing, by hyperlinks, the proof that the Third Department appellate decision in *CJA v. Cuomo…DiFiore* is fraudulent – the same as identified and furnished by ¶87(8) of the petition, *to wit*, petitioners' analysis of the decision which they presented to the Court of Appeals by their March 26, 2019 letter in support of an appeal of right, whose accuracy was uncontested;

    - Exhibit D-3 to the petition (#12), which is petitioners' February 7, 2021 judicial misconduct complaint against the Court of Appeals judges and Third Department justices pertaining to the fraudulent *CJA v. Cuomo…DiFiore* appellate decision, which, together with petitioners' February 11, 2021 attorney misconduct complaint against AG James for her litigation fraud at the Court of Appeals in obstructing review of that decision (Exhibit D-2 (#11)), is part of their March 5, 2021 complaint against her to JCOPE (Exhibit D-1 (#10))".

To further expose the fraud of Justice Gandin's decision with respect to the judicial disqualification issue, here, in full and with its footnotes, is petitioners' September 15, 2022 memorandum of law (#94), pp. 14-17) pertaining to the seventh branch of their September 15, 2022 motion:

"Petitioners' Seventh Branch of Relief
Disclosure by the Court Pursuant to §100.3D
of the Chief Administrator's Rules Governing Judicial Conduct --
& its Duty to Transfer/Remove the Case
to Federal Court or Certify the Question

The bedrock principle for a judge is judicial impartiality. Over 150 years ago, the New York Court of Appeals recognized that 'the first idea in the administration of justice is that a judge must necessarily be free from all bias and partiality', *Oakley v. Aspinwall*, 3 N.Y. 547 (1850).

Petitioners' order to show cause that the Court signed, amended, on July 8, 2022, was necessitated by the Court's demonstrated actual bias with respect to petitioners' June 23, 2022 notice of petition – the particulars of which were set forth by petitioners' July 6, 2022 moving affidavit in support of the order to show cause (#67), culminating in the following:

> '14. The Court's duty, in response to this order to show cause, is to furnish such other explanation as it has – and, in any event, to make disclosure, pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct, of its financial and other interests.
>
> 15. Disclosure is especially requisite if the Court refuses to disqualify itself, based on the appearance and actuality of its interest and bias, refuses to confront its lack of jurisdiction arising from interest proscribed by Judiciary Law §14 , and refuses to address the additional threshold relief sought, with disclosure, by this order to show cause's branch of 'other and further relief as may be just and proper'…
>
> 16. Suffice to say that notwithstanding the Court's absence of jurisdiction, by reason of its proscribed Judiciary Law §14 interest, its *matter of law* granting of TRO/preliminary injunctive relief is a ministerial act – a 'housekeeping' task, preserving the *status quo*, comparable to the Court's ability to make an order transferring/removing the case to federal court, or certifying the question to the Appellate Division, Third Department or the New York Court of Appeals, both sought by the June 23rd notice of petition, as here on this order to show cause." (hyperlinking in the original).

Judiciary Law §14 entitled 'Disqualification of judge by reason of interest or consanguinity' reads, in pertinent part:

> 'A judge shall not sit as such in, or take any part in the decision of, an action, claim, matter, motion or proceeding to which he is a party, or in which he has been attorney or counsel, or in which he is interested, or if he is related by consanguinity or affinity to any party to the controversy within the sixth degree. …'

The Judiciary Law §14 issue was most comprehensively presented by petitioners' June 6, 2022 affidavit (#32) and, thereafter, quoted verbatim by their June 21, 2022 affidavit (#43 at pp. 4-5), which described the situation, as follows:

> "9. Judiciary Law §14[fn] is, in fact, the threshold issue before this Court, as its judges all have HUGE direct financial and other interests in the petition's eleven branches of relief. This is manifest from the complaints annexed to the petition whose determination by JCOPE and the NYS-IG is sought to be compelled by mandamus. All the complaints involve the commission-based 'force of law' judicial pay raises that have boosted each judge's salary by approximately $80,000 per year, the Judiciary's own budget, and the New York State Commission on Judicial Conduct. By reason thereof, the Court is without jurisdiction to proceed[fn5] – as to which

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'[fn5] *See* Appellate Division, Third Department's decision in *People v. Alteri*, 47 A.D.3d 1070 (2008), stating:

