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January 18, 2024

Holding Government Accountable – The People Fight Back!

OPPOSITION REPORT TO THE DECEMBER 4, 2023 FINAL REPORT ON JUDICIAL COMPENSATION OF THE (3rd) COMMISSION ON LEGISLATIVE, JUDICIAL AND EXECUTIVE COMPENSATION

Presented to:
Governor Kathy Hochul & Lieutenant Governor Antonio Delgado
All Senators: *c/o* Senate Leaders Andrea Stewart-Cousins & Robert Ortt
All Assembly Members: *c/o* Assembly Leaders Carl Heastie & William Barclay
Chief Judge Rowan Wilson & Chief Administrative Judge Joseph Zayas, Etc.
Attorney General Letitia James & Comptroller Thomas DiNapoli

To Assist Your Discharge of Constitutional & Oversight Responsibilities:

(1) to void the Commission's "force of law" December 4, 2023 Final Report on Judicial Compensation because it is statutorily-violative, fraudulent, and unconstitutional – and striking the $34.6 million appropriation for judicial salary increases from the Governor's Legislative/Judiciary Budget Bill #S.8301/A.8801;

(2) to refer the Commission's seven members for criminal prosecution – and for Attorney General James to herself bring such prosecution – based on penal law violations including:

Penal Law §175.35: "Offering a false instrument for filing in the first degree";
Penal Law §195: "Official misconduct";
Penal Law §105.15: "Conspiracy in the second degree";
Penal Law §20.00: "Criminal liability for conduct of another";
Penal Law Article 496: "PUBLIC TRUST ACT"
§496.06: "Public corruption";
§496.05: "Corrupting the government in the first degree";

(3) to hold hearings on the corruption in New York's judiciary to which the three judicial pay raise opponents attested, with evidence – involving the corruption of the Commission on Judicial Conduct, the Appellate Division attorney grievance committees, and the OCA Inspector General.

Written & Sworn to be True by: Elena Ruth Sassower

Elena Ruth Sassower, Director

"…if we're just weighing the evidence here today, there would be nothing to discuss really.
It would be easy because there is only evidence on one side."
(Chair Fahey, Oct 31 Tr. 113)

"I think the testimony that we received by just about everybody,
minus, I think, three individuals that had testified provided overwhelming evidence
in regard to the state of the judiciary now, as well as really what their desires are going forward."
(Commissioner Egan, Nov 4 Tr. 7-8)

"I want to say doing this confirms and vindicates the widespread judgment
that the New York State Judiciary is the premier state judiciary around the nation.
We ought to as a society recognize it appropriately."
(Commissioner Kovner, Nov 13 Tr. 11-12)

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* Dedicated to my beloved father, George Sassower, ESQ., a legal giant and patriot, on this, the fifth anniversary of his last day of work, a full day's work at his computer, battling judicial corruption and its enablers – Friday, January 18, 2019.

INTRODUCTION

The December 4, 2023 Final Report on Judicial Compensation of New York's third incarnation of its Commission on Legislative, Judicial and Executive Compensation is a fraud on the People of the State of New York and a grand larceny of taxpayer monies by its judicial pay raise "Conclusions", if these are deemed to be its "force of law" "recommendations".

This is readily proven. It requires nothing more than comparing the paltry Report to the statute pursuant to which it purports to be rendered – Part E, Chapter 60 of the Laws of 2015 – to establish its facial statutory violations, mandating its voiding, *as a matter of law*. Such violations – "replicating, duplicating" those of the prior "force of law" compensation commission and committee Reports, each "false instruments"[1] – were anticipated by CJA's testimony at the Commission's October 13, 2023 hearing,[2] itself preceded by CJA's October 12, 2023 letter to the Commission entitled "'History', Your Website – & Prepping for Tomorrow's Hearing".

The Commission's Report makes no mention of CJA's October 13th testimony and October 12th letter, let alone findings of fact and conclusions of law pertaining to them, as for instance, as identified by CJA in testifying,

- that the threshold and most important unenumerated "appropriate factor" that the statute requires the Commission to "take into account" is "whether judges are doing their job"; and

- that New York's judiciary is not "doing its job", but is "pervasively, systemically, corrupt at trial, appellate, supervisory levels", "throw[ing] cases by fraudulent judicial decisions", as evidentiarily established by:

    - ***CJA v. Cuomo…DiFiore***, challenging, *inter alia*, the constitutionality of Part E, Chapter 60 of the Laws of 2015 and seeking to void the "false instrument" December 24, 2015 Report of the (1st) Commission on Legislative, Judicial and Executive Compensation and the "false

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[1] Most relevant of these "force of law" Reports:

- the August 29, 2011 Report of the Commission on Judicial Compensation, whose statutory violations, fraud, and unconstitutionality were particularized by CJA's October 27, 2011 Opposition Report and then expanded upon and embodied in causes of action by CJA's March 30, 2012 verified complaint in its declaratory judgment action, *CJA v. Cuomo…Lippman*;

- the December 24, 2015 Report on Judicial Compensation of the (1st) Commission on Legislative, Judicial and Executive Compensation, whose statutory violations, fraud and unconstitutionality were summarized by CJA's December 31, 2015 letter to then Chief Judge Nominee Janet DiFiore, thereafter expanded upon and embodied in causes of action by CJA's March 23, 2016 verified second supplemental complaint in its 1st citizen-taxpayer action, *CJA v. Cuomo, et al.*, and by the September 2, 2016 verified complaint in its 2nd citizen-taxpayer action, *CJA v. Cuomo…DiFiore*.

[2] The hyperlink is to the transcript excerpt of CJA's testimony (pp. 101-108). CJA's webpage for the October 13, 2023 hearing, posting the VIDEO and the documents handed up to the Commission, is here.

instrument" August 29, 2011 Report of the Commission on Judicial Compensation – "thrown" by fraudulent judicial decisions up to the Court of Appeals, on which was then sitting, as associate judges, Commission Chair Eugene Fahey and now Court of Appeals Chief Judge Rowan Wilson – designated **EXHIBIT A**;

- ***CJA v. JCOPE, et al.***, which is "where we're at now", being "the continuation of *CJA v. Cuomo…DiFiore*" involving complaints based thereon and related thereto, including against "Judge Fahey and his brethren on the Court of Appeals", whose judicial odyssey establishes "once again, how the judiciary comports itself when the issue is its self-interest in pay raises and what has been going on", presently at the Appellate Division, Third Department – designated **EXHIBIT B**;

- **CJA's lawsuit against the Commission on Judicial Conduct**, identified as having been furnished, in 2011, to the Commission on Judicial Compensation to substantiate CJA's assertion, "at that time", that "the judiciary throws cases by fraudulent judicial decisions", itself "thrown by fraudulent decisions going up to the Court of Appeals";

- **CJA's Independent Expert Report pertaining to a sealed Family Court case from Monroe County**, identified as establishing that the judiciary's corruption is not just "in cases of magnitude" and that it was "only the first piece" whose continuation involves the Appellate Division, Fourth Department.

As to all of these, CJA stressed, repeatedly, by its testimony, the necessity of investigation by the Commission, with findings of fact and conclusions of law and utilizing its subpoena power (Tr. 104, 105, 106, 107) – none of which was done.

The Commission's Report likewise conceals, without mention, CJA's three post-hearing submissions, furnishing the Commission with further evidence, and "in real time", of the judiciary's corruption involving the Commission on Judicial Conduct, the Appellate Division attorney grievance committees, the OCA Inspector General, and supervisory and administrative judges, headed by Chief Administrative Judge Joseph Zayas – the Commission's first witness at the October 13th hearing:

- CJA's October 16, 2023 e-mail entitled: "Furnishing the Commission on Legislative, Judicial & Executive Compensation with EVIDENCE, in real time, as to how the AD-1 Attorney Grievance Committee & OCA Inspector General Operate – AD-1 justices & OCA admin judges with respect thereto";

- CJA's October 25, 2023 e-mail entitled: "Monroe County Family & Supreme Courts & Fourth Dept Appellate Division – Follow-up to Testimony at Oct 13th Hearing of the Commission on Legislative, Judicial & Executive Compensation" – and CJA's October 26, 2023 e-mail relating thereto entitled "The Unified Court

System's policy of uniformity for attorney disciplinary matters – to which the attorney grievance committees of the Appellate Division, Fourth Dept. have excepted themselves".

These post-hearing submissions – to which the sole response was an acknowledgment from the Commission on Judicial Conduct to the second – are, additionally, not posted on the Commission's mishmash, a-chronological webpage of "Submissions on Judicial Compensation", which also does not post CJA's six FOIL requests to the Commission, not even the first which CJA handed up to each of the seven commissioners at the October 13th hearing, with four other documents, also not posted.[3] To no avail, on November 7th, CJA sent the Commission an inventory of what it had furnished, asking that it be posted as "Inventory of Center for Judicial Accountability Submissions: Oct 12-Nov 6".

CJA's website, www.judgewatch.org, posts everything in chronological sequence:[4] CJA's written submissions,[5] FOIL requests,[6] the VIDEOs and transcripts of the Commission's meetings and

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[3] The five documents contained in seven sets for the seven commissioners consisted of:

(1) Part E, Chapter 60 of the Laws of 2015, with Legislative Law §62-A;

(2) CJA's October 10, 2023 FOIL request – "Appointments & Oaths of Office of the 7 Commissioners of the Commission on Legislative, Judicial & Executive Compensation, as Required by Public Officers Law §8 & §10, & Website & Other Info";

(3) CJA's November 25, 2019 letter to Chief Administrative Judge Lawrence Marks – "Demand that You Withdraw Your Unsworn November 4, 2019 Testimony before the Commission on Legislative, Judicial and Executive Compensation as FRAUD, as Likewise Your Submission on which it was Based, Absent Your Denying or Disputing the Accuracy of My Sworn Testimony";

(4) CJA's August 29, 2023 letter to the Commission on Judicial Conduct – "Request for Substantiation & Reconsideration...CJA's February 23, 2023 conflict-of-interest corruption complaint ... – CJA v. JCOPE et al (Albany Co. #904235-22)";

(5) The New York Law Journal's front-page June 13, 2022 article – "*Citizens' Groups Seeks to Void Repeal And Replacement of NY Ethics Watchdog*", inscribed with CJA's homepage link for *CJA v. JCOPE, et al.*

[4] *See*, the prominent homepage center link "NY's Force of Law Commissions – Unconstitutionality & Fraud IN PLAIN SIGHT", identified by CJA in testifying (Tr. 108). The direct link for CJA's chronological webpage for the 2023 Commission is: https://www.judgewatch.org/web-pages/searching-nys/force-of-law-commissions/part-e-chapter60-laws-2015/2023-24/3rd-commission-leg-jud-exec-compensation.htm – and it culminates in a webpage for this Opposition Report, here.

[5] Because the Independent Expert Report pertains to a sealed Monroe County Family Court case, it and what occurred thereafter, recited by CJA's October 25, 2023 complaint, are posted on a publicly inaccessible webpage, [link omitted].

[6] The FOIL requests to the Commission additionally have their own separate webpage, here.

hearings – and the written submissions of the two other non-lawyer citizen-witnesses who, like CJA's director, Elena Sassower, testified in opposition to judicial pay raises, based on evidence of corruption within the judiciary:

- Sebastian Doggart, executive director of the New York Families Civil Liberties Union, the last witness to testify at the October 13th hearing (Tr. 108-114), following CJA's testimony – and who substantiated his oral testimony with an "Independent Report on Corruption and Waste in the Court System in 2023" for the Commission's investigation – and which itself stated:

> "The report begins with a survey of the judges who have most egregiously failed to perform their constitutional and statutory duties over the last few years. The report then documents the agencies which have facilitated, and benefited from widespread judicial misconduct. In the interests of our children and families – and of the citizenry that pays their lofty salaries – they all need to be investigated, audited, and removed from the public payroll." (Independent Report, at p. 1).

- Robert L. Schulz, founder and chairman of We, The People Foundation for Constitutional Education, the last witness to testify at the October 31st hearing, whose testimony (Tr. 83-96) pertaining to "judicial repeal" of provisions of the New York State Constitution by New York's judiciary, colluding in violations of the State Constitution by the executive and legislative branches,[7] was particularized by an inventory of 22 civil cases he had

[7] Mr. Schulz similarly testified on November 30, 2015 before the (1st) the Commission on Legislative, Judicial and Executive Compensation at its one and only hearing on judicial compensation: (Tr. 59-63) – VIDEO (at 1hr/32mins), stating, in pertinent part:

> "It seems the judiciary in New York State is highly politicized and, to that extent, it has deviated from the standard becoming morally and legally unsound. My experiences are with State Supreme Court judges and justices at the lowest level on up through the Court of Appeals. I believe the judiciary is running interference for the leaders of the executive and legislative branches, protecting their rule of whim from the principles, prohibitions and mandates of the New York Constitution. In my experience, the Judiciary has accomplished this by dispossessing the Constitution of provisions essential to the freedoms, rights and liberties of the people. Including the article that prohibits the state and its municipalities from reoccurring debt without voter approval, Article 7, §11. And the articles that prohibit the state and its municipalities from giving or lending public money or credit in aid of private undertakings both Article 7, §8.1 and Article 8, §1. And the article that prohibits the state in the absence of an emergency from enacting a law that has not been on the desks of each of the legislatures for at least three days. Of course, I'm talking there about the three-day rule in Article 3, §14.
>
> The article that prohibits the state from enacting a special law that affects the property affairs and government of a municipality unless two-thirds of the governing board of that municipality requests that extension. Of course, I'm talking there about Article 9, §2(b)(2). . …

brought to the Court of Appeals, wherein it had subverted the standard for appeals of right guaranteed by Article VII §(3)(b)(1) of the State Constitution wherein "is directly involved the construction of the constitution of the state or the United States", which he had satisfied, by orders, unsigned by any judge, dismissing the appeals "upon the ground that no substantial constitutional question is directly involved", which he had also satisfied, as to which he had stated:

> "I urgently request that the Commission not recommend any increase in judicial compensation until the Commission *undertakes and completes* an investigation of my complaint presented here today. I stand ready to assist the Commission. For instance, I have a full record of our cases that produced upwards of 175 decisions by the judicial departments of the State of New York." (written testimony, at p. 4, italics in the original).

These establish not only the fraud and deceit that infuse virtually every sentence of the Commission's scant Report and transmitting letter, but the fraud perpetrated by Chief Administrative Judge Zayas and other judicial pay raise proponents – these being judges and bar associations – fully embraced by the seven commissioners, four of whom were duty-bound to have disqualified themselves for direct interest, with the other three duty-bound to have disqualified themselves for interests less direct, but biasing them totally.

It is my experience that in the process of dispossessing the Constitution of these provisions the judiciary has issued conclusory judgments that ignore facts, law and Framer's intent on serious constitutional challenges assisted by the top law enforcement agency in the state. In my estimation, the judiciary is anything but the great leveler here in New York State. It seems rewarding such behavior would not be in the interest of constitutional government carried out in decency and good order. For if you subsidize anything you get more of it.

The Constitution, in my opinion, is hanging by a thread. If judges are not abiding by their oaths of office to support the Constitution of the State of New York then it seems it would be unconstitutional to reward them with increased compensation for their time in office. The vitality of the Constitution as a set of rules to govern the government to constrain its power based on the will of the people is truly what is at stake here."

THE COMMISSION'S DECEMBER 4, 2023 TRANSMITTAL LETTER

The Commission transmitted its Report to the four appointing authorities of its seven members by a December 4, 2023 letter signed by Commission Chair Fahey. Each of the letter's six paragraphs is fraudulent and deceitful.