> 'A statutory disqualification under Judiciary Law §14 will deprive a judge of jurisdiction (*see Wilcox v. Supreme Council of Royal Arcanum*, 210 N.Y. 370, 377, 104 N.E. 624 [1914]; *see also Matter of Harkness Apt. Owners Corp. v. Abdus–Salaam*, 232 A.D.2d 309, 310, 648 N.Y.S.2d 586 [1996]) and void any prior action taken by such judge in that case before the recusal (*see People v. Golston*, 13 A.D.3d 887, 889, 787 N.Y.S.2d 185 [2004], lv. denied 5 N.Y.3d 789, 801 N.Y.S.2d 810, 835 N.E.2d 670 [2005]; *Matter of Harkness Apt. Owners Corp. v. Abdus– Salaam*, 232 A.D.2d at 310, 648 N.Y.S.2d 586). In fact, ''a judge disqualified under a statute cannot act even with the consent of the parties interested, because the law was not designed merely for the protection of the parties to the suit, but for the general interests of justice' '(*Matter of Beer Garden v. New York State Liq. Auth.*, 79 N.Y.2d 266, 278–279, 582 N.Y.S.2d 65, 590 N.E.2d 1193 [1992], quoting *Matter of City of Rochester*, 208 N.Y. 188, 192, 101 N.E. 875 [1913])'. (underlining added).

Also, the Appellate Division, First Department's decision in *Matter of Sterling Johnson, Jr. v. Hornblass*, 93 AD2d 732, 733 (1983):

> 'Section 14 of the Judiciary Law… is the sole statutory authority in New

'rule of necessity' cannot be invoked, because such is predicated on jurisdiction that Judiciary §14 divests from interested judges.[fn6]

10. As the same applies to every judge of New York's Unified Court System, the Court's only option is to transfer/remove the case to the federal courts, including pursuant to Article IV, §4 of the United State Constitution: 'The United States shall guarantee every State in this Union a Republican Form of Government.'." (capitalization, underlining in the original).

'Recusal, as a matter of due process, is required…where there exists a direct, personal, substantial or pecuniary interest in reaching a particular conclusion', *People v. Alomar*, 93 N.Y.2d 239 (1999), *Kampfer v. Rase*, 56 A.D.3d 926 (3rd Dept. 2008).

York for disqualification of a Judge. If disqualification under the statute were found, prohibition would lie, since there would be a lack of jurisdiction. There is an express statutory disqualification. *(See Matter of Merola v. Walsh*, 75 AD2d 163; *Matter of Katz v. Denzer*, 70 AD2d 548; *People ex rel., Devery v. Jerome*, 36 Misc 2d 256.)' (underlining added).

Oakley v. Aspinwall, 3 NY 547, 548, 551 (Court of Appeals, 1850); 28 New York Jurisprudence 2nd §403 (2018).

'[fn6] *See* 32 New York Jurisprudence §45 (1963), 'Disqualification as yielding to necessity':

'…since the courts have declared that the disqualification of a judge for any of the statutory reasons deprives him of jurisdiction,[fn] a serious doubt exists as to the applicability of the necessity rule where the judge is disqualified under the statute.[fn]'

Conspicuously, when New York courts invoke the 'rule of necessity' in cases involving judicial self-interest governed by Judiciary Law §14, they do NOT cite to Judiciary Law §14, which divests them of jurisdiction. Instead they cite, either directly or through other cases, to *United States v. Will*, 449 U.S. 200, 210-211 (1980), wherein the U.S. Supreme Court **expressly and under the title heading 'Jurisdiction'**, recited its jurisdiction and that of the lower federal judiciary to decide a case involving their own pay raises, there being no federal statute removing from them jurisdiction to do so.

Illustrating the New York courts' sleight of hand with respect to 'rule of necessity' in cases of judicial self-interest: the Court of Appeals decisions in *Maresca v Cuomo*, 64 NY2d 242, 247, n 1 (1984), *Matter of Morgenthau v Cooke*, 56 NY2d 24, 29, n 3 (1982), as well as in *Maron v. Silver*, 14 NY3d 230, 249 (2010) – this being its decision consolidating appeals in three lawsuits by New York judges suing for pay raises. Similarly, the Appellate Division, Third Department's decision in the *Maron* case, 58 AD3d 102, 106-107.'

A judge is not empowered to disregard fact and law, as was done, knowingly and flagrantly, with respect to petitioners' entitlement to a TRO/preliminary injunction – and decisional law is emphatic as to the seriousness of so-doing:

> *'A single decision or judicial action, correct or not, which is established to have been based on improper motives and not upon a desire to do justice or to properly perform the duties of his office, will justify a removal…*', italics added by Appellate Division, First Department in *Matter of Capshaw*, 258 AD 470, 485 (1940), quoting from *Matter of Droege*, 129 AD 866 (1st Dept. 1909).
>
> 'A judicial officer may not be removed for merely making an erroneous decision or ruling, but he may be removed for *willfully* making a wrong decision or an erroneous ruling, or for a reckless exercise of his judicial functions without regard to the rights of litigants, or for manifesting friendship or favoritism toward one party or his attorney to the prejudice of another…' *Matter of Bolte*, 97 AD 551, 568 (1st Dept. 1904).
>
> '…Favoritism in the performance of judicial duties constitutes corruption as disastrous in its consequence as if the judicial officer received and was moved by a bribe.' (at 574)." (petitioners' September 15, 2022 memorandum of law (#94), pp. 14-17, bold, underlining, hyperlinking in the original).