The two-sentence **FIRST PARAGRAPH** states, by its second sentence:

> "Pursuant to Chapter 60 of the Laws of 2015, as amended in the Laws of 2019 Chapter 59, Part VVV, this report sets forth the Commission's recommendations with respect to compensation levels of judges and justices of the State-paid courts of the Unified Court System, fiscal years 2024 to 2027." (underlining added).

This is fraud. Pursuant to the statute – and as highlighted by CJA's testimony – the Commission's recommendations are required to be predicated on "adequate levels of compensation and non-salary benefits", which this sentence does not state to have been done. Moreover, in disregard of the statute, the Report does not set forth "recommendations", but, rather, by its last page entitled "Conclusions" (p. 10), furnishes what it identifies as "unanimously approved changes".

The four-sentence **SECOND PARAGRAPH** states, by its first sentence:

> "The Commission considered a broad range of data, beginning with the factors in Part E of Chapter 60." (underlining added).

This is also fraud. Pursuant to the statute – and as highlighted by CJA's testimony – the Commission was required to "take into account all appropriate factors", which this sentence does not state to have been done.

The remaining three sentences read:

> "The Commission held two (2) days of public hearings. All public meetings and hearings were broadcast live over the Internet. The Commission carefully reviewed the public testimony and written submissions received." (underlining added).

The first sentence is materially misleading as the Commission's "two (2) days of public hearings" were not, as might be inferred, day-long hearings, but were of approximately 3 hours and 2 hours, respectively – and Chair Fahey conducted them as if the priority was to make them as short as possible. Nor did the Commission ensure, by adequate outreach, that the public was alerted to its opportunity to testify at the hearings or by written submissions – as may be seen from the Commission's response to CJA's November 1, 2023 FOIL request (#2) entitled "Records of the Commission's public outreach: Oct 2nd meeting & Oct 13th & Oct 31st hearings on judicial compensation", accessible here. As a result, only three members of the public testified at the hearings – all three in opposition.

As to the second sentence, it does not disclose that the live broadcasts of the Commission's meetings and hearings were recorded and posted on its website, along with "written submissions

received" – enabling verification of the fraud of the third sentence: "The Commission carefully reviewed the public testimony and written submissions received."

There was no "careful review" of anything. Rather, as the VIDEOS and transcripts make evident, there was an agenda to raise judicial salaries that dictated abandoning the Commission statute. CJA stated this in testifying, demonstrating that only cursory review of the statute was needed to discern the fraud being committed by Chief Administrative Judge Zayas, the judicial pay raise advocates, and the Commission.

The three-sentence **THIRD PARAGRAPH** states, by its first sentence:

> "The recommendations of the Commission are based on our understanding of what is fair compensation for the judges of New York State." (underlining added).

This is fraud. The statute does not authorize the Commission to base its recommendations on its "understanding of what is fair compensation", but on "adequate levels of compensation and non-salary benefits" and CJA's testimony highlighted this.

The remaining two sentences are also fraud:

> "We believe that our recommendations are supported by the factual record. Most importantly, the Commission relied upon the criteria set out in L. 2015, Ch. 60 Part E §3:
>
> > '[t]he Commission shall take into account all appropriate factors including, but not limited to: the overall economic climate; rates of inflation; changes in public-sector spending; the levels of compensation and non-salary benefits received by executive branch officials and legislators of other states and of the federal government; the levels of compensation and non-salary benefits received by professionals in government, academia and private and nonprofit enterprise; and the state's ability to fund increases in compensation and non-salary benefits." (underlining added).

Apart from the "We believe" hedging that the "factual record" supports the Commission's recommendations – reflective of the Commission's knowledge that it does not – the Commission did not rely on the statutory criteria it quotes. Three of the six enumerated "appropriate factors" expressly include "compensation and non-salary benefits", as to which the Commission's only "factual record" is as to salary. As for the unenumerated "appropriate factors" that the statute expressly "includ[es]", CJA's testimony identified that "The most appropriate factor, the threshold factor, is whether judges are doing their job" (Tr. 104), thereupon furnishing evidentiary proof of the judiciary's flagrant and systemic corruption, which the Report conceals, with no findings of fact and conclusions of law as to it, or as to the evidentiary submissions of the two other witnesses testifying in opposition.

The single-sentence **FOURTH PARAGRAPH** states:

> "Further, the Commission reviewed the salary levels and systems of compensation for Federal Court Judges and other State Court judges" (underlining added).

This is more fraud. The Commission did not review "systems of compensation for Federal Court Judges and other State Court judges" at any of its meetings or hearings – and none is reflected by its Report, whose single closest "finding" on the subject, its Number 4 (at pp. 5-6), is confined to "current salaries for federal and other state judges" (underlining added).

The three-sentence **FIFTH PARAGRAPH** states, by its first sentence:

> "We believe our Judges are among the best in the nation."

Again, fraud – and no less so by the hedging "We believe". The Commission's duty, pursuant to the statute, was not to operate by "belie[f]", but on evidence – which is why the statute's §2.1 provided it with ample time and §3.2, §3.5, and §3.6 equipped it with ample resources including subpoena power. CJA's testimony emphasized this and furnished case file evidence proving New York's judges as the very opposite of "the best", being "pervasively, systemically corrupt" (Tr. 104). The evidence of the other two citizen witnesses, also in opposition, was further reinforcing and dispositive.

The second sentence is also fraud, stating:

> "The recommended salary levels will help to attract and retain both the diversity and the excellence of the bench to ensure a strong and independent judiciary."

The "recommended salary levels" are not based on any finding that current "salary levels" are inadequate – because they are not – or that they impede attracting a pool of diverse, qualified candidates – because they do not – or that even a single judge left the bench due to "salary levels" – because none have.

Indeed, as to the issue of "diversity", nauseatingly trumpeted by judicial pay raise advocates, not only does the Report make no mention of it, anywhere, but the above-sentence, in the original November 9, 2023 drafted letter had not included it. It read:

> "The recommended salary levels will help to attract and retain the exceptional lawyers necessary to ensure a strong and independent judicial system."

In other words, it was an afterthought, thrown in for effect.

The third sentence is a further fraud, stating:

> "This is what the people of New York deserve."

This is outrageous. "[What] the people of New York deserve" is not to be defrauded of their money and deceived by assertions about "excellence of the bench" and "a strong and independent judicial system" whose falsity the judicial pay raise opponents proved with evidence. As to that evidence, "the people of New York deserve" the findings of fact and conclusions of law that was the Commission's duty to have made, but did not – with further findings of fact and conclusions of law as to the fraudulent claims shamelessly put forward by judicial pay raise advocates at the hearings and by their written submissions, and by the commissioners at their meetings that did not make it into either the Commission's Final Report or Draft Report.[8]

The two-sentence **SIXTH PARAGRAPH** is also fraud, by both its sentences, stating:

> "I would like to thank all the members of the Commission for their time, hard work, and dedication that they have given to our mission. As we move forward to the next phase of our responsibilities – determining appropriate levels of legislative and executive compensation – I look forward to working with them."

The Commission's "mission" is defined by the statute, which the seven commissioners violated knowingly and deliberately, while commending themselves for "their time, hard work and dedication". Based on this Opposition Report, there can be no "next phase" of "responsibilities" for these commissioners – and such, moreover, is not about "determining appropriate levels of legislative and executive compensation", but, as with the first phase, "adequate levels of compensation and non-salary benefits".

[8] This includes the gem, repeated from past commissions, that staffing shortages should result in giving judges higher salaries – rather than using the money to hire additional staff. (Nov 6 Tr. 27, 34-35).

THE COMMISSION's DECEMBER 4, 2023 FINAL REPORT

"MEMBERS OF THE COMMISSION ON LEGISLATIVE, JUDICIAL AND EXECUTIVE COMPENSATION"

(at the 4 unnumbered pages preceding the "Introduction")

This four-page section, immediately following the Report's cover and "Table of Contents", consists of bios of the seven commissioners, presented alphabetically, except for Chair Fahey, whose bio is first. These are the same commissioner bios as are accessible from the 2023 Commission's homepage.

The prominence given to these bios is itself a fraud, designed to foster the belief that credentialled individuals appointed by New York's four highest constitutional officers of its three government branches can be trusted to have faithfully discharged statutory duties they have brazenly violated.

Six of the commissioners are attorneys, with two of these former judges. CJA identified this at the outset of its October 13th testimony, further specifying that one of the commissioners was "a former judge of the Court of Appeals and another one a 25-year jurist" (Tr. 101). This, while handing to each commissioner a set of five documents, the first being the statute, and stating "We start with the statute" – and then, upon returning to the speaker's podium, continuing "The starting point is always the statute".

These six commissioners are:

- former Court of Appeals Associate Judge Fahey and Helene Blank, Esq., appointed by Chief Judge Wilson:
- Victor Kovner, Esq. and R. Nadine Fontaine, Esq., appointed by Governor Hochul;
- former Judge Jeremy Weinstein, appointed by Temporary Senate President Stewart-Cousins;
- Theresa Egan, Esq., appointed by Assembly Speaker Heastie.

Yet notwithstanding the bread-and-butter of their professional careers is analyzing and interpreting statutes, not one saw fit – at the Commission's October 2nd organizational meeting – to pull out the short Commission statute – and to suggest reviewing it, paragraph by paragraph, so that the public might understand: (1) what the statute expressly required of them; (2) the tools the statute gave them to discharge their duties; and (3) the seven-month time frame the statute gave them to discharge their duties pertaining to judicial compensation.

As for the seventh commissioner, Robert Megna, appointed by Governor Hochul – the sole commissioner who was not present at the October 2nd organizational meeting – he was no less familiar with the importance of statutory language. Indeed, he was already familiar with the operative provisions of the Commission statute and of the history of past commissions and their

"force of law" judicial pay-raise Reports. Most recently, in 2019-2020, he had been a member of the (2nd) Commission on Legislative, Judicial and Executive Compensation.

Tellingly, Commissioner Megna's bio does not identify that he was a member of the 2019-2020 (2nd) Commission on Legislative, Judicial and Executive Compensation, or that, in November 2016, he had been parachuted in as a member of the (1st) Commission on Legislative, Judicial and Executive Compensation, or that, in 2011, as state budget director, he had testified before the Commission on Judicial Compensation, in opposition to judicial pay raises.

All this relevant biographic information about Commissioner Megna's involvement with three prior compensation commissions – serving as a member of two – is entirely omitted from his bio.[9]

By contrast, Commissioner Kovner's bio furnishes the relevant fact that:

> "He has been a member of the Board of Trustees of the Fund for Modern Courts from 1970 to the present, and was the Fund's chair for four years roughly a decade ago. While Chair of the Fund, he helped draft and advocate for the legislation signed by Governor Paterson in 2010 creating the first Commission on Judicial Compensation."

Yet Commissioner Kovner's bio also omits that, like Commissioner Megna, he had testified before the Commission on Judicial Compensation in 2011 – though in favor of judicial pay raises.

Common to both Commissioners Megna and Kovner is that both were disqualified for interest from serving on the 2023 Commission. This, because the corruption and unconstitutionality of the prior compensation commissions are traceable to them.

The specifics of Megna's collusion in the "false instrument" August 29, 2011 Report of the Commission on Judicial Compensation are recited and reflected by CJA's correspondence to him, as state budget director, starting with CJA's November 1, 2011 letter, furnishing him with CJA's October 27, 2011 Opposition Report for his corrective action. This and the subsequent correspondence are itemized by CJA's July 11, 2013 complaint against him to the State Inspector General – and it incorporates CJA's June 27, 2013 complaint against him to JCOPE and CJA's April 15, 2013 complaint to then U.S. Attorney Preet Bharara that is part thereof.

The specifics of Megna's collusion in the corruption of the (2nd) Commission on Legislative, Judicial and Executive Compensation, of which he was a member – and, additionally, in the "false instrument" December 10, 2018 Report of the Committee on Legislative and Executive Compensation, are recited by CJA's August 31, 2020 complaint to JCOPE against him as SUNY's then vice-chancellor and chief operating officer, materially quoted in CJA's November 2, 2021 complaint against him to the State Inspector General.

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[9] Up until the Commission's final meeting, on December 4th (Tr. 10-11), there was no reference by Megna or the other commissioners about his involvement with prior commissions – and he himself acted as if he had no knowledge of what he should have known by reason thereof (*See* Nov 6 Tr. 9, 41).

The foregoing five complaints are all exhibits to the June 6, 2022 verified petition in *CJA v. JCOPE, et al* [R.50-421], whose first and fifth causes of action [R.65-70; R74-80; R.651-654] seek mandamus and other relief with respect to the complaints. All are contained in the *CJA v. JCOPE, et al.* record on appeal that CJA furnished, with the appeal brief, to the Commission at the October 13th hearing.[10]

As for Kovner, who, as his bio identifies, was a member of the Commission on Judicial Conduct "from 1976 to 1990, concluding as [its] chair", the specifics of his collusion in the "false instrument" August 29, 2011 Report of the Commission on Judicial Compensation and, prior thereto, in that commission's embrace of the frauds of the judiciary and judicial pay raise advocates, Kovner among them, is evidenced by the contemporaneous correspondence CJA sent him, *to wit*,

(1) CJA's August 8, 2011 e-mail, transmitting its August 8, 2011 letter to the Commission on Judicial Compensation, entitled "Protecting the People of this State from Fraud: The Commission on Judicial Compensation's Duty to Identify the Case Presented by Opponents of ANY Judicial Pay Raises & to Make Findings with Respect Thereto, in Discharge of its Statutory Responsibilities", which stated (at p. 5), in pertinent part:

> "By copy of this letter to…Victor Kovner, Chair of the Fund for Modern Court, who…testified [at the July 20, 2011 hearing]…, CJA calls upon [him] to justify – if [he] can - the succession of fraudulent judicial decisions particularized by the final two motions in CJA's lawsuit against the Commission on Judicial Conduct for which the taxpayers of this State should be rewarding the judiciary with pay raises";

(2) CJA's August 17, 2011 e-mail, transmitting CJA's August 17, 2011 letter to him, among others entitled "Protecting the People of this State from Fraud: The Commission on Judicial Compensation's Duty to Identify the Case Presented by Opponents of ANY Judicial Pay Raises & to Make Findings with Respect Thereto, in Discharge of its Statutory Responsibilities" and identically-titled August 17, 2011 letter to the Commission on Judicial Compensation;

(3) CJA's August 23, 2011 e-mail**,** transmitting CJA's August 23, 2011 letter to then Chief Administrative Judge Ann Pfau entitled "Ensuring that the Commission on Judicial Compensation is Not Led into Constitutional Error: Clarification of the Office of Court Administration's 'Memorandum discussing constitutional considerations in establishing judicial pay levels' – and the Substantiating Evidence";

(4) CJA's August 26, 2011 e-mail, transmitting CJA's August 26, 2011 letter to Chief Administrative Judge Pfau entitled "Part 2: Ensuring that the Commission on Judicial Compensation is Not Led into Constitutional Error: Clarification of the Office of Court

[10] Nor was the October 13th hearing the first that Megna was apprised of *CJA v. JCOPE, et al.* and its record. More than seven months earlier, following Governor Hochul's appointing Megna to be acting budget director for the 2023-24 state budget, CJA had sent a March 2, 2023 e-mail to the office of the Division of the Budget for transmittal to him.