AAG Rodriguez' response to the above was his usual *modus operandi* of litigation fraud – and petitioners' October 4, 2022 reply memorandum of law – their last "paper…read and considered" by Justice Gandin, according to his decision's page 1 – had this to say on the subject (#110, at pp. 11-12):

> "THE RECORD WITH RESPECT TO
> THE SEVENTH BRANCH OF PETITIONERS' MOTION[fn8]
> *Disclosure by the Court of its Interests, Giving Rise to its Manifested Actual Bias*
>
> AAG Rodriguez' opposition to the seventh branch of petitioners' motion is at Point IV of his opposing memorandum of law (#99, at pp. 4-5) titled: 'Petitioners Do Not Identify Any Valid Ground to Disqualify Judge Gandin from Adjudicating this Litigation'[fn9] and at ¶12 of his opposing affirmation (#98). His opposition is founded

'fn8 This seventh branch is particularized at pp. 14-17 of petitioners' September 15, 2022 memorandum of law (#94) and ¶¶9-10 of their September 15, 2022 affidavit (#87).'

'fn9 See, comparably, AAG Rodriguez' reply memorandum of law, Point V, identically-titled (#102, at pp. 5-6). His reply affirmation (#101) contains no paragraph pertaining to this Point V.'

on fraud, deceit, and material concealment – beginning with the relief sought by the seventh branch, *to wit*:

(a) disclosure by the Court, pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct, of its financial and other interests in this case, giving rise to its actual bias, as recited by petitioner's July 6, 2022 affidavit in support of their order to show cause, and further manifested by the Court's oral decision at the July 7, 2022 argument of petitioners' order to show cause for a TRO/preliminary injunction;

(b) transferring/removing this case to federal court, including pursuant to Article IV, §4 of the United States Constitution: 'The United States shall guarantee every State in this Union a Republican Form of Government', inasmuch as this Court and every justice and acting justice of the Supreme Court of the 62 counties of New York State are divested of jurisdiction to hear the case pursuant to Judiciary Law §14 because of their direct financial and other interests and "rule of necessity" cannot be invoked by reason thereof – or, alternatively, certifying the question to the Appellate Division, Third Department or to the New York Court of Appeals.

AAG Rodriguez conceals the requested disclosure, which is, therefore, unopposed. When made, it will establish the Court's disqualification for 'financial and other interests' and already manifested 'actual bias' resulting therefrom, as above-specified and by petitioners' September 15, 2022 affidavit (¶¶9-10) and memorandum of law (at pp. 14-17), without rebuttal from AAG Rodriguez, other than by his falsehoods that 'Petitioners offer nothing but conclusory allegations' and presented only 'general allegations of bias', as opposed to 'proof that demonstrates bias or prejudice', 'have demonstrated no basis for disqualifying Justice Gandin'." (petitioners' October 4, 2022 reply memorandum of law (#110), at pp. 11-12, hyperlinking, italics, underlining, bold in the original, except that bold is removed from title heading).

PAGE 3 – first full paragraph

standards for dismissal of Article 78 proceedings pursuant to CPLR §7804(f)

"Where respondents to an Article 78 proceeding move to dismiss under CPLR §7804(f), objections in point of law are limited to threshold objections of the kind listed in CPLR §3211(a) which are capable of disposing of the case without reaching the merits. *Matter of Hull-Hazard, Inc. v. Roberts*, 129 AD2d 348 (3d Dept 2021). Furthermore, only the petition may be considered and all of its allegations must be deemed to be true. *Mattioli v. Casscles*, 50 AD2d 1013 (3d Dept 1975)."

This paragraph is deceitful window-dressing, intended to imply that Justice Gandin's decision is consistent therewith. In fact, because the allegations of petitioners' petition (#1) and of their amendment (#84) establish the invulnerability of their ten causes of action, the decision conceals, even more completely than AAG Rodriguez' dismissal cross-motion had, virtually ALL the petition's allegations – and ALL allegations of the amendment.

PAGE 3 – second full paragraph

dismissal of claims asserted by Center for Judicial Accountability, Inc.

> "Initially, all claims asserted on behalf of petitioner Center for Judicial Accountability, Inc. must be dismissed as it is not represented by counsel. Excluding exceptions not relevant here, a corporation must appear in a civil action by attorney. CPLR §321(a)."

This is fraudulent, not revealing that this was urged by AAG Rodriguez' dismissal cross-motion (#80, at p. 4) – and rebutted by petitioners' Exhibit A "legal autopsy"/analysis (#88, at pp. 11-12) as follows:

> "AAG Rodriguez here conceals that petitioners are expressly acting 'on behalf of the People of the State of New York and the public interest' and that they have raised, as a threshold issue, their entitlement to the Attorney General's representation, pursuant to Executive Law §63.1, because they – not respondents – are upholding the 'interest of the state' – and that this is proven by the Attorney General's litigation fraud, in the absence of any legitimate defense.
>
> It may also be presumed that the reason AAG Rodriguez conceals, at his page 1, that this 'hybrid' lawsuit is also a citizen-taxpayer action is because State Finance Law Article 7-A expressly contemplates that the Attorney General will involve himself as plaintiff or on behalf of plaintiffs to ensure merits determination of wrongful, illegal and unconstitutional expenditures of taxpayer monies (State Finance Law §123-A, §123-C, §123-D, §123-E).[fn]
>
> As 'any claims alleged in the Petition on behalf of Petitioner CJA' are also alleged by petitioner Sassower, they continue through her, making dismissal of CJA's claims 'of little practical consequence'. *Cf.*, *Cass v. New York*, 88 AD2d 305, 308 (3rd Dept. 1982), dismissal of action against the state as being 'a result of little practical consequence since the two State officers [Comptroller and Chief Administrator of the Courts] remain as parties defendants.'" (underlining in the original).

PAGE 3 – last paragraph

dismissal of First Cause of Action (#1, ¶¶27-41)
& Third Cause of Action (¶¶48-53) for "lack of standing"

> "With respect to Sassower's remaining claims, her first and third causes of action must be dismissed for lack of standing. To have standing to challenge a governmental action, a petitioner must show: (1) injury in fact, meaning that the petitioner will actually be harmed by the administrative action; and (2) that the alleged injury falls within the zone of interests or concerns sought to be promoted or protected by the statutory provision under which the agency has acted. *New York State Ass'n of Nurse Anesthetists v. Novello*, 2 NY3d 207, 211 (2004). 'As the term itself implies, the injury [in fact] must be more than conjectural.' *Id*. 'Tenuous and ephemeral harm…is insufficient to trigger judicial intervention.' *Id*, at 214. Here, Sassower asserts that, by failing to send the subjects of her complaints a 15 day letter informing them of the complaints and presenting the option to submit evidence to rebut her allegations, JCOPE was denied the proof that would have substantiated her claims of public corruption. Such allegations do not constitute injury in fact. Sassower's line of reasoning contemplates hypothetical harm too remote and speculative to confer standing. Moreover, the language of the former EL §94(13)(a) makes clear that the provision directing JCOPE to send a letter informing a subject of a pending complaint was enacted for the protection of the subject, not the complainant. Therefore, Sassower also lacks standing as she falls outside of the class of persons sought to be protected by the statute. Similarly, the third cause of action which seeks an order directing the appointment of a ninth member to the Legislative Ethics Commission (LEC) must be dismissed as Sassower fails to demonstrate that she has or will suffer an actual tangible injury from the vacancy on the LEC."

This paragraph is fraudulent, starting with its opening words about "Sassower's remaining claims", when prior paragraphs of the decision have not, in fact, adjudicated any claims actually made by petitioners. Fashioned on false and conclusory assertions, it is largely exported from AAG Rodriguez' dismissal cross-motion – already rebutted by petitioners' Exhibit A "legal autopsy"/analysis (#88, at pp. 12-14). Its most material difference is that it does not utilize AAG Rodriguez' "mootness" ground for dismissing petitioners' first cause of action.

With respect to this paragraph – and repeating petitioner's Exhibit A "legal autopsy"/analysis (#88, at pp. 12-14), ignored by the decision:

- There is NOTHING "hypothetical", "remote" or "speculative" about the injury to Sassower or the public on whose behalf she filed the complaints to JCOPE — each presenting open-and-shut, *prima facie* EVIDENCE of "public corruption" arising from Public Officers Law §74 violations by the public officers and entities complained-against and so-described, accurately, by the petition and annexed as exhibits (#2, #8, #9, #10, #13, #14, #15);

- NOTHING in "the language of the former EL §94(13)(a) makes clear that the provision directing JCOPE to send a letter informing a subject of a pending complaint was enacted for the protection of the subject, not the complainant" – and this bald assertion is devoid of any contextual analysis, legislative history, or reference to JCOPE's own rule provision, adopted on an emergency basis on January 25, 2022 and made permanent on June 28, 2022, from which is evident that due process to the complained-against is NOT its exclusive "zone of interest", as it states:

> "While any response submitted [to a 15-day letter] will be reviewed by the Commission, the Commission is not precluded from voting to commence a substantial basis investigation prior to receiving a Respondent's written response." (19 NYCRR Part 941 *et seq.*, underlining added).