Administration's 'Memorandum discussing constitutional considerations in establishing judicial pay levels' – and the Substantiating Evidence" ;

(5) CJA's October 28, 2011 e-mail, transmitting CJA's October 28, 2011 letter to him, among others entitled "Holding Government Accountable: CJA's October 27, 2011 Opposition Report in Support of Legislative Override of the Commission on Judicial Compensation's Judicial Pay Recommendations & Other Relief" and transmitting the Opposition Report and a link to CJA's evidentiary webpage for it.

Based thereon, and other facts known by Commissioners Megna and Kovner, each knew they were disqualified by interest from serving on the 2023 Commission. Their failure, as commissioners, to ensure that the Commission discharged its duty to make findings of fact and conclusions of law with respect to CJA's October 12th letter and October 13th testimony makes that manifest.

So, too, did Chair Fahey and Commissioner Weinstein each know they were disqualified for interest from serving on the 2023 Commission – and the only way they did not know this is if they were unaware of the "history" of the prior compensation commissions and committee, culminating in *CJA v. Cuomo…DiFiore* at the Court of Appeals, as recounted by CJA's October 12th letter.

With respect to Chair Fahey, he was one of the six associate judges of the Court of Appeals whose five unsigned-by-any-judge orders dismissed and denied appellate review by right and by leave and all other relief in *CJA v. Cuomo…DiFiore* – all five orders purporting that the only judge who had "[taken] no part" was then Chief Judge DiFiore. For Chair Fahey to have been unaware of those orders, he would have had to be unaware of CJA's published letter to the editor in the August 21, 2019 New York Law Journal, highlighted by CJA's October 12, 2023 letter as having been concealed by the 2019 commission. The October 12th letter itself furnished, by its links, ready-access to the record of *CJA v. Cuomo…DiFiore*, at the Court of Appeals from which Chair Fahey could easily verify, if he did not already know, that the Court's February 18, 2020 order denying CJA's final November 25, 2019 motion therein was its imprimatur to the collusive fraud between the 2019 commission, the judiciary, and judicial pay raise advocates particularized by the motion and further reinforced by CJA's culminating January 9, 2020 letter.

Moreover, if, prior to the October 13th hearing, Chair Fahey did not know about CJA's February 7, 2021 complaint to the Commission on Judicial Conduct against him and his former Court of Appeals brethren arising from *CJA v. Cuomo…DiFiore*, he and his fellow commissioners all learned of it from CJA's testimony and that the record in *CJA v. JCOPE, et al.* contained it. Indeed, the copy of the *CJA v. JCOPE, et al.* record on appeal (& here & here) that CJA exhibited in testifying and handed to Chair Fahey, after the hearing ended, flagged the complaint [R.251] by a post-it.[11]

[11] Also flagged by post-its were CJA's November 24, 2021 complaint to JCOPE against the Commission on Judicial Conduct [R.185] and February 11, 2021 complaint to the Appellate Division Attorney Disciplinary Committees [R.241].

Whether from the record of *CJA v. Cuomo…DiFiore*, with which Chair Fahey is presumed familiar, having participated in the Court of Appeals' five indefensible, fraudulent orders therein – or so purported by each order – or from the record on appeal of *CJA v. JCOPE, et al.*, with its accompanying appellants' brief, Chair Fahey would have seen that he and Commissioner Weinstein had huge direct financial interests because, as then judges and now by their pensions, they are beneficiaries of the judicial pay raises resulting from the "false instrument" August 29, 2011 Report of the Commission on Judicial Compensation and the "false instrument" December 24, 2015 Report of the (1st) Commission on Legislative, Judicial and Executive Compensation, and that findings of fact and conclusions of law with respect to the Reports and lawsuits would establish this – and their liability for claw-backs on the order of three quarters of a million dollars, each.[12] CJA told this to Chair Fahey on October 13th, in handing him the *CJA v. JCOPE, et al.* appeal brief and record – and further reminded him of his presence at the Senate Judiciary Committee's April 17, 2023 "meeting" to confirm then Associate Judge Wilson as chief judge, at which CJA had requested to testify about Wilson's participation in *CJA v. Cuomo…DiFiore* and the related *Delgado v. New York State*, and the conversation they had afterward, outside the meeting room, pertaining to the *CJA v. Cuomo…DiFiore* sixth cause of action challenging the constitutionality of Part E, Chapter 60 of the Laws of 2015, *as written* [R.109-110; R.187-192], which quoted Fahey's dissent, as an Appellate Division, Fourth Department justice, in *St. Joseph Hospital v. Novello, et al.*, 43 A.D.3d 139 (2007), in substantiation of the statute's unconstitutionality.

Commissioner Weinstein would have independently seen his own huge financial and other interests – and by no later than CJA's October 13th testimony before him, if he had not already reviewed CJA's October 12th letter, which he may be presumed to have done.

As for Commissioners Blank, Egan, and Fontaine, Esq., all were disabled by undisclosed interests and relationships, biasing them totally**.** This is manifest from their acquiescence and participation

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[12] CJA's February 7, 2021 complaint to the Commission on Judicial Conduct particularized Fahey's direct financial interest in *CJA v. Cuomo…DiFiore* and that of his then fellow Court of Appeals associate judges by quoting from CJA's May 31, 2019 motion for reargument of the Court's May 2, 2019 order dismissing the appeal of right, stating:

> "29. Undisclosed by the Court's May 2, 2019 Order (Exhibit A-1) – and itself demonstrative of the disqualifying facts – is that each associate judge has, at present, a $82,200 a year salary interest in the commission-based judicial salary increases challenged by appellants' sixth, seventh, and eighth causes of action as unconstitutional, unlawful, and fraudulent [R.109-114 (R.187-213)]. Such declarations, to which appellants have a summary judgment entitlement,[fn14] bring down the salary of each associate judge from the commission-based $233,400 it presently is to the $151,200 fixed by Judiciary Law §221.[fn15]
>
> 30. On top of this are the 'claw-backs' that each associate judge will be liable for, whose amounts vary. In the case of Senior Associate Judge Rivera, the sole associate judge whose name appears on the May 2, 2019 Order (Exhibit A-1) and who first became a judge on February 11, 2013, when she was confirmed to the Court, the 'claw-back' is well over $300,000 as of this date and will top $400,000 by the April 1, 2020 start of the next fiscal year."

in the Commission's frauds – and not only by its December 4, 2023 Report, but by their conduct at the hearings and at the subsequent meetings, not revealed by the Report. This includes purporting, in tandem with their fellow commissioners, that the witnesses favoring judicial pay raises had presented "overwhelming evidence" – a charade that began immediately after Mr. Schulz' testimony at the October 31st hearing. Disregarding that he had furnished for the Commission's investigation, a list of 22 cases in which the Court of Appeals had subverted the New York Constitution – cases which could reasonably involve, and did, dismissal orders in which Chair Fahey, as a Court of Appeals associate judge from February 2015 to December 2021 had participated[13] – they made no objection to Chair Fahey asking whether the commissioners were "comfortable saying yes or no" for the raises. (Tr. 102). Upon Commissioner Kovner's response: "We were listening to overwhelming testimony now at two hearings with a broad range of witnesses. It is compelling and bears a case for a raise. I would go on but I don't expect that there's going to be substantial disagreement within this Commission", Commissioner Blank chimed in "I think that he said it eloquently based on the evidence that we heard, it's compelling, all this testimony." Chair Fahey then agreed: "It has been strong. It has been strong". Commissioner Megna also piped in with his agreement about the supposedly "compelling evidence" (Tr. 104).

At the November 6th meeting, Commissioner Kovner reiterated: "As I said up in Albany, I found the evidence that we received at our two hearings compelling in terms of the need for a raise." (Tr. 3). Commissioner Egan thereafter joined: "I think the testimony that we received by just about everybody, minus, I think three individuals that had testified provided overwhelming evidence in regard to the state of the judiciary now, as well as really what their desires are going forward." (Tr. 7-8).

At the November 13th meeting, Commissioner Blank reiterated: "we have heard overwhelming evidence" (Tr. 5). Likewise Commissioner Egan: "As our fellow Commissioners have noted, there's been ample evidence presented to support a raise." (Tr. 8).

These were flagrant lies. The testimony of Chief Administrative Judge Zayas and the other judicial pay raise advocates was unsworn and suffused with readily-discernable fraud, so-highlighted by CJA's testimony at the October 13th hearing and it remained true at the October 31st hearing. Their testimony would have been demolished by the most basic cross-examination of any remotely competent attorney – as Commissioners Blank, Egan, and Fontaine are presumed to be. This includes as to "retention attrition" about which Commissioner Fontaine herself stated on October 31st, in the discussion following the hearing: "we haven't gotten any specific numbers" (Tr. 106).

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[13] The listed cases included three from 2016, identified as:

> "19. Schulz, et al., v. N.Y. Exec., 2016 N.Y. LEXIS 249
> 20. Schulz, et. al., v. Cuomo, 2016 N.Y. LEXIS 371
> 21. Schulz, et. al., v. Silver, SSD 35, decided March 31, 2016".

Chair Fahey and his fellow commissioners may be presumed to have recognized that investigation of Mr. Schulz' testimony as to the Court of Appeals subversion of the State Constitution with respect to appeals of right was reinforcing of what *CJA v. Cuomo…DiFiore* had documented with respect to appeals of right – and, additionally with respect to appeals by leave and by direct appeal. CJA's appended Exhibit A furnishes the *CJA v. Cuomo…DiFiore* record references.

To this, her fellow commissioners gave disgraceful, laughable responses, starting with Chair Fahey who, upon confirming that she meant "attrition because they don't get pay raises", stated:

> "I don't know of any numbers. I'm sure we would have heard them by now. So much of that kind of information is anecdotal. I talked to so and so and he said I can't afford to run for judge because my kind wants to go to Georgetown and I can't afford it on a judge's salary. That, of course, I believe is totally real, but there's no quantification of it that I saw. I'm not familiar with anything." (Tr. 106-107),

Commissioner Fontaine nonetheless stated:

> "I want to renew my request for the data. I think it would be helpful in demonstrating, there has to be a way Judge Zayas can provide information from the period from 2011 to the present, the number of judges, whether there has been a decrease in the number of minority judges." (Tr. 114).

Presumably Chief Administrative Judge Zayas was unable to provide substantiating "data" because at the November 6th meeting no mention was made about it, including by Commissioner Fontaine who stated, at the outset, in support of pay raises, without reference to any "data":

> "I feel that the salary issue does come to bear when we're talking about retention, the tradition of retention recruitment, and I think it's imperative that we do recognize the need for an increase so we can continue to retain good talent and attract additional talent to come work in the government and continue the commitment to public service" (Tr. 4-5).

Similarly, at the November 13th meeting, Commissioner Fontaine, without referencing any "data", stated:

> "Again, we did talk about the need to provide increases in salary so we maintain and retain judges and to reduce attrition from judges…We have had a lot of testimony with regard to that." (Tr. 10).[14]

As with the members of the 2019 commission, whose disqualifications born of interest and relationships CJA set forth by a webpage posting the pertinent documents in the weeks after testifying at its November 4, 2019 hearing (VIDEO, at 1 hr/35 mins), so, too, CJA constructed a

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[14] Illustrative of the non-probative and hearsay testimony on this subject (Oct 31 Tr. 64) was Commissioner Blank's statement at the November 6th meeting embracing it:

> "And I don't remember who it was, but I do think [s]he actually was the president of the women's bar who pointed out that one of the women who belonged to the women's bar is a member of the judiciary, basically can't really make ends meet because of the pressures on her salary. She is a single mother taking care of a family and it's just not working. And we can't have somebody like that looking for private employment if she's really an asset…" (Tr. 6).

comparable webpage for the members of the 2023 Commission, in the weeks after testifying at its October 13, 2023 hearing, here.

Finally, but threshold, on October 10, 2023, by CJA's first FOIL request – the same as CJA additionally handed up to each of the seven commissioners at the October 13th hearing before commencing to testify – CJA alerted them to the oaths they were required to take and file with the Department of State, pursuant to Public Officers Law §10.

The oaths for each of the seven commissioners that the Commission sent CJA on November 15, 2023[15] – and then only after CJA's November 1, 2023 reminder e-mail – stated:

> "I do solemnly swear (or affirm) that I will support the constitution of the United States, and the constitution of the State of New York, and that I will faithfully discharge the duties of the office of [Member of Commission] [Chair of Commission] according to the best of my ability.
>
> I, the Appointee named above, hereby acknowledge receipt of a copy of sections 73, 73-a, 74, 75, 76, 77 and 78 of the Public Officers Law, together with such other material related thereto as may have been prepared by the Secretary of State, and I acknowledge that I have read the same and that I undertake to conform to the provisions, purposes and intent thereof and to the norms of conduct for members, officers and employees of the legislature and state agencies."

Public Officers Law §74[16] pertains to conflicts of interest, the appearance of which all seven commissioners had and manifested brazenly,[17] abandoning any semblance of neutrality by their own incessant advocacy, on behalf of the judges, as if they themselves were testifying.

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[15] All seven were dated October 31, 2023 and none reflected filing with the Secretary of State. And yet FOIL production by the Department of State, on November 9, 2023, in response to CJA's October 19, 2023 FOIL request to it, reiterated on November 7, 2023, reveals that four commissioners, Weinstein Kovner, Fontaine, and Megna, had signed and filed earlier "Public Office Oaths of Office" for their service on the Commission.

[16] In pertinent part, Public Officers Law §74.2 states:

> "No officer…should have any interest, financial or otherwise, direct or indirect…which is in substantial conflict with the proper discharge of his duties in the public interest."

§74.3(h) states, in pertinent part:

> "An officer…should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust."

[17] Mr. Doggart's October 13th testimony touched on the "appearance" issue, stating, with respect to the Commission's composition and the location of the hearing:

THE "INTRODUCTION" SECTION OF THE COMMISSION'S REPORT (at p. 1)

Virtually everything in this five-paragraph section is deceitful, fraudulent, and improper.

The "Introduction" is where the Report should have properly provided a background recital of the prior compensation commissions and committee identified by CJA's October 12th letter. Most important of these:

- the 2011 Commission on Judicial Compensation, rendering an August 29, 2011 Report;
- the 2015 (1st) Commission on Legislative, Judicial and Executive Compensation, rendering a December 24, 2015 Report;
- the 2019 (2nd) Commission on Legislative, Judicial and Executive Compensation, rendering a December 26, 2019 Report and then a November 11, 2020 Report.

A proper "Introduction" would have summarized the similarities and differences of these Reports – particularly the 2011 and 2015 Reports which had brought judicial salaries to levels that are concealed, entirely, by the supposedly superseded, but still extent, Judiciary Law Article 7-B entitled "Compensation of Judges and Justices of the Unified Court System".

Indeed, a proper "Introduction" would have also revealed the "longer history" of judicial compensation commissions from decades earlier, as, for instance, the Temporary State Commission on Judicial Compensation whose June 1982 Report is twice quoted by CJA's October 27, 2011 Opposition Report:

at page 20:

> "the judgment as to what level of pay is adequate should be based on whether a reasonable supply of well-qualified attorneys will make themselves available to become or remain judges in the courts concerned. The lowest pay which produces an adequate supply of well-qualified candidates for the various courts is the only

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> "Now, all of you but one of the commissioners are attorneys…. I do question whether this is a reassuring indicator of your impartiality or independence. Does the makeup of this commission really represent the population of New York? Why are there no social workers, no psychologists, no journalists on this commission? What you think are the optics to the public that six of you are zealous members of the Bar Association where we happen to be standing right now? It's a beautiful building, but the Bar Association is a major engine of the whole judiciary racket and you are charged with deciding whether your fellow bar colleagues should get a raise. Do you really think that holding the commission here helps your credibility? So I ask you at least to put aside your natural allegiance to your fellow bar and to oppose these obscene funding requests… and to help establish genuine oversight." (Tr. 108-9).