- It offers NO caselaw involving JCOPE because, in *Cox v. JCOPE*, a defense of lack of standing was expressly rejected by Albany Supreme Court in a December 18, 2018 decision stating (at p. 5):

> 'To the extent [JCOPE] is advancing petitioners' lack of standing here, it is without merit, as '[s]tanding has been granted absent personal aggrievement where the matter is one of general public interest.' Police Conference of N.Y. v. Municipal Police Training Council, 62 AD2d 416, 417 (3d Dept. 1978). In such case, a 'citizen may maintain a mandamus proceeding to compel a public officer to do his [or her] duty.' Matter of Hebel v. West, 25AD3d 172, 176 (3d Dept. 2005)…see Matter of Schenectady County Benevolent Assn. v. McEvoy, 124 AD2d 911,912 (3rd Dept. 1986). As 'the overall purpose and spirit of Executive Law 94…is to strengthen the public's trust and confidence in government,'(Matter of O'Connor v. Ginsberg,106 AD3d 1207, 1211 (3d Dept. 2013) (citations omitted)) the Court finds that the matter here is one of general public interest, and petitioners have standing to bring this proceeding.' (hyperlinking added).

- It conceals other caselaw establishing petitioners' standing with respect to their first and third causes of action, such as *Albert Ella Bldg. Co. v. New York State Urban Dev. Corp.*, 54 A.D.2d 337, 342 (4th Dept. 1976), with its citation to treatise authority:

> 'As a general rule, where a citizen, in common with all other citizens, is interested in having some act of a general public nature done, devolving as a duty upon a public body or officer refusing to perform it, the performance of such act may be compelled by a proceeding brought by such citizen against a body or officer. This is especially so where the matter involved is one of great public interest, and granting the relief requested would benefit the general public (24 Carmody-Wait 2d, N Y Civ Prac, §145.255). The office which the citizen performs is merely one of instituting a proceeding for the general benefit, the only interest necessary is that of the people at large *(People ex rel. Stephens v*

> *Halsey*, 37 N.Y. 344; 24 Carmody-Wait 2d, N Y Civ Prac, §145.255). Any citizen may maintain a mandamus proceeding to compel a public officer to do his duty *(Matter of Cash v Bates*, 301 N.Y. 258; *Matter of Andresen v Rice*, 277 N.Y. 271; *Matter of McCabe v Voorhis*, 243 N.Y. 401; *Matter of Yerry v Goodsell*, 4 A.D.2d 395, 403 affd 4 N.Y.2d 999). … Standing has been granted absent personal aggrievement where the matter is one of general public interest (8 Weinstein-Korn-Miller, N Y Civ Prac, par 7802.01, n 2)."

- It conceals petitioners' citizen-taxpayer standing, as the complaints for which mandamus is sought and is a safeguard, involve larceny and misappropriation of taxpayer monies;

- It falsifies the third cause of action (¶¶48-53), which is NOT about a simple "vacancy" on the Legislative Ethics Commission , such that it doesn't have "a ninth member". It concerns a non-legislator vacancy, deliberately maintained to prevent LEC from having a non-legislative majority – a statutory requirement that exists to safeguard non-legislative public interest, for which petitioners have obvious standing. As stated by petitioners' Exhibit A "legal autopsy"/analysis (#88, at p. 16):

> "the public is plainly within the 'zone of interest' intended by Legislative Law §80.1 and §80.4 in requiring that LEC's majority be non-legislators, which is why [AAG Rodriguez] makes no argument and furnishes no decisional law on the subject." (underlining in the original).

PAGE 4 – first paragraph

dismissal of Second Cause of Action (#1, ¶¶42-47)
& Fourth Cause of Action (¶¶54-58) as "moot"

> "Sassower's second cause of action seeking mandamus to compel JCOPE to file an annual report pursuant to the former EL §94(9)(l)(i) detailing complaints received as well as their disposition has been rendered moot by the enactment of ECRA on July 8, 2922. By Sassower's own admission, ECRA abolished JCOPE and in its place established CELG. As JCOPE no longer exists, it cannot be compelled to file an annual report. Similarly, Sassower's fourth cause of action in the nature of mandamus to compel the LEC to issue annual reports for the years 2020 and 2021 is moot as the reports have been published on the organization's official website. As further judicial determination of these issues will not affect the rights of the parties, the claims are dismissed. See *Sportsmen's Tavern LLC v. New York State Liq. Auth.*, 194 AD3d 1557 (4th Dept 2021)."