> pay level which is fair to State taxpayers; any higher pay would require unnecessarily higher taxes.";

and at page 30:

> "…there are significant differences in the cost of living in various areas of the State; and [] it makes much more sense to adjust the salaries of judges who reside where it is more expensive to live to reflect that fact, rather than to establish a single salary for each office, which, while perhaps adequate in part of the State, might be inadequate or excessive in the rest of the State."

Also relevant, the different Temporary Commission on Judicial Compensation whose January 1993 Report, among other things, rejected "parity" with surging federal judicial salaries, stating:

> "The Federal government's ability to pay and to incur debt is fundamentally different from New York's constitutionally-imposed requirement for a balanced budget." (at p. 8).

Yet, the Commission's "Introduction" makes NO reference to the relevant "history" of prior judicial compensation commissions. Instead, its **FIRST PARAGRAPH** substitutes a different "history", one extolling the excellence of New York's judiciary that it then brings to the present by the first two sentences of its **SECOND PARAGRAPH**:

> "The judiciary of New York State has a long and distinguished history. Our judges draw on the character and minds of jurists as varied as John Jay, Benjamin N. Cardozo, Irving Lehman, Stanley Fuld, and Charles Breitel. When Judge Cardozo passed, Judge Learned Hand stated 'he was a great judge because he successfully reconciled the letter with the spirit of the law' (from the World of Benjamin Cardozo by Richard Pollenberg p. 240).
>
> This spirit runs through to our current judges. We see it in our recent Chief Judges Judith Kaye and Jonathan Lippman through to our current Chief Judge Rowan D. Wilson. …"

It is not until the final **FIFTH PARAGRAPH** that there is even a reference to the 2023 Commission. Its two sentences state:

> "The Commission recognizes these realities. Our goal is to responsibly address these issues."

The referred-to "realities" as pertains to a judiciary that does its "job" of delivering justice by "reconcil[ing] the letter with the spirit of the law" – implied, but not stated – are not "realities". And proving this is the testimony and evidence of the three witnesses opposing the judicial pay raises, rebutting:

- that "our current judges" embody the supposed "long and distinguished history" of New York's judiciary;

- that "our recent Chief Judges Judith Kaye and Jonathan Lippman through to our current Chief Judge Rowan D. Wilson" are exemplars of this.

Tellingly, the recited sequence of "recent Chief Judges" omits Janet DiFiore, whose corruption as the yet-to-be-confirmed nominee for chief judge in January 2016, gave rise, eight months later, to CJA's citizen-taxpayer action that would bear her name – *CJA v. Cuomo…DiFiore*.[18]

The corruption infesting the judiciary, established by the evidence-supported testimony of the three opposition witnesses, renders unconstitutional any increase in judicial salaries and irrelevant the assertions in the **SECOND PARAGRAPH** that:

> "[New York's]…legal system [] is one of the largest and the busiest in the world. In 2022, there were 2.1 million new cases filed in our courts (civil-criminal-family court). New York had more than twice the number of filings as the entire federal court system",

and in the **FOURTH PARAGRAPH** that:

> "[New York judges] have not seen any increase in pay for four and a half years. During this time the Federal Judiciary has seen a continuous rise in compensation. When compared to the judiciary of other states, New York is ranked ninth…The buying power of a judge's salary is now 20% less than it was in 2019. During this same time period, the other branches of New York government have received [] pay raises. The same is true of employees whose pay is set by collective bargaining."

Indeed, the unconstitutionality of conferring pay raises to judges who should be removed from the bench for corruption, but are not because ALL mechanisms for removing them are corrupted, has been asserted by CJA throughout the past dozen years:

- It was first set forth by CJA's August 8, 2011 letter to the Commission on Judicial Compensation (at pp. 3-4), based on an analysis of the Court of Appeals' February 23, 2010 decision in *Maron v. Silver*, and Article VI of the New York State Constitution.

- It was then quoted, *verbatim*, by CJA's August 23, 2011 letter to then Chief Administrative Judge Ann Pfau (at pp. 2-4);

[18] This history is concisely summarized by CJA's November 25, 2019 letter to then Chief Administrative Judge Lawrence Marks, furnished to the 2019 commission – a letter so important that CJA included it in the addendum to its October 12, 2023 letter and handed up seven copies to each of the seven commissioners before commencing to testify on October 13th.

- Thereafter, it was quoted, *verbatim*, by CJA's October 27, 2011 Opposition Report to the Commission on Judicial Compensation's August 29, 2011 Report (at pp. 10-13), which ADDITIONALLY highlighted it, by its own separate page, after the cover, stating:

> "'The appellate, administrative, disciplinary, and removal provisions of Article VI are safeguards whose integrity – or lack thereof – are not just 'appropriate factors', but constitutional ones. Absent findings that these integrity safeguards are functioning and not corrupted, the Commission cannot constitutionally recommend raising judicial pay.[fn4]'
>
> > '[fn4] Such safeguards are properly viewed as comparable to the 'good Behaviour' provision of the U.S. Constitution, immediately preceding – and in the same sentence as – the prohibition against diminishment of federal judicial compensation [U.S. Constitution, Article III, §1].' .
>
> (concluding paragraph of analysis of Article VI of the New York State Constitution, based on the Court of Appeals' February 23, 2010 decision in the judicial compensation lawsuits, presented by the Center for Judicial Accountability's August 8, 2011 letter to the Commission on Judicial Compensation (at pp. 3-4) and August 23, 2011 letter to Chief Administrative Judge Ann Pfau (pp. 2-4) – whose accuracy is uncontested by them and other judicial pay raise advocates.)"

This was thereafter embodied in CJA's three *CJA v. Cuomo* lawsuits:

- the *CJA v. Cuomo…Lippman* declaratory judgment action, whose March 30, 2012 verified complaint featured the above-quote on its page 1, quoted the analysis *verbatim* at ¶98, followed by a cause of action entitled "Systemic Judicial Corruption is an 'Appropriate Factor' Having Constitutional Magnitude" (¶¶161-162);

- the *CJA v. Cuomo, et al.* first citizen taxpayer action, most directly by its March 23, 2016 verified second supplemental complaint, whose thirteenth causes of action entitled "Chapter 60, Part E, of the Laws of 2015 is Unconstitutional, *As Written* – and the Commission's Judicial Salary Increase Recommendations are Null & Void by Reason Thereof", contained a section B entitled "Chapter 60, Part E, of the Laws of 2015 Unconstitutionally Delegates Legislative Power Without Safeguarding Provisions" (¶400);

- the *CJA v. Cuomo…DiFiore* second citizen-taxpayer action, whose September 2, 2016 verified complaint incorporated the above thirteenth causes of action as a sixth cause of action, quoting its section B as follows:

> "400. It is unconstitutional to raise the salaries of judges who should be removed from the bench for corruption or incompetence – and who, by

reason thereof, are not earning their current salaries. *Consequently, a prerequisite to any judicial salary increase recommendation must be a determination that safeguarding appellate, administrative, disciplinary and removal provisions of Article VI of the New York State Constitution are functioning.*

401. Likewise, it is unconstitutional to raise the salaries of other constitutional officers and public officials who should be removed from office for corruption – and who, by reason thereof, are not earning their current salaries. *Consequently, a prerequisite to any salary increase recommendation as to them must be a determination that mechanisms to remove such constitutional and public officers are functional, lest these corrupt public officers be the beneficiaries of salary increases.*

402. The absence of explicit guidance to the Commission that corruption and the lack of functioning mechanisms to remove corrupt public officers are 'appropriate factors' for its consideration in making salary recommendations renders the statute unconstitutional, *as written*." (underlining and italics in the original March 23, 2016 verified second supplemental complaint).

All three lawsuits were "thrown" by fraudulent judicial decisions – none identifying, nor determining, the constitutional issue, whose correctness was never challenged by anyone, in court or out. Of these three lawsuits, only the culminating *CJA v. Cuomo…DiFiore*, incorporating the prior two, went up on appeal – and the particulars as to the fraud by which the Appellate Division, Third Department disposed of its sixth cause of action, section B, are recited by CJA's "legal autopsy"/analysis of its December 27, 2018 decision (at pp. 13-17), accompanying its March 26, 2019 letter to the Court of Appeals in support of its appeal of right.

The **THIRD PARAGRAPH**, by its inference that the Commission's function is to ensure that New York's judges are "properly compensated for the job we are asking them to do" is another fraud. The statute mandates that the Commission's recommendations to increase salary be based on "adequate levels of compensation and non-salary benefits".

The **FOURTH PARAGRAPH**, above-quoted (at p. 20, *supra*) is fraudulent by each of its six sentences – with all but the fifth sentence repeating frauds that CJA exposed in 2011 before the Commission on Judicial Compensation, culminating in its October 27, 2011 Opposition Report:

- As to its first sentence: New York's judges have no entitlement, constitutional or statutory, to pay raises, absent a showing of inadequacy;

- As to its second sentence: the "continuous rise in compensation" of "the Federal Judiciary" results from a federal statute – the 1989 Ethics Reform Act – giving COLAs to them and to other federal officers, and agency heads and which mandated that a quadrennial commission's salary recommendations for federal district court judges and members of Congress be equal and, likewise, that its salary recommendations for the chief justice, vice-

president, speaker, majority and minority leaders and cabinet secretaries be equal[19] – statutory provisions with no parallel to any New York statute;

- As to its third sentence: that New York's judiciary ranks "ninth" in pay in comparison to other states does not make the pay of New York's judges inadequate;[20]

- As to its fourth sentence: the decrease in "buying power" of New York's judges since 2019 by reason of inflation does not render their salaries inadequate;

- As to its fifth sentence: its reference to "well-deserved pay raises" that "other branches of New York government" received since 2019 is fraudulent. The unidentified "other branches" are the executive branch, whose constitutional officers are the governor, lieutenant governor, attorney general, and comptroller, and the legislative branch, whose constitutional officers are the legislators – all sued for corruption in *CJA v. Cuomo…DiFiore* and *CJA v. JCOPE, et al.,* excepting the lieutenant governor. Pay raises for them are not "well-deserved". Rather, they are unconstitutional for the reasons stated by the above-quoted ¶¶401-402, arising from their corrupting of constitutional, lawful state governance, as documented by those two lawsuits and by CJA's predecessor lawsuits, also suing them for corruption.

  In March 2018, the fraudulent Supreme Court decisions in *CJA v. Cuomo…DiFiore* and its predecessors led directly to the supposed "well-deserved pay raises" for the legislators and governor, *et al.*, as they enabled the governor, temporary senate president, and assembly speaker to continue their unconstitutional "three men in a room" behind-closed-doors budget deal-making and insert a Part HHH into the revenue budget bill. This established the Committee on Legislative and Executive Compensation, which then rendered a "false instrument" December 10, 2018 Report to confer pay raises. CJA's July 15, 2019 analysis of the December 10, 2018 Report documents this – and it underlies CJA's March 5, 2021 complaint to JCOPE [R.207-286] and subsequent three complaints, for which investigation is sought by *CJA v. JCOPE, et al*, now on appeal at the Appellate Division, Third Department, after having been "thrown" by two fraudulent Supreme Court decisions.

  The direct legal challenge to Part HHH, Chapter 59 of the Laws of 2018 and the Committee on Legislative and Executive Compensation's December 10, 2018 Report was *Delgado v.*

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[19] *See* footnote 9 of CJA's October 27, 2011 Opposition Report, quoting "*How to Pay the Piper: It's Time to Call Different Tunes for Congressional and Judicial Salaries*" (Russell R. Wheeler and Michael S. Greve, Governance Studies, April 2007), part of the record on appeal, at the Court of Appeals, in *Larabee, et al. v Governor, Senate, Assembly, and State of New York*.

[20] *See* footnote 35 of CJA's October 27, 2011 Opposition Report, quoting then Governor Cuomo's December 7, 2007 reply memorandum of law in *Larabee, et al. v Governor, Senate, Assembly, and State of New York* in support of defendants' motion to dismiss it for failure to state a cause of action:

> "New York's judiciary can only be assessed in relation to New York's Executive and Legislative branches, not in relation to circumstances in foreign states which have no impact on judges and justices here."

New York State – and it was "thrown" by a fraudulent June 7, 2019 Supreme Court decision that rested on the fraudulent December 27, 2018 decision of the Appellate Division, Third Department in *CJA v. Cuomo…DiFiore*. By then, *CJA v. Cuomo…DiFiore* was at the Court of Appeals seeking review both by right and by leave, identifying that it was dispositive of the unfolding *Delgado* case. By unsigned October 21, 2019 orders, with Chief Judge DiFiore allegedly "[taking] no part", the Court of Appeals, with *Delgado* before it on a direct appeal, denied review by right and by leave to *CJA v. Cuomo…DiFiore*. The Court then denied the *Delgado* direct appeal by an unsigned November 21, 2019 order. CJA detailed this in its final November 25, 2019 motion in *CJA v. Cuomo...DiFiore* – simultaneously furnishing the motion to the 2019 (2nd) Commission on Legislative, Judicial and Executive Compensation, on which Commissioner Megna sat.

Over a year later, the Appellate Division, Third Department "threw" the *Delgado* appeal by a fraudulent March 18, 2021 decision which – like the Supreme Court decision it affirmed – rested on its own fraudulent *CJA v. Cuomo…DiFiore* decision. This is also embraced by *CJA v. JCOPE, et al*., as what the Appellate Division did in *Delgado*, thereafter covered up by the Commission on Judicial Conduct, is part of CJA's November 24, 2021 complaint against the Commission on Judicial Conduct to JCOPE [R.185-206], to which CJA referred in testifying at the October 13th hearing (Tr. 105).

The *Delgado* case then continued to the Court of Appeals, which, in May 2021, granted an appeal of right. On November 17, 2022, the then six judges of the Court of Appeals rendered three opinions, two of which were to affirm the constitutionality of Part HHH, one to disaffirm – all three materially fraudulent.[21] Notwithstanding the affirmance meant that the largely identical Part E, Chapter 60 of the Laws of 2015 was not struck down, the "lame duck" legislators – with Governor Hochul's approval – opted to forgo waiting for the 2023 Commission and spent about $50,000 in taxpayer money[22] for a December 22, 2022 special session of the legislature, for the sole purpose of giving themselves a further pay raise, effective January 1, 2023.

- As to its sixth sentence: about "employees whose pay is set by collective bargaining", it is a deceit as New York's judges are not "employees", but the constitutional officers of New York's judicial branch – a fact CJA has pointed out for more than 12 years, including prior to and by its October 27, 2011 Opposition Report (at pp. 14, 36-37).[23]

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[21] Summarizing this is CJA's April 16, 2023 e-mail to the Senate Judiciary Committee, sent again on April 17, 2023, requesting to testify in opposition to Senate confirmation of then Court of Appeals Associate Judge Wilson as chief judge. This was referred to by CJA's director at the Senate Judiciary Committee's "meeting" on the confirmation, attended by retired Court of Appeals Judge Fahey, at which she reiterated her requests to testify, to which there had been no response. CJA's April 18, 2023 e-mail to the Secretary of the Senate, for distribution to all 63 senators prior to their Senate vote, transcribes from the video what CJA's director said.