This paragraph is also fraudulent:

- There is no "mootness" with respect to petitioners' second cause of action pertaining to JCOPE's annual reports (¶¶42-47) – as Sassower's relevant "own admission", highlighted by

petitioners' Exhibit A "legal autopsy"/analysis (#88, at p 17), is that based on the state of the record establishing petitioners' summary judgement entitlement to their sixth cause of action to void ECRA as unconstitutionally and unlawfully enacted, JCOPE will, *as a matter of law*, be reinstated as a result of ECRA's voiding, mandated by the record;

- There is no "mootness" with respect to petitioners' fourth cause of action pertaining to LEC's annual reports (¶¶54-58) – which is why the decision here falsifies the cause of action to make it appear that the mandamus it seeks is nothing more than reports for 2020 and 2021, replicating the deceit of AAG Rodriguez, exposed by petitioners' Exhibit A "legal autopsy"/analysis (#88, at pp. 7, 18).

PAGE 4 – second paragraph

dismissal of Fifth Cause of Action (#1, ¶¶59-77),
as "lack[ing] merit" (impliedly failing to state a cause of action)

> "Sassower's fifth cause of action in the nature of mandamus to compel the Office of the Inspector General (OIG) to investigate her allegations of public corruption in state government also lack merit. 'Mandamus to compel is available only to enforce a clear legal right where the public official has failed to perform a duty enjoined by law.' *Matter of Glenman Indus. & Commercial Contr. Corp. v. New York State Off. of State Comptroller*, 75 AD3d 986 (3d Dept 2010). 'Thus, mandamus does not lie to enforce the performance of a duty that is discretionary, as opposed to ministerial.' *New York Civ. Liberties Union v. State*, 4 NY3d 175, 184 (2005). 'A discretionary act involve[s] the exercise of reasoned judgment which could typically produce different acceptable results whereas a ministerial act envisions direct adherence to a governing rule or standard with a compulsory result.' *Id*., quoting *Tango v. Tulevech*, 61 NY2d 34, 41 (1983). Contrary to Sassower's assertion, EL §53(1) does not impose a mandatory obligation upon the OIG to investigate each and ever complaint it receives. 'Whether a given provision in a statute is mandatory or directory is to be determined primarily from the legislative intent gathered from the entire act and the surrounding circumstances, keeping in mind the public policy to be promoted and the results that would follow one or the other conclusion.' *989 Hempstead Turnpike, LLC v. Town Bd. of Town of Hempstead*, 67 Misc 3d 1234(A), 4 (Sup Ct 2020), quoting Statutes Law §171. Notwithstanding the legislature's use of the word 'shall,' the interpretation Sassower espouses would lead to an absurd result by obligating the OIG to waste time and public resources investing allegations of corruption no matter how patently devoid of merit they may be on their face. Having found the complained-of-governmental actions are discretionary in nature, Sassower cannot seek enforcement through mandamus."

This paragraph is another fraud.

- It misrepresents the mandamus sought, which, as reflected by the very title of the fifth cause of action, is not limited to EL §53(1), but "the Mandates of Executive Law Article 4-A and [the Inspector General's] own Policy and Procedure Manual";

- It conceals that the fifth cause of action additionally seeks a declaration that "the Provisions of the Policy and Procedural Manual that Allows the Inspector General to Take 'No Action' on Complaints Involving 'Covered Agencies' to be Violative of Executive Law §53.1 and Void" – also reflected by the title of the fifth cause of action;

- It conceals that petitioners further expanded their fifth cause of action by their amendment to the petition, including by an expansion of the title, to add:

". Alternatively, or Additionally,
Declaring the Inspector General's "No Action"
Determination with Respect to Petitioners' November 2, 2021 Complaint
to be a Violation of Lawful Procedure, Affected by Error of Law, Arbitrary,
Capricious, and/or an Abuse of Discretion."

- Its simplistic assertion that the "shall" language of EL §53(1) is "discretionary" and, therefore, not enforceable by mandamus is unsupported by ANY examination of "the legislative intent gathered from the entire act and the surrounding circumstances", which it quotes as necessary for such determination;

- It falsely implies that petitioners' November 2, 2021 complaint is "patently devoid of merit…on [its] face" and involves but "allegations of public corruption in state government", when the complaint (#17) presents EVIDENCE that is *prima facie*, and open-and-shut of the Inspector General's own corruption and that of key state entities within its jurisdiction.