[22] "*You Paid For It: Special session for lawmaker raise cost taxpayers thousands*", CBS6 News/Albany (Greg Floyd).

[23] The accuracy of CJA's assertions that judges are not "employees" has never been denied or disputed by judicial pay raise advocates or anyone else, yet all have persisted in purporting or implying that

THE "STATUTORY MANDATE" SECTION OF THE COMMISSION'S REPORT (at pp. 2-3)

This seven-paragraph section is another fraud, beginning with the first sentence of its **FIRST PARAGRAPH**, stating:

> "In March of 2015, Part E of chapter 60 of the Laws of 2015 was enacted."

Here concealed is that Part E of Chapter 60 of the Laws of 2015 "was enacted through the budget, unconstitutionally, and by fraud, a ground for challenge", so-stated by CJA in testifying at the October 13th hearing (Tr. 101). Concealed, too, is that *CJA v. Cuomo…DiFiore* was that challenge, "thrown" by fraudulent judicial decisions, at every level, up to the Court of Appeals[24] – and that *CJA v. JCOPE, et al.* both continues and expands upon the constitutional challenge.[25]

Although the balance of the **FIRST PARAGRAPH** correctly quotes the Commission's statutory charge to "examine, evaluate and make recommendations with respect to adequate levels of compensation and non-salary benefits", the **SECOND PARAGRAPH** transmogrifies it to falsely purport that the Commission is to determine "appropriate judicial salary levels". This is fraud. The statute's use of the word "appropriate" is part of its directive that the Commission "shall take into account all appropriate factors, including but not limited to…"

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they are. The 2023 Commission is no exception. *See*, *inter alia*, Nov. 6th meeting: Chair Fahey (Tr. 14): "other government employee issues"; "other government employees"; Commissioner Egan: (Tr. 18): "other employees in state government"; Commissioner Weinstein (Tr. 21): "the rest of the state employees"; Commissioner Kovner (Tr. 26-7): "all other state employees."; "almost all other employees."; Nov. 13th meeting: Weinstein (Tr. 6): "mirroring raises that the rest of the state workers have gotten over the last four to five years."; (Tr. 8): "mirroring what state employees have gotten".

[24] *See*, in particular, sections D and E of the sixth cause of action in *CJA v. Cuomo…DiFiore* (¶¶67-68), resting on sections D and E of the thirteenth cause of action in the predecessor *CJA v. Cuomo, et al.* citizen taxpayer action (¶¶407-423). CJA's March 27, 2019 letter to the Court of Appeals in support of its appeal of right furnishes the particulars (at pp. 17-20) as to the fraud of the Appellate Division, Third Department's December 27, 2018 decision with respect to sections D and E, covering up the fraudulence of the appealed-from Supreme Court decision, set forth by CJA's July 4, 2018 appeal brief.

[25] *See*, in particular, the sixth cause of action in *CJA v. JCOPE, et al.* (¶¶78-85) [R.81-84], specifically ¶¶81, 82, 85 pertaining to CJA's March 18, 2020 letter to then Governor Cuomo [R.132-154] as to the unconstitutionality of non-tax, non-revenue-producing policy legislation, inserted into the budget, based on an analysis of the Court of Appeals' 2004 plurality, concurring, and dissenting opinions in *Pataki v. Assembly/Silver v. Pataki*, 4 NY3d 75. The fraudulent dismissal of that sixth cause of action by a November 23, 2022 Supreme Court decision, including by its reliance on the Appellate Division, Third Department's December 27, 2018 decision in *CJA v. Cuomo…DiFiore*, is particularized by CJA's "legal autopsy"/analysis thereof [*see* R.882-884], now before the Appellate Division, Third Department. Its dispositive nature is focally presented by CJA's August 15, 2023 appellants' brief – and CJA gave a copy to Chair Fahey, *in hand*, together with the three-volume record on appeal containing it, twice [R.9-39, R.856-886].

Neither of these two paragraphs assert that the Commission, in fact, examined and made findings as to "adequate levels of compensation and non-salary benefits" and that it had taken "into account all appropriate factors".

The **THIRD, FOURTH, and FIFTH PARAGRAPHS** pertain to non-substantive procedural aspects of the statute, following which – and by skipping over the June 1st date on which the Commission was supposed to have been established (§2.1) and the resources with which the statute equipped the Commission for its task (§3.2, §3.5, §3.6) – the **SIXTH and SEVENTH PARAGRAPHS** state:

> "In furtherance of its statutory mission, the Commission held public meetings in New York City. It also held two days of public hearings; one on October 13, 2023 in New York City and one on October 31, 2023 in Albany. A total of 31 witnesses testified at the hearings. The public hearings and meetings were televised live on the Internet.
>
> In addition, the Commission invited written commentary and established post office and email addresses (nyscompensation@gmail.com) through which it received 30 written submissions from judicial associations, bar associations, good government groups, and other interested individuals and organizations. The witness lists, written submissions and other information about the work of the Commission including transcripts and videos of the Commission's public hearings and meetings, are all available on the website at: www.nyscommissiononcompensation.org."

These two paragraphs are the sum total of what the Report says about how the Commission went about its work. No mention of investigation of the hearing testimony and the "30 written submissions", no mention of the resources employed to ascertain their relevancy, accuracy, and truth – no mention even of divergence between the testimony or, for that matter, that there was opposition testimony and submissions. Tellingly, there is not even repetition of the sentence from Chair Fahey's transmittal letter: "The Commission carefully reviewed the public testimony and written submissions received" – because, in fact, it did not.

THE "FINDINGS" SECTION OF THE COMMISSION'S REPORT (at pp. 4-9)

Individually and collectively, the Report's findings, numbered 1-8, are statutorily insufficient to support judicial pay raise recommendations, as comparison to the statute readily reveals. They also replicate identical violations of the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation,[26] itself replicating identical violations of the August 29, 2011 Report of the Commission on Judicial Compensation:[27]

- **In violation of the statute, specifically §2.1 and §2.2(a)(2)**, there are no findings as to "compensation and non-salary benefits", let alone that they are "inadequate";

- **In violation of the statute, specifically, §2.3**, three of the six enumerated factors required to be "take[n] into account" were not, as they include "compensation and non-salary benefits", as to which there are no findings;

- **In violation of the statute, specifically §2.3**, there is no finding that "all appropriate factors" were "take[n] into account", including the unenumerated factors and what they consist of, as, for instance, as set forth in the:

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[26] *See*, ¶434 of the fifteenth cause of action of CJA's March 23, 2016 verified second supplemental complaint in 1st citizen-taxpayer action *CJA v. Cuomo, et al.* entitled:

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

incorporated by ¶78 of the identically-titled eighth cause of action of CJA's September 2, 2016 verified complaint in 2nd citizen taxpayer action *CJA v. Cuomo…DiFiore*.

Also, ¶¶74, 75, and 76 of the seventh cause of action of *CJA v. Cuomo…DiFiore* entitled:

> "Chapter 60, Part E, of the Laws of 2015 is Unconstitutional, As Applied – & the Commission's Judicial Salary Increase Recommendations are Null & Void by Reason Thereof",

incorporating ¶¶433-452 of the identically-titled fourteenth cause of action of the March 23, 2016 verified second supplemental complaint of the *CJA v. Cuomo, et al.* 1st citizen taxpayer-action.

[27] *See*, ¶¶167-172 of the fourth cause of action of CJA's March 30, 2012 verified complaint in the *CJA v. Cuomo…Lippman* declaratory judgment action entitled:

> "The Commission's Judicial Pay Raise Recommendations are Statutorily Violative"

and incorporated by the March 28, 2014 verified complaint in the *CJA v. Cuomo, et al.* 1st citizen taxpayer action and part of its second cause of action (¶¶99-108) entitled:

> "The Judiciary's Proposed Budget for 2014-2015, Embodied in Budget Bill #S.6351/A.8551, is Unconstitutional & Unlawful".

Appropriate Factor #1: systemic judicial corruption;

Appropriate Factor #2: fraud perpetrated upon the Commission by the judicial pay raise advocates – including the complete absence of ANY evidence that judicial compensation and non-salary benefits are inadequate;

Appropriate Factor #3: citizen input and opposition to judicial pay raises;

Appropriate Factor #4: the statutory link between supreme court justice salaries and district attorney salaries.

As for the eight numbered findings of the December 4, 2023 Report, they are frauds, as hereinbelow particularized:

NUMBER 1 (at p. 4) is not a finding that existing judicial salaries are inadequate. It also properly belongs in the "Introduction", as it states:

> "Since 1977 the State has assumed the funding of all the courts of the Unified Court System. At that time the State took full responsibility for the costs of all courts, other than town and village courts. Judges were moved from local payrolls to the State payroll.
>
> The adjustment of salaries over the past fifty-six years has a long, and sometimes tortured, history. Since consolidation under State government, pay raises have been addressed ten times. While the issue has come up regularly, there have been significant time periods during which no raises were granted. The longest period of no increase was from February 1999 to March 2012, covering thirteen years. Since 2012, there has been one approved pay increase, in 2015. This took effect in 2016 for a four year period.[fn2]
> The arbitrary manner by which judicial pay raises were addressed led to the creation of a Commission system by the Legislature. While this process has not always resulted in pay adjustments, it has guaranteed that the issue will be consistently addressed." (underlining in the original, at p. 4).

Moreover, the "one approved pay increase, in 2015" is a deceit, concealing that the first "approved pay increase" was in 2011 by the Commission on Judicial Compensation – and so-reflected by the annotating fn2:

> "*see* OCA Submission to 2023 Commission on Legislative Judicial & Executive Compensation – pp 8-9".

The cited "pp 8-9" is section III of Chief Administrative Judge Zayas' submission entitled "A Brief History of Judicial Compensation in New York State".

NUMBER 2 (at p. 4) is not a finding that inflation has rendered existing judicial salaries inadequate. It is also superfluous because "rates of inflation" is one of the six enumerated factors that the Commission is statutorily required "to take into account" – which is why Finding Number 7B (at p. 7) reads "Inflation Rate – Previously Discussed (see No. 2)".

NUMBER 3 (at p. 5) is four sentences, each fraudulent, and all irrelevant to whether current judicial salaries are inadequate.

- The first sentence reads:

> "The erosion of the value of the salaries of State employees not covered by negotiated contracts is one of the reasons that the Commission was created."

This is fraud. Firstly, "reasons that the Commission was created" belong in the "Introduction". Secondly, New York's judges are not "State employees, but constitutional officers.

- The second sentence reads:

> "Nonetheless, well-deserved raises have recently been approved."

This, too, is fraud. Whose raises are being referred-to and where are the facts justifying the value judgment that they are "well-deserved"?

- The third sentence reads:

> "Collective bargaining agreements have resulted in pay increases for State employees that will amount to almost 14% through April 2025."

Again fraud. Judges are not "State employees" – and there are no facts here presented from which any relevant comparative, contextual evaluation can be made.

- The fourth sentence reads:

> "New York's Governor and Legislators have also received recent raises."

This is also fraud and not only are there no facts here presented to enable relevant, contextual evaluation – but the evidence CJA furnished to the Commission, including by the *CJA v. JCOPE, et al.* record [R.207-240], establishes that the December 10, 2018 Report of the Committee on Legislative and Executive Compensation, by which the "Governor and Legislature" received raises was a "false instrument", so-proven by CJA's July 15, 2019 analysis of it.

NUMBER 4 (at pp. 5-6) is fraud – and is, by its own admission, "available data on current salaries for federal and other state judges". In other words, it does not include their "compensation and non-salary benefits", apart from salary. It also falsely implies, by its gratuitous reference to the

"Compensation Clause" for the COLAs given to federal judges that New York judges have a comparable constitutional entitlement – which they do not, and so-set forth by CJA, in 2011, to the Commission on Judicial Compensation, thereafter embodying it in its October 27, 2011 Opposition Report (at pp. 34-35, also fn. 9; p. 12, fn. 30).

NUMBER 5 (at p. 6) is fraud – and the ONLY place in the Report that references "[p]rior commissions". Its four sentences read:

> "Prior Commissions have drawn a connection between the ability to support a 'strong well-qualified judiciary and a healthy state economy.[fn28] We endorse that prior finding.
>
> The recognition of the reliance of New York's business community on the state court's ability to adjudicate complex commercial litigation is an important factor in deciding to do business here.
>
> In order to maintain a judicial system worthy of New York's status as one of the economic and cultural leaders in the world, we must attract lawyers to the bench that have the skill and experience to support that system",

This is not a finding that current judicial salary levels are insufficient for attracting skilled and experienced lawyers, nor that New York has a "strong well-qualified judiciary".

NUMBER 6 (at p. 6) is fraud – and *sub silentio* repudiates the statute's §3.2, to which it does not cite, in stating:

> "The Commission Statute in its current form (L. 2019, Ch. 59, Part VVV and L. 2015, Ch. 60, Part E) provides the guidance necessary to fulfill our responsibilities by enumerating six factors to consider…"

§3.2 expressly requires that the Commission "take into account all appropriate factors, including", thereby expressly contemplating factors additional to the six enumerated ones. The Commission's "responsibilities" are not fulfilled without a finding that it has taken into account "all appropriate factors", which it does not here do and which, by its concealment of that language, it concedes it has not.[29]

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[28] Annotating footnote 5 is not to "Prior Commissions", but only a single one, as it reads: "*see* Commission on Legislative, Judicial & Executive Report (December 2015 p. 7)" – and replicates footnote 25 of Chief Administrative Judge Zayas' submission.

[29] The *CJA v. Cuomo…DiFiore* sixth and seventh causes of action particularized that the unenumerated factors are not only "appropriate", but of constitutional magnitude – which, if not "take[n] into account", render the statute unconstitutional:

- sixth cause of action challenging the constitutionality of the statute, *as written*, in failing to specify judicial corruption as an "appropriate factor" [¶64]; and

NUMBER 7 (at pp. 7-9) is a fraud. Although stating "The Commission finds", implying that it is doing so with respect to the six enumerated factors that its Number 6 correctly recites, its subsections D and E remove "compensation and non-salary benefits" from the two enumerated factors to which they impliedly correspond.[30] It also omits any subsection F – the sixth enumerated factor that, like the two that preceded it, contains "compensation and non-salary benefits".

NUMBER 8 (at p. 9) is a final fraud. It takes the sixth enumerated factor that its above Number 7 omits and transmogrifies what its Number 6 correctly recites into "Ability to Fund", thereby omitting the statutory continuation "increases in compensation and non-salary benefits".

- seventh cause of action challenging the constitutionality of the statute, *as applied*, (1) when a commission conceals and does not determine whether judicial corruption is an "appropriate factor"; (2) when a commission conceals and does not determine the fraud before it – including the absence of ANY evidence that judicial compensation and non-salary benefits are inadequate; and (3) when a commission suppresses and disregards citizen input and opposition [¶¶74-76].

[30] Thus, whereas Number 6 recites: "levels of compensation and non-salary benefits received by Executive Branch officials and legislators of other states and the Federal government", Subsection D responds: "Comparable Salaries of other state and federal judges – Previously Discussed (See No. 4)" (underlining added). Likewise, whereas Number 6 recites: "levels of compensation and non-salary benefits received by professionals in government, academia, and private and non-profit enterprise", Subsection E responds: "Salaries of Professionals in government, academia, private and non-profit sectors greatly exceed judicial salaries" (underlining added).

THE "CONCLUSIONS" SECTION OF THE COMMISSION'S REPORT (at p. 10)

The final section of the Commission's Report is titled "Conclusions" – a word that appears in the statute's §3.7, as amended, as follows:

> "The commission shall make a report to the governor, the legislature and the chief judge of the state of its findings, conclusions, determinations and recommendations, if any, not later than the thirty-first of December of the year in which the commission is established for judicial compensation and the fifteenth of November the following year for legislative and executive compensation. Any findings, conclusions determinations and recommendations in the report must be adopted by a majority vote of the commission and shall also be supported by at least one member appointed by each appointing authority. Each recommendation made to implement a determination pursuant to section two of this act shall have the force of law, and shall supersede, where appropriate, inconsistent provisions of article 7-B of the judiciary law, section 169 of the executive law, and sections 5 and 5-a of the legislative law, unless modified or abrogated by statute prior to April first of the year as to which such determination applies to judicial compensation and January first of the year as to which such determination applies to legislative and executive compensation." (underlining added).

The statute contains no section of definitions. However, "findings" are, presumably, findings of fact, "conclusions" are, presumably, conclusions of law, and "determinations" are presumably, pursuant to its §2.2(b), whether an increase in salary is "warrant[ed]", upon which a "recommendation, if any" is then made, having "the force of law…unless modified or abrogated".

The single prefatory sentence beneath the title of this section does not use the word "conclusions", does not use the word "determinations", and does not use the word "recommendations". It states:

> "The Commission on Legislative, Judicial and Executive Compensation on November 13, 2023 unanimously approved changes to judicial salaries as outlined below:" (underlining added).

As such, the denominated "changes", under a title "Conclusions", have no "force of law" power to supersede "inconsistent provisions of article 7-B of the judiciary law" – even were they supported by the statutorily-mandated examination and evaluation of "adequate levels of compensation and non-salary benefits", which they are not, and after having "take[n] into account all appropriate factors", which they are not.

As to the five listed "unanimously approved changes", each is completely unexplained:

As to the first "unanimously approved change":

> "1) Effective April 1, 2024, New York State Supreme Court Justices shall receive an annual salary of $232,600."

This $232,600 figure is not based on any finding in the Report that it represents an "adequate" salary based on a determination of "adequate levels of compensation and non-salary benefits", as the Commission statute requires.

Nor is this "change" identified as to either its dollar amount increase or percentage, namely, an increase of $21,700 or 10.28% over the current $210,600 Supreme Court justice salary, which the Commission had not found to be "inadequate", let alone when evaluated with other "compensation and non-salary benefits".

As to the second "unanimously approved change":

> "2) The salaries of all other state judges (including Appellate and Administrative judges) shall be adjusted to reflect their present proportion to the salary of State Supreme Court Justices effective April 1, 2024."

None of the "present proportion(s)" are identified, nor what will be the corresponding salaries for any of the referred-to "other state judges (including Appellate and Administrative judges)". Nor is there any finding in the Report that these "adjusted" salaries are the "adequate" amounts, but not the current salary amounts, let alone when evaluated with other "compensation and non-salary benefits".

As to the third "unanimously approved change":

> "3) Except that no County Court Judge, Family Court Judge or Surrogate's Court Judge shall earn less than 95% of a Supreme Court Justice's salary. Any such judicial position now being paid a percentage of a Supreme Court Justice's salary that is greater than 95% shall continue to be paid at that same percentage."

Not identified is why this "Except[ion]" is necessary, as 95% is the "present proportion" for the referred-to judges – making this "change" superfluous. Nor is there any identification as to who the referred-to judges are who are "now being paid…greater than 95%".[31]

As to the fourth "unanimously approved change":

> "4) Judges of the New York City Civil Court, the New York City Criminal Court, District Court, Housing Court of New York City Civil Court and full-time City Court Judges (outside of New York City), shall earn 93% of a Supreme Court

[31] The uniform rate of 95% or greater was the result of the December 24, 2015 Report of the (1st) Commission on Legislative, Judicial and Executive Compensation, but this is nowhere identified by the December 4, 2023 Report, nor the basis upon which the 2015 commission did so.

> Justice's salary. Part-time City Court Judges shall earn the same proportion of the salaries of the full-time City Court Judges that they now earn."[32]

Concealed, entirely, is what is being changed, namely, an increase to 93% for both New York City Housing Court judges and full-time City Court judges outside New York City from the current 90%.[33] The Report makes no finding that the current salary, produced by the 90%, is inadequate as to either category, let alone when evaluated with other "compensation and non-salary benefits".

As to the fifth "unanimously approved change":

> "5) Effective April 1, 2026, all judges will receive a salary increase of 2% of their April 1, 2024 salary."

The Report makes no finding that salary levels that it has raised, effective April 1, 2024, will have become inadequate by April 1, 2026, let alone when evaluated with other "compensation and non-salary benefits" – and that a 2% increase, effective April 1, 2026, will rectify the inadequacy. Nor is the basis of the 2% calculation identified, or what it is in monetary terms for a Supreme Court justice salary, which is $4,652 increase.

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[32] See page 26 of the 2015 submission of Chief Administrative Judge Marks to the (1st) Commission on Legislative, Judicial and Executive Compensation.

[33] The current 90% had resulted from the December 24, 2015 Report of the (1st) Commission on Legislative, Judicial and Executive Compensation, which raised what had been 84% for New York City Housing Court judges and raised to that same 90% – and uniformly – percentages for City Court judges outside New York City that had ranged from 80% to 88%. The December 4, 2023 Report does not identify this or the basis for the 2015 commission having eliminated these calibrated percentages.

ADDITIONAL COMMENT

The Final Report on Judicial Compensation was approved by a unanimous vote of the commissioners at a December 4, 2023 meeting, without discussion, but with compliments to one another for their time and hard work in getting it done. Three weeks earlier, on November 13th, the commissioners had met to discuss a November 9th Draft Report, which Chair Fahey purported to be his work-product and as to which he explained "the findings are not complete, and that's why the report is still in its draft stage" (Tr. 3).

In fact, there were no "findings", at all, in the section of his Draft Report for "Findings". Nonetheless, Commissioner Weinstein was not ashamed to respond: "excellent draft report, and one that I could support wholeheartedly" (Tr. 7).

Not a single commissioner dissented or questioned how Chair Fahey could have drafted recommendations for them to vote on when he – and they – had not first made findings based on evidence that, according to them, was "compelling", "overwhelming", and "ample". (*see* pp. 15-16, *supra*).

Instead, at the November 13th meeting, the commissioners all voiced approval for Chair Fahey's draft recommendation A – the same as would be "changes" 1-4. This was reiterated following a "bathroom break", at which point, for no apparent reason, Chair Fahey announced that he was modifying his recommendation C by eliminating 2% increases for 2025 and 2027, leaving only the 2% for 2026, thereupon stating "I think we should take a vote on this". Without discussion – indeed notwithstanding that before the "bathroom break" five of the commissioners had seemingly aligned themselves with Chair Fahey's original recommendation C – all the commissioners then voted to approve his modified recommendation C (Tr. 13-15), not even inquiring as to the basis for the modification that would be "change" 5 in the Final Report. That done, Chair Fahey repeated:

> "…the report needs findings put in….I will get you my proposed finalized version for the findings of the Commission." (Tr. 15).

Yet, the findings that Chair Fahey would thereafter supply for the Final Report – and which, at the December 4, 2023 meeting, elicited no discussion – are wholly disconnected from, and furnish no factual or legal basis for, its five listed "changes".

Notably, just as the Report makes no mention of the word "evidence", although "evidence" was referred to by the commissioners in their post-hearing discussions, so it makes no mention of "parity" of a Supreme Court Justice salary with the salary of a federal district court judge, nor of COLAs, although both were discussed by the commissioners, post-hearing and were focal to the advocacy of Chief Administrative Judge Zayas, the judges, and the bar association pay raise proponents – relying, of course, on the prior 2011, 2015, and 2019 commission reports which had endorsed "parity" and COLAs. The Report makes a single mention of the 2015 commission report, in its footnote 5, but not relating to "parity" of COLAs.

Notably, too, notwithstanding Chair Fahey had stated:

> "I think the aim here is to have a decent life, a normal middle class house, you own a house, you own a car, you can pay for your kids to go to school. That's all a judge should really expect" (Oct 31 Tr. 112),

and thereafter reiterated:

> "The remuneration that you receive for the job should simply be in accordance with what it takes, as I've said before, to live a middle class life…" (Nov 6 Tr. 10),

the Report he drafted and that the commissioners approved makes no mention of "middle class" or "middle class life" – and contains zero data germane to the issue, such as:

- the average or median household income in New York, and differences between the 62 counties;

- the average or median income of New York attorneys, and differences between the 62 counties;

- differences in the cost of living in the 62 counties.

Assumedly, this is because current judicial salaries, hovering at just below and well above $200,000, are already substantially beyond "middle class" for most of New York's 62 counties, and not "inadequate" for New York City, and especially when taken together with other "compensation and non-salary benefits" – and CJA's October 13th testimony stated as much.

Tellingly, Chief Administrative Judge Zayas, the judges, and the bar associations provided the Commission with none of the above relevant statistics, knowing that they exposed that there was no basis for judicial pay raises, pursuant to the statute. This the Commission could have requested from them, but did not. Nevertheless, it had relevant statistics from a dozen years ago, furnished by CJA to the 2011 Commission on Judicial Compensation and thereafter embodied in its October 27, 2011 Opposition Report. These not only showed a wide divergence between New York's 62 counties, but that the then Supreme Court salary of $136,700 was "roughly three times greater than New York's median household income" and that U.S. Census Bureau statistics placed New York's judges "at the highest income levels – as high as the top 5%. …" (see pp. 15 (fn. 21), 30 (fn. 36).

CONCLUSION

The cost of the judicial pay raises, for FY2024-25, is not included in the Commission's December 4, 2023 Report on Judicial Compensation – though it was known to the commissioners.[34]

On November 14, 2023, the same day as they unanimously approved "recommendations" for the without-findings Draft Report that Chair Fahey purported as his work-product, the seven judges of the Court of Appeals approved, and Chief Judge Wilson certified, "attached itemized estimates of the financial needs of the judiciary for the fiscal year beginning April 1, 2024" – stating this to be pursuant to Article VII, §1 of the New York Constitution, which reads, in pertinent part:

> "Itemized estimates of the financial needs of the legislature, certified by the presiding officer of each house, and of the judiciary, approved by the court of appeals and certified by the chief judge of the court of appeals, shall be transmitted to the governor not later than the first day of December in each year for inclusion in the budget without revision but with such recommendations as the governor may deem proper. Copies of the itemized estimates of the financial needs of the judiciary also shall forthwith be transmitted to the appropriate committees of the legislature."

On December 1, 2023, Chief Administrative Judge Zayas transmitted the Court of Appeals' November 14, 2023 "Approval" and "Certification" to Governor Hochul, to the Senate and Assembly majority and minority leaders, to the chairs and ranking members of the Senate and Assembly fiscal committees, and to the chair and ranking members of the Senate and Assembly judiciary committees. The "attached" was a "FY2025 Judiciary Budget". Its "Introduction" identified the "Judicial salary increases that have been recommended by the Commission on Legislative, Judicial & Executive Compensation, pursuant to Chapter 60 of the Laws of 2015, as amended by Chapter 55 of the Laws of 2020" (at p. ii), specifying this (at p. iii) as "$34.6 million". A line item for "34,600,000" was part of its "Judiciary Appropriation Bill" (at p. 8), stated as:

> "For expenses necessary to implement the recommendations of the commission on legislative, judicial and executive compensation pursuant to chapter 60 of the Laws of 2015, as amended by Part WW of chapter 55 of the Laws of 2020, for adjustment of the salaries of judges and justices of the unified court system effective April 1, 2024".

This same appropriation would appear at pages 18-19 of Governor Hochul's January 16, 2023 Legislative/Judiciary Appropriation Bill #S.8301/A.8801 – a bill seemingly unaccompanied by any "recommendations" by her.[35]

Based on this Opposition Report, establishing the Commission's December 4, 2023 Report to be statutorily-violative, fraudulent, and unconstitutional – the product of commissioners disqualified for interest and actual bias – the judiciary must promptly notify the Governor that it is withdrawing

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[34] *See* Chief Administrative Judge Zayas' submission (at pp. 13, 17) and November 9, 2023 letter.

[35] *See* CJA's January 17, 2024 FOIL request for the Governor's "'recommendations', if any".

the requested $34,600,000 appropriation so that she can embody same in her "30-day amendments" and/or the Senate and Assembly must promptly strike the $34,600,000 from #S.8301/A.8801. Otherwise, the Governor must "recommend", in conjunction with her "30-day amendments", that the Senate and Assembly strike the $34,600,000 and give notice that should they fail to do so she will strike it from such amended/unamended #S.8301/A.8801 as they pass.

As the December 4, 2023 Report violates – and by an enacted $34,600,000 appropriation will violate – a succession of penal laws including:

Penal Law §175.35: "Offering a false instrument for filing in the first degree";

Penal Law §195: "Official misconduct";

Penal Law §105.15: "Conspiracy in the second degree";

Penal Law §20.00: "Criminal liability for conduct of another";

Penal Law Article 496: "PUBLIC TRUST ACT"
§496.06: "Public corruption";
§496.05: "Corrupting the government in the first degree";

Penal Law §110.00: "Attempt to commit a crime";

Penal Law §195.20: "Defrauding the government";

Penal §190.65: "Scheme to defraud in the first degree";

Penal Law §155.42: "Grand larceny in the first degree";

Penal Law §460.20: "Enterprise corruption",

the commissioners must be referred to appropriate district attorneys and/or U.S. attorneys for criminal prosecution, if Attorney General James does not herself bring such criminal prosecutions based on the evidence here presented.

Meantime, this Opposition Report is being filed with New York's "public protection"/ethics entities having ethics jurisdiction over the commissioners, *to wit*, the Commission on Ethics and Lobbying in Government and, as to the six attorney-commissioners, the Appellate Division attorney grievance committees, in support of complaints against them for their conflict-of-interest-driven statutory violations, fraud, and intended "grand larceny of the public fisc".

Finally, there must be hearings as to the corruption infesting New York's judiciary to which the three judicial pay raise opponents attested, with evidence – involving the corruption of the Commission on Judicial Conduct, the Appellate Division attorney grievance committees, and the OCA Inspector General. Pay raises for New York judges – and for complicit and colluding

legislative and executive officers – are unconstitutional until that evidence is confronted and the situation rectified (see pp. 20-22, *supra*).

EXHIBIT A

At the Commission's October 31, 2023 hearing, We the People Foundation for Constitutional Education Chairman Robert L. Schulz testified (Tr. 83-96) about "judicial repeal" of provisions of the New York State Constitution by New York courts, colluding in the violations of the State Constitution by the executive and legislative branches – and that, at the Court of Appeals, this had been manifested not only by a fraudulent judicial decision upon an appeal taken of right,[1] but that, thereafter, in 22 cases in which he had met the standard for appeals of right guaranteed by Article VI §(3)(b)(1) wherein "is directly involved the construction of the constitution of the state or the United States", which he had satisfied, the Court had dismissed his appeals "upon the ground that no substantial constitutional question is directly involved", which he had also satisfied.

The commissioners were already fully familiar with this scenario and the evidence substantiating it, from CJA's testimony at the October 13, 2023 hearing (Tr. 101-108) identifying, as **EXHIBIT A** for its investigation, *CJA v. Cuomo…DiFiore* and, as **EXHIBIT B**, *CJA v. JCOPE, at al.* These lawsuits each sued the executive and legislative branches for constitutional violations with respect to the New York State budget and pay raises, with the *CJA v. Cuomo…DiFiore* lawsuit, also suing the judicial branch and having completed its appellate journey at the Court of Appeals, on which was then sitting Associate Judge Eugene Fahey and Associate Judge Rowan Wilson.