PAGE 4 – third paragraph (& continuing to PAGE 5)

dismissal of Sixth Cause of Action (#1, ¶¶78-85),
Seventh Cause of Action (¶¶86-90), Eighth Cause of Action (¶¶91-96),
& Ninth Cause of Action (¶¶97-105), all as"fail[ing] to state a cause of action"

"As a matter of law, Sassower's sixth, seventh, eighth and ninth causes of action challenging the constitutionality of ECRA, the state budget and legislative and judicial budget bill fail to state a cause of action. A legislative enactment is entitled to a 'strong presumption of constitutionality and…will be declared unconstitutional by the courts only when it can be shown beyond reasonable doubt that it conflicts with the Constitution after every reasonable mode of reconciliation of the statute with the Constitution has been resorted to, and reconciliation has been found impossible'. *Harkenrider v. Hochul*, 38 NY3d 494, 509 (2022) (internal quotation marks omitted). 'A party mounting a facial constitutional challenge bears the substantial burden of demonstrating that in any degree and in every conceivable application, the law

> suffers wholesale constitutional impairment. *Moran Towing Corp. v. Urbach*, 99 NY2d 443, 448 (2003) (internal quotation marks omitted). Here, Sassower alleges both procedural and substantive illegality in the budget approval process. Sassower's challenge to the constitutionality of 'three people in the room' budget negotiations has previously been rejected by the Appellate Division, Third Department. See *Ctr. for Jud. Accountability, Inc., supra*. To the extent that she asserts that the budget was unconstitutionally enacted, the petition makes only conclusory, unsupported allegations that unnamed members of the legislature violated various provisions of the state constitution. Moreover, '[t]he manner in which bills are voted out of committee is entirely determined by internal rules of proceedings, which article III, §9 of the Constitution vests in each house of the Legislature.' *Urban Justice Ctr. v. Pataki*, 38 AD3d 20, 30 (1st Dept 2006). '[I]t is not the province of the courts to direct the legislature how to do its work, particularly when the internal practices of the Legislature are involved.' *Id.*, at 27 (internal quotation marks omitted). With respect to Sassower's substantive challenges to specific approvals for funding contained within the state budget and budget bills and the methodology employed to arrive at those figures, no court may substitute its judgment for that of the legislature in this regard. *Id*., quoting *Saxton v. Carey*, 44 NY2d 545, 549 (1978) ('It is not 'a proper function of the courts to police the degree of itemization necessary in the State budget,' a task for which the courts 'are neither constituted, suited, nor, indeed, designed,' but rather 'is a decision which is best left to the Legislature'').''

This paragraph is another fraud, dismissing four of petitioners' causes of action (¶¶78-105) without identifying ANY of their presumed-true allegations, by falsifying what minuscule reference to them it makes, and by inapposite law – essentially replicating, even more dramatically, the fraud of AAG Rodriguez' dismissal cross-motion, exposed by petitioners' Exhibit A "legal autopsy"/analysis (#88, at pp. 23-27). Thus,

- It conceals that petitioners' constitutional challenge to ECRA pertains to its enactment through the budget, except possibly inferentially;

- It is a LIE that petitioners challenge by "only conclusory, unsupported allegations…" the constitutionality of the budget – and Justice Gandin does not cite to any paragraph of their sixth, seventh, eighth and ninth causes of action, or furnish any example, of what he contends to be "conclusory" or "unsupported" – or as deficient because it does not specify the names of "members of the legislature [who] violated various provisions of the state constitution";

- It is a LIE that petitioners challenge the "constitutionality of 'three people in the room' budget negotiations" – and Judge Gandin does not cite to any paragraph of their sixth, seventh, eighth, and ninth causes of action for his assertion that they are;

- It is a LIE to cite to the Appellate Division, Third Department decision "*Ctr. for Jud. Accountability, Inc., supra*." as upholding the constitutionality of "'three person in a room'

budget negotiations" as such decision is a judicial fraud, so-pleaded by the petition (¶87(8)), with evidence: petitioners' analysis of the decision which they presented to the Court of Appeals by their March 26, 2019 letter in support of an appeal of right, whose accuracy was uncontested, and by the petition's exhibits, most importantly their March 5, 2021 complaint to JCOPE (#11), with its included February 7, 2021 judicial misconduct complaint against the Court of Appeals judges and Third Department justices pertaining to the fraudulent *CJA v. Cuomo…DiFiore* appellate decision (#12);

- It is a LIE to cite to the Appellate Division, First Department decision "*Urban Justice Ctr. v. Pataki*, 38 AD3d 20, 30" (2006), as the plaintiffs in that case were challenging legislative rules, whereas here petitioners seek enforcement of legislative rules that respondents Senate and Assembly have violated;

- It is a LIE to cite to the Court of Appeals decision "*Saxton v. Carey*, 44 NY2d 545, 549 (1978), as the plaintiffs in that case were challenging the lack of itemization in the budget, which petitioners here do not challenge.