The record of *CJA v. Cuomo…DiFiore* at the Court of Appeals is an overwhelming, open-and-shut evidentiary record of precisely what Mr. Schulz would separately testify about concerning appeals of right at the Court of Appeals, based on his own decades of experience – and the list of 22 cases, annexed to his written testimony. Indeed, *CJA v. Cuomo…DiFiore* goes way beyond chronicling the Court's subversion of Article VI, §3(b)(1) for appeals of right. It also chronicles – and just as decisively – the Court's subversion of Article VI, §3(b)(6) for appeals by leave, and Article VI, §3(b)(2) for direct appeals.

Below are excerpts from the most important documents of the *CJA v. Cuomo…DiFiore* record at the Court of Appeals[2] – preceded by a Table of Contents.

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[1] *Schulz v. New York State*, 84 NY2d 231 (1994). This Court of Appeals decision is routinely invoked, on the floor of the Senate and Assembly, by the majority in opposing the minority's posturing as to unconstitutionality of the state's debt. Illustrative are the March 31, 2023 Senate floor proceedings on Governor's debt service budget bill for FY2023-24: VIDEO -- 3-31-2023 (at 27mins) & transcript: pp. 2136-7 and the March 31, 2020 Assembly floor proceedings on the Governor's debt service budget bill for FY2020-21: VIDEO – 3-31-2020 (at 45-52 mins) (4x) & transcript: pp. 27-35.

[2] The record includes the succession of lawsuits then being litigated in state and federal court, challenging the "force of law" December 10, 2018 Report of the Committee on Legislative and Executive Compensation and the constitutionality of Part HHH, Chapter 59, of the Laws of 2018 that established the Committee – materially identical to Part E, Chapter 60, of the Law of 2015 that established the Commission on Legislative, Judicial and Executive Compensation. Mr. Schulz, who had testified at the Committee's November 28, 2018 hearing – the video of which disappeared while its website was still operative – brought a federal lawsuit. CJA's April 11, 2019 letter in further support of its appeal of right identified (at fn. 15) Mr. Schulz' federal lawsuit, annexing an extract of his January 15, 2019 verified complaint as Exhibit D.

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A.
CJA's March 26, 2019 letter in support of its appeal of right, pursuant to Article VI, §3(b)(1), responding to the *sua sponte* jurisdictional inquiry of the Court's Clerk's Office

Two sections of CJA's March 26, 2019 letter are particularly here relevant – the second being the summarizing last section of the letter (at pp. 21-22), which was, as follows:

"In Conclusion:
New York's Constitution Has Been Undone by Collusion of Powers

> No fair and impartial tribunal, constitutionally charged, as this Court is, with reviewing appeals wherein is 'directly involved the construction of the constitution of the state', could fail to discharge that duty here.
>
> What is before the Court, on this appeal of right, is catastrophic. Gone is the constitutional design of separation of executive and legislative powers – replaced by collusion of powers that has undone our State Constitution. And more than the budget is at issue. It is the very governance of this State, as the budget has become a pass-through for policy having nothing to do with the budget – the 'proposed legislation, if any' of Article VII, §3 having become separated from its meaning in Article VII, §2: 'proposed legislation, if any, which the governor may deem necessary to provide moneys and revenues sufficient to meet such proposed expenditures [of the budget]',[fn11] further foisted by constitutionally unauthorized "non-appropriation" Article VII budget bills.[fn12]"

The first particularly relevant section (at pp. 8-9) was this:

> "Appellants Meet the Constitutional Requirements
> Entitling Them to an Appeal of Right,
> Pursuant to Article VI, §3(b)(1) of the New York State Constitution,
> Reiterated by CPLR §5601(b)(1)
>
> The constitutional requirements for appeals of right, pursuant to Article VI, §3(b)(1) of the New York State Constitution, reiterated by CPLR §5601(b)(1), which appellants meet, are:
>
> > 'a judgment or order entered upon the decision of an appellate division of the supreme court which finally determines an action or special proceeding wherein is directly involved the construction of the constitution of the state or of the United States…'
>
> For this reason, appellants' notice of appeal expressly invoked Article VI, §3(b)(1) and CPLR §5601(b)(1) – with the basis for their doing so evident from the Appellate Division Memorandum itself, appended thereto. *On its face*, the Memorandum makes apparent that appellants' sixth cause of action, as well as their fifth and ninth, 'directly involve[] the construction of the constitution of the state' and that each was so-decided by the Appellate Division. …
>
> Now that the Court has before it the three-volume record on appeal, the appeal briefs, and appellants' four appellate motions, the Court can further verify the foregoing. Indeed, from appellants' September 2, 2016 verified complaint [R.87-392] and March 29, 2017 supplemental verified complaint [R.671-743], the Court can discern what is not revealed by the face of the Memorandum, namely, that appellants' first, second, third, and fourth causes of action also 'directly involve[ ] the construction of the constitution of the state…', if not, additionally, the seventh, eighth and tenth causes of action.
>
> By reason thereof, appellants have an appeal of right, which they here seek to enforce. And relevant thereto is the dissent of former Court of Appeals Associate Judge Robert Smith in *Kachalsky v. Cacace*, 14 N.Y.3d 743 (2010), candidly confessing that the Court's addition of the word 'substantial', such as appears in [the] March 4, 2019 letter [of the Court's Deputy Clerk], is without constitutional or statutory warrant and that its effect is to *sub silentio* convert the Court's mandatory jurisdiction to one that is discretionary. Consequently, if the largely boilerplate March 4, 2019 letter is a prelude to the Court's completely boilerplate second letter 'Appeal dismissed, without costs, by the Court of Appeals, sua sponte, upon the ground that no substantial constitutional question is directly involved', that is itself a

further 'substantial constitutional question…directly involved' – and appellants are here asserting it.[fn3]' (at p. 9, italics and underlining in the original).

The annotating footnote 3 read:

"See, *inter alia*, '*An Illusionary Right of Appeal: Substantial Constitutional Questions at the New York Court of Appeals*', 31 Pace Law Review 583 (2011) (Meredith R. Miller); '*What Does It Mean If Your Appeal of Right Lacks A 'Substantial' Constitutional Question in the New York Court of Appeals?*', 75 Albany Law Review 899 (2012) (Alan J. Pierce)."

The Court's response to CJA's appeal of right, on a record showing that the accuracy of its presentation of fact and law was uncontested by the Attorney General, was a May 2, 2019 order (SSD-23), unsigned by any judge, dismissing the appeal "sua sponte…upon the ground that no substantial constitutional question is directly involved".

B.
CJA's May 31, 2019 motion for reconsideration
of the Court's May 2, 2019 order dismissing the appeal of right
"upon the ground that no substantial constitutional question is directly involved"

Expressly sought by CJA's May 31, 2019 notice of motion was an order, *inter alia*:

"2. Determining the threshold issues which the May 2, 2019 Order neither identifies nor determines – or certifying same to the United States Supreme Court, *to wit*:

…

c) Is this Court's substitution of the language of Article VI, §3(b)(1) of the New York State Constitution and CPLR §5601(b)(1), granting appeals of right 'wherein is directly involved the construction of the constitution of the state or of the United States', with a *sua sponte* ground to dismiss because 'no substantial constitutional question is directly involved' unconstitutional, *as written, as unwritten, and as applied*?'" (underlining and italics in the original).

CJA's May 31, 2019 moving affidavit then quoted the above quoted portion of its March 26, 2019 letter stating that it "did not go far enough" – and furnished the following facts and legal argument in substantiation:

"19. …not only is there no 'constitutional or statutory warrant' for the Court's *sua sponte* ground 'no substantial constitutional question…directly involved', but the Court has not set it forth in any rule provision: 22 NYCRR Part 500.

20. To cover up that there is no constitutional, statutory, or rule authority for what it is doing, the Court has created a 41-page 'Civil Jurisdiction and Practice

Outline', from which it has all but vanquished the New York State Constitution, citing it only at pages 19 and 28, as if it is were quite subsidiary to the plenteously-cited CPLR, rather than the other way around. Neither those two pages nor any others quote the language of Article VI, §3(b)(1) or CPLR §5601(b)(1) for appeals of right 'wherein is directly involved the construction of the state or of the United States'. In a section entitled 'Constitutional Question – CPLR 5601(b)(1) – Appeal from Final Appellate Division Order' (at pp. 4-5) is a subsection on 'Substantiality' whose single paragraph is prefaced by 'see Karger, §7:5, at 226-228'. The paragraph offers up no justification for the Court's 'substantiality' requirement – and the justification in the cited 'Powers of the New York Court of Appeals…[3d ed rev 2005]' by Arthur Karger, is Karger's own:

> 'It is an obviously necessary safeguard against abuse of the right to appeal on constitutional questions, for otherwise the right to appeal would turn on the ingenuity of counsel in advancing arguments on constitutional issues however fanciful they might be. A similar requirement is applied by the United States Supreme Court on certiorari petitions to review State court decisions.' (at p. 226).

21. Surely this Court knows that Article III of the U.S. Constitution does not confer a right of appeal to the U.S. Supreme Court – just as none is conferred by the federal statute governing U.S. Supreme Court review, 28 U.S.C.S. §1257, providing for discretionary review by certiorari. For this reason, the U.S. Supreme Court's 'substantiality' add-on does not violate the U.S. Constitution nor the federal statute. By contrast, this Court's 'substantiality' add-on violates the appeal of right conferred by Article VI, §3(b)(1) of the New York State Constitution and reiterated by CPLR §5601(b)(1).

22. As for 'substantiality' being 'an obviously necessary safeguard against abuse of the right to appeal on constitutional questions', what the Court has been doing, in fact, is using it, in tandem with burying the Court's pre-eminent function to safeguard and interpret the state and federal constitutions – embodied in Article VI, §§3(b)(1) and 3(b)(2) – to destroy 'the right to appeal on constitutional questions'. And epitomizing this is the Court's own 2018 Annual Report, whose third sentence, under the heading 'The Work of the Court' states:

> 'The State Constitution and applicable jurisdictional statutes provide few grounds for appeals as of right; thus, the Court hears most appeals by its own permission, granted upon civil motion or criminal leave application.' (at p. 2, underlining added).

In other words, the Court blames the paucity of its mandatory docket on the 'State Constitution and applicable jurisdictional statutes', concealing what it has done to them.

23. As the May 2, 2019 Order (Exhibit A-1) implicitly found 'no substantial constitutional question…directly involved' in using such objected-to *sua sponte* ground to dismiss what is doubtless among the most monumental appeals of

right to come before the Court, ever – appellants are, by this motion, directly challenging its constitutionality, framing the issue, as follows:

> 'Is this Court's substitution of the language of Article VI, §3(b)(1) of the New York State Constitution and CPLR §5601(b)(1), granting appeals of right 'wherein is directly involved the construction of the constitution of the state or of the United States', with a *sua sponte* ground to dismiss because 'no substantial constitutional question is directly involved' unconstitutional, *as written, as unwritten, and as applied*?' (appellants' notice of motion (at ¶c))."

The Court's response, by an October 24, 2019 order, unsigned by any judge, on a record showing that the accuracy of CJA's presentation was uncontested by the Attorney General, was to deny, without reasons, the requested reconsideration of its May 2, 2019 order dismissing CJA's appeal of right – and without identifying its challenge to the Court's insertion of a substantiality requirement.

C.
CJA's June 6, 2019 motion for leave to appeal pursuant to Article VI, §3(b)(6)

By a June 6, 2019 motion, CJA moved for leave to appeal pursuant to Article VI, §3(b)(6), stating, in pertinent part (at pp. 5-10):

"Questions Presented for Review
(22 NYCRR §500.22(b)(4))

> Whether this Court, having dismissed, *sua sponte*, the appeal of right, taken pursuant to Article VI, §3(b)(1) of the New York State Constitution 'upon the ground that no substantial constitutional question is directly involved', is of the 'opinion' that there is an appeal by leave, pursuant to Article VI, §3(b)(6), because the Appellate Division, Third Department's December 27, 2018 Memorandum and Order in this citizen-taxpayer action:
>
> (a) involves 'question[s] of law… which ought to be reviewed by the court of appeals'; and/or
>
> (b) is so totally devoid of any semblance of justice as to 'require[]' that the appeal 'shall be allowed…in the interest of substantial justice.'"

…

p. 5: '…As the Court does not appear to have rendered any interpretive decision about this [section b] mandatory leave to appeal, contained within the last sentence of Article VI, §3(b)(6), here's some rudimentary analysis:

Article VI, §3(b)(6) reads:

> '3…b. Appeals to the court of appeals may be taken in the classes of cases hereafter enumerated in this section:
> …
> In civil cases and proceedings as follows:
> …
> (6) From a judgment or order entered upon the decision of an appellate division of the supreme court which finally determines an action or special proceeding but which is not appealable under paragraph (1) of this subdivision where the appellate division or the court of appeals shall certify that in its opinion a question of law is involved which ought to be reviewed by the court of appeals. Such an appeal may be allowed upon application (a) to the appellate division, and in case of refusal, to the court of appeals, or (b) directly to the court of appeals. Such an appeal shall be allowed when required in the interest of substantial justice.' (underlining added).

The rules of construction pertaining to the New York State Constitution are the same as for statutes and written instruments:

> 'The starting point for any constitutional question must be the language of the constitution itself. The same general rules that govern the construction and interpretation of statutes and written instruments generally apply to, and control in, the interpretation of written constitutions.
> … there is no room for application of rules of construction so as to alter a constitutional provision that is not ambiguous…'

20 New York Jurisprudence 2nd, §17 'Mode of construction: applicability of principles of statutory construction'.

> '…When the language of a constitutional provision is plain and unambiguous, full effect should be given to the intention of the framers as indicated by the language employed and approved by the people. ….
> The courts should not permit explicit language of the constitution to be rendered meaningless, and, in its construction of clear constitutional and statutory provisions, a court may not read out any requirement.'

20 New York Jurisprudence 2nd, §25 'Conformity to language'.

The meaning of 'shall' is mandatory, as opposed to 'may' which is discretionary – and the distinction between them is reinforced because they both appear in Article VI, §3(b)(6):

> '…When different terms are used in various parts of a statute or rule, it is reasonable to assume that a distinction between them is intended. McKinney's Consol. Laws of N.Y., Book 1, Statutes, Sec. 236 at 403…

> Generally, it is presumed that the use of the word 'shall' when used in a statute is mandatory, while the word 'may' when used in a statute is permissive only and operates to confer discretion, especially where the word 'shall' appears in close juxtaposition in other parts of the same statute. *Metro Burak, Inc. v. Rosenthal & Rosenthal, Inc.*, 51 A.D.2d 1003, 380 N.Y.S.2d 758 (2nd Dept. 1976); 82 C.J.S. Statutes, Sec. 380.'

D'Elia on behalf of Maggie M. v. Douglas B., 524 N.Y.S.2d 616, 620 (Fam. Ct. 1983).

And there are additional principles of construction regarding 'Peremptory or permissive language':

> 'Language peremptory in form is usually given a peremptory meaning[fn24] and the power of courts to disregard the provisions of a statute as directory only should be exercised with great caution.[fn25] Especially is this true where acts of common justice are involved or where officers are commanded to do an act which concerns public interests or the rights of individuals.[fn26],

McKinney's Consolidated Laws of New York Annotated, Book 1 (Statutes), §177, 2019 Cumulative Pocket Part.