PAGE 5 – first full paragraph

dismissal of tenth cause of action (#1, ¶¶106-114), impliedly for failing to state a cause of action

> "Finally, Sassower's tenth cause of action seeking to invalidate POL §108(2)(b) as unconstitutional on its face and in its application must be dismissed. In support of her claims, Sassower merely asserts that the law conflicts with Art. 3, §10 of the state constitution. Her pleadings fail to allege non-speculative facts legally sufficient to overcome the strong presumption of constitutionality of the statute. 'The performance of legislative function requires the private, candidate exchange of ideas and points of views among members of each political party concerning the public business to come before legislative bodies.' *Urban Justice Center*, at 31. In this spirit, private discussions between members of the state legislature concerning the state budget are not violative of the state constitutionon or the Open Meetings Law. For similar reasons, Sassower's 'as-applied' challenge to the statute fails as the petition lacks an analysis of facts specific to her particular claims to determine whether the application of a statute deprived her of a protected right. See *Field Day, LLC v. County of Suffolk*, 453 F3d 167 (2d Cir 2006)."

This paragraph is a further fraud – once again not identifying ANY of the presumed-true allegations of this tenth cause of action, falsifying what minuscule bit it contains, and citing inapposite law. Thus:

- It is a LIE that petitioners "merely asserted" that POL §108(2)(b) "conflicts with Art. 3, §10 of the state constitution". Rather, their tenth causes of action (#1, at ¶¶108-112) compared the language of POL §108(2)(b) with the language of Article III, §10 of the state

Constitution – and also with legislative rules based on the constitutional language – neither of which the decision does because it exposes the unconstitutionality of POL §108(2)(b), *on its face*.

- It is a LIE that petitioners "fail[ed] to allege non-speculative facts legally sufficient to overcome the strong presumption of constitutionality of the statute". There is NO "presumption of constitutionality" when a statute's unconstititonality is facial – and such constitutes "non-speculative facts";

- It is a LIE that "Sassower's 'as-applied' challenge to the statute fails as the petition lacks an analysis of facts specific to her particular claims to determine whether the application of a statute deprived her of a protected right." The tenth cause of action, by its ¶¶107, 109, furnishes facts specific and sufficient to her "'as-applied' challenge".

PAGE 5 – ordering paragraphs

"ORDERED that respondents' motion is granted and that the petition is dismissed. It is further

ORDERED that petitioners' cross-motion is denied."

This is further fraud. As hereinabove particularized, it was respondents who cross-moved to dismiss the petition – to which petitioners responded by a motion demonstrating their entitlement to summary judgment on all ten of the petition's causes of action, *as a matter of law* – and as reinforced by their June 28, 2022 CPLR §2214(a) notice to produce (#60), their September 3, 2022 CPLR §2214(a) notice to produce (#85), and their September 15, 2022 CPLR §3120 notice of discovery and inspection (#86) – all three omitted from the decision's page 1 recitation of "papers…read and considered".

Notably, the NYSCEF docket shows that three of the identical six copies of the decision that Justice Gandrin uploaded (#111, #112, #113, #114, #115,#116) are identified as relating to "Motion #2", "Motion #4" and "Motion #5".

- Motion #4 is AAG Rodriguez' August 18, 2022 cross-motion (#79).

- Motion #5 is petitioners' September 15, 2022 motion (#93).

- Motion #2 is petitioners' June 23, 2022 notice of petition (#46) and, additionally, their order to show cause (#66), signed by Justice Gandin on July 7, 2022 and signed again, as amended, on July 8, 2022 (#75) – as to which there is no ordering or dispositional paragraph in the decision.

PAGE 5 – final paragraph

> "The foregoing constitutes the decision and order of the Court. The signing of this decision and order shall not constitute entry or filing under CPLR §2220. Counsel is not relieved from the applicable provisions of that rule regarding notice of entry."

This paragraph makes no reference to the "foregoing" being other than a "decision and order". So where is the "JUDGMENT", purported on the first page: "DECISION, ORDER and JUDGMENT".

PAGE 6 – only paragraph

> "Pursuant to CPLR §5513, an appeal as of right must be taken within thirty (30) days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of entry, the appeal must be taken within thirty (30) days thereof."

On December 16, 2022, to commemorate the 78th anniversary of the start of the Battle of the Bulge, petitioners have fought back on the assault to their June 6, 2022 D-Day-plus-78-years verified petition by countering on two fronts: (1) by motion, before Justice Gandin, for reargument and for vacatur for lack of jurisdiction and fraud (#119, #120); and (2) by filing of their notice of appeal (#122). Both rest on this "legal autopsy"/analysis of Justice Gandin's indefensible decision.