Suffice to say in 1967, this Court's newly installed Chief Judge, Stanley Fuld, in advocating for the changes he hoped would be achieved through that year's constitutional convention – and which would be effectuated 18 years later by the 1985 changes to CPLR §5602 that would to give the Court a more discretionary docket, described the Court's caseload, responsibilities, and practices in the 18 years he had been on the Court:

> 'Our underlying philosophy has been that, although we should devote ourselves primarily to questions of significance in the development and clarification of the general body of law, we may not shirk our responsibility to remedy plain injustice in individual controversies, even though the immediate decision may not have any impact on the State's jurisprudence.
>
> …
>
> Concern has been expressed that under a system of discretionary jurisdiction, such as I have suggested, some meritorious appeals might be denied a hearing in the Court of Appeals. The fear seems to be that, on a motion for leave to appeal, a case will not receive as full and thorough a study as it would be accorded on oral argument. I would assure the Bar, however, that all cases passed upon by the Court or its judges, whether on motion for leave or on oral argument, are subjected to careful and searching scrutiny. Indeed, we have a liberal practice under which the affirmative

votes of only two of the seven judges of the Court are required for the granting of leave to appeal.

Nor has our Court ever been deaf to a plea of injustice. A number of cases come to mind: one recent example will suffice …

As this and many other of our cases attest, there need be little fear that the Court will refuse any appeal which merits review. …'' (at pp. 101, 103-104).

Chief Judge Fuld's January 27, 1967 address at the annual meeting of the New York State Bar Association, printed in New York State Bar Journal, Volume 39, April 1967, under the title '*The Court of Appeals and the 1967 Constitutional Convention*'.

The Court's Rule 500.22 makes no mention of the 'interest of substantial justice' ground for the granting of leave – and the 2005 edition of Powers of the New York Court of Appeals by Arthur Karger reflects as much. Under the §10:3 heading 'Appeal by leave of Court of Appeals from final determination', with a footnote 17 citing Judge Fuld's above New York State Bar Journal article, Karger struggles with his own interpretation, as follows:

'…the primary, though not the sole, function of the Court of Appeals is conceived to be that of declaring and developing an authoritative body of decisional law for the guidance of the lower courts, the bar and the public, rather than merely correcting errors committed by the courts below.[fn17]

Indeed, the Court stated in an early case that leave to appeal would not be granted unless that case involved a question of public interest or conflict between departments or an error of law 'which, if permitted to pass uncorrected, will be likely to introduce confusion into the body of law.'[fn18] However, that [1896] case was decided long before the adoption in 1925 of the revised Judiciary Article of the State Constitution from which the present Judiciary Article was basically derived.[fn19] That Article made clear that the Court of Appeals sits, not only to settle and develop the law, but also to correct errors committed in individual cases, even to the extent of reviewing questions of fact in certain situations pursuant to enlarged powers conferred on it in that regard by the new Article.[fn20]

The precise procedure for making a motion in the Court of Appeals for leave to appeal to that Court is set forth in section 500.11(d) of its Rules of Practice. That section requires the movant to show, *inter alia*, 'why the questions presented merit review by the court,' and it then specifies, as examples of such a showing, that the questions 'are novel or of public importance, or involve a conflict with decisions of this court, or there is a conflict among the Appellate Divisions.'[fn21]

The movant should therefore attempt to show, if possible, that the case involves questions of the kind mentioned in the foregoing

> rule. However, the rule does not provide that the examples mentioned therein are the only instances in which leave to appeal may be granted, and leave would appear to be warranted if a strong showing is made of reversible error on the part of the Appellate Division, even in the absence of any novel or important question of law.
>
> Thus, the constitutional provisions governing the granting of leave to appeal to the Court of Appeals from a final determination of the Appellate Division provide that '[s]uch an appeal shall be allowed when required in the interest of substantial justice.'[fn22] Moreover, a showing of reversible error of law in the particular case would itself come directly within the ambit of one of the examples specified in the rule if the error represented 'a conflict with prior decisions' of the Court of Appeals.
>
> Though the power of review of the Court of Appeals is in general limited to questions of law, it is authorized to review questions of fact where the Appellate Division, on reversing or modifying a final or interlocutory determination, has expressly or impliedly found new facts and a final determination pursuant thereto is entered.[fn23] It is uncertain what approach the Court of Appeals would take on a motion for leave to appeal in such a case if the only showing in support of the motion, though very strong, related to error on the part of the Appellate Division in deciding the questions of fact.
>
> CPLR 5602(a) provides, by way of codification of the Court's prior practice, that leave to appeal shall be granted upon the approval of two of the Judges of the Court of Appeals.' (at pp. 331-332).

At bar, this is not an appeal where the 'only showing' is 'error on the part of the Appellate Division in deciding the questions of fact'. There are, however, an avalanche of factual 'errors' …

p. 11: This is also not an 'individual case' involving private parties and with no public impact – as was the 'recent example' Judge Fuld described in January 1967 to the New York State Bar Association in support of his assertion 'Nor has our Court ever been deaf to a plea of injustice'. Nor is this a case where the 'reversible error[s] of law' do not ''conflict with prior decisions' of the Court of Appeals'. Consequently, none of these scenarios negate the appeal which Article VI, §3(b)(6) mandates 'in the interest of substantial justice'.

Indeed, before the Court on this appeal is, doubtless, one of the most monumental cases to come before it, ever: a citizen-taxpayer action, expressly 'on behalf of the People of the State of New York & the public interest', suing New York State's highest constitutional officers of its three governmental branches for corruption, on a record establishing that appellants have an open-and-shut, *prima facie* entitlement to declarations that the state budget and commission-based judicial salary increases it embeds are unconstitutional, unlawful, and fraudulent – and where

the 'reversible error[s] of law' of the Appellate Division are so profound that, except where there are no 'prior decisions' of this Court on a given subject – as, for instance, the 'interest of the state' predicate for the Attorney General's litigation posture pursuant to Executive Law §63.1 – the so-called 'errors of law' are ALL in diametric conflict with ALL 'prior decisions' of this Court. As illustrative of an endless list: …

p. 15: As the most cursory examination of appellants' ten causes of action reveal [R.99-130 (R.159-224); R-731-741], ALL are of statewide significance, involving government accountability and vast sums of taxpayer money. They particularize tens of 'novel' issues never previously addressed by this Court, presented on a fully-developed, perfectly-preserved record, in a posture of summary judgment for appellants for the declarations of unconstitutionality and unlawfulness they seek…

p. 16: These causes of action additionally expose deficiencies in this Court's 'settled law' relating to the budget, demonstrating the necessity that the Court revisit its decisions so as to refine and, in some respects, overturn them. …

p. 19: On top of this, there is the 'unsettled law' concerning the constitutionality of the Legislature's 'force of law' delegation of legislative powers to the Commission on Legislative, Judicial and Executive Compensation by Part E of Chapter 60 of the Laws of 2015, the subject of the first two sections of appellants' sixth cause of action [R.109-111 (R.187-193)]…" (underlining in the original).

The Court's response, by an October 24, 2019 order (Mo. No. 2019-646) unsigned by any judge – and on a record showing that the accuracy of CJA's presentation was uncontested by the Attorney General, was to deny CJA's June 6, 2019 motion for leave to appeal, without reasons.

D.
CJA's November 25, 2019 motion to vacate and pertaining to the Court's November 21, 2019 order in *Delgado v. New York State* denying a direct appeal pursuant to Article VI, §3(b)(2), the particulars of which were set forth by CJA's final January 9, 2020 letter

Faced with the Court's two October 24, 2019 orders denying without reasons, CJA's May 31, 2019 and June 6, 2019 motions, plus a third October 24, 2019 order (Mo. No. 2019-799) denying, without reasons, their August 8, 2019 motion to strike the Attorney General's combined opposition to the May 31, 2019 and June 6, 2019 motions as a "fraud on the court", CJA made a final motion to the Court on November 25, 2019 – the same motion as CJA highlighted by its October 12, 2023 letter to the Commission (at pp. 3-4).

The November 25, 2019 notice of motion sought, by its fifth branch, an order:

> "pursuant to CPLR §2221(d) and this Court's Rule 500.24, granting reargument to address what the Court 'overlooked' by its three October 24, 2019 Orders – *to wit*, ALL the facts, law, and legal argument presented by appellants' May 31, 2019, June 6, 2019, and August 8, 2019 motions, including as to the *unconstitutionality, as written, as unwritten, and as applied*, of the Court's substitution of the language of Article VI, §3(b)(1) of the New York State Constitution, mirrored in CPLR §5601(b)(1) – granting appeals of right 'wherein is directly involved the construction of the constitution of the state or of the United States' – with a *sua sponte* ground to dismiss because "no substantial constitutional question is directly involved", which it has not even embodied in a court rule."

The motion also sought renewal pursuant to CPLR 2221(e), by its sixth branch, based on new facts that could not be presented previously, including relating to the Court's November 21, 2019 order in *Delgado v. New York State*, which denied the direct appeal that the *Delgado* plaintiffs had taken to the Court, pursuant to Article VI, §3(b)(2), from a Supreme Court order that rested on the Appellate Division, Third Department's December 27, 2018 decision in *CJA v. Cuomo…DiFiore.*

CJA's November 25, 2019 moving affidavit by CJA plaintiff Sassower stated (at p. 17), with respect to the Court's denial of the *Delgado* direct appeal:

> "Based upon my preliminary review, it appears that just as the Court has subverted Article VI, §3(b)(1) of the New York State Constitution, for appeals of right from Appellate Division orders, and has subverted Article VI, §3(b)(6) of the New York State Constitution, for appeals by leave[fn8] – so, too, has it subverted Article VI, §3(b)(2) for direct appeals. This includes by *sua sponte* jurisdictional inquiry letters, of the type [the Court of Appeals Clerk] sent out, NOT citing Article VI, §3(b)(2), but only CPLR §5601(b)(2) – plainly reflective of his knowledge that CPLR §5601(b)(2) omits the crucial clause that Article VI, §3(b)(2) contains: 'and on any such appeal only the constitutional question shall be considered and determined by the court'. I will report more specifically on this upon my further examination of the law – and after the Court furnishes me with [*Delgado* counsel] MacDonald's September 9, 2019 letter in support of his direct appeal, which he has refused to supply.[fn]

By a January 9, 2020 letter addressed to the Court's Clerk, which would be the CJA plaintiffs last submission to the Court in *CJA v. Cuomo…DiFiore*, plaintiff Sassower stated (at pp. 3-5):

> "Having now more thoroughly examined the law pertaining to direct appeals and Mr. Paladino's submissions – and, for the first time, Mr. MacDonald's submissions – I can now more definitively report…that the November 21, 2019 Order you signed is neither procedurally nor substantively proper – and that:

"[fn8] *See* appellants' May 31, 2019 motion, at ¶¶19-23 and appellants' June 6, 2019 motion, at pages 5-10."

> 'just as the Court has subverted Article VI, §3(b)(1) of the New York State Constitution, for appeals of right from Appellate Division orders, and has subverted Article VI, §3(b)(6) of the New York State Constitution, for appeals by leave[fn8] – so, too, has it subverted Article VI, §3(b)(2) for direct appeals.' (my November 25, 2019 moving affidavit, at p. 17).

As for this now third subversion of Article VI, §3(b) of the New York Constitution by the Court, §3(b)(2) confers an appeal of right:

> 'from a judgment or order of a court of record of original jurisdiction which finally determines an action or special proceeding where the only question involved on the appeal is the validity of a statutory provision of the state or of the United States; and on any such appeal only the constitutional question shall be considered and determined by the court.'

In other words, the existence of other questions not pertaining to 'the validity of a statutory provision of the state or of the United Sates' does not preclude a direct appeal so long as they do not prevent the Court from considering and determining the constitutional question – which is the only question that the Court can consider and determine on the direct appeal.

Yet the Court's stock boilerplate – which the November 21, 2019 Order in *Delgado* (Exhibit B) uses – is that 'a direct appeal does not lie when questions other than the constitutional validity of a statutory provision are involved'.[fn4] This is misleading, at best – and NOT consistent with Article VI, §3(b)(2), to which the boilerplate *Delgado* Order cites with an inferential 'see'.[fn5] Nor is it consistent with CPLR §5601(b)(2), also cited. Indeed, the language of CPLR §5601(b)(2) is materially identical to that of Article VI, §3(b)(2), except that the statute omits the concluding clause of the constitutional provision 'and on any such appeal only the constitutional question shall be considered and determined by the court.'[fn6]

"[fn4] This boilerplate appears in all five of the Court's orders cited at page 5 of its 'Civil Jurisdiction and Practice Outline': https://www.nycourts.gov/ctapps/forms/civiloutline.pdf: *Jetro Cash and Carry Enters. v. State of New York Dept. of Taxation and Finance*, 81 NY2d 776 (1992); *Town of Brookhaven v. State of New York*, 70 NY2d 999 (1998); *Matter of Morley v. Town of Oswegatchie*, 70 NY2d 925 (1987); *New York State Club Assn. v City of New York*, 67 NY2d 717 (1986); *Kerrigan v. Kenny*, 64 NY2d 1109 (1985)."

"[fn5] According to The Bluebook: A Uniform System of Citation (at p. 4)(18th ed. 2004), the word 'see' is used 'to introduce an authority that clearly supports, but does not directly state, the proposition'."

"[fn6] The only other difference is that CPLR §5601(b)(2) additionally omits the words 'order' and 'special proceeding' from which Article VI, §3(b)(2) identifies a direct appeal to also be available."

Obvious from this concluding clause of Article VI, §3(b)(2) is that the existence of non-constitutional questions does not, of itself, bar a direct appeal. Is this the reason the Court's 'Civil Jurisdiction and Practice Outline' omits any reference to it and refers only to CPLR §5602(b)(2)? Or do you have another reason? Likewise, what is the reason that the Court's preliminary appeal statement form also does not cite to Article VI, §3(b)(2), but only CPLR §5602(b)(2)? How about your *sua sponte* jurisdictional inquiry letters? Do they all resemble your August 30, 2019 letter to Mr. MacDonald, which, with no mention of Article VI, §3(b)(2), states:

> 'The Court has received your preliminary appeal statement and will examine its subject matter jurisdiction with respect to whether a direct appeal lies pursuant to CPLR 5601(b)(2).'

Your November 21, 2019 *Delgado* Order (Exhibit B) reads, in full:

> 'Appellants having appealed to the Court of Appeals in the above cause;
>
> Upon the papers filed and due deliberation, it is
>
> ORDERED, that the appeal is transferred without costs, by the Court sua sponte, to the Appellate Division, Third Department, upon the ground that a direct appeal does not lie when questions other than the constitutional validity of a statutory provision are involved (see NY Const, art VI, §§3[b][2], 5[b]; CPLR 5601[b][2]).
> Chief Judge DiFiore took no part.'

What are the supposed other 'questions' precluding direct review?

Mr. MacDonald had presented none when, by his August 9, 2019 notice of direct appeal, he invoked both 'Article 6, Section 3(b)(2) of the New York Constitution and CPLR §5601(b)(2)', further stating:

> 'This appeal deals solely with the constitutionality of Part HHH of Chapter 59 of the Laws of 2018.'

Likewise, only a single issue was presented by Mr. MacDonald's August 20, 2019 preliminary appeal statement:

> "Whether Part HHH of Chapter 59 of the Laws of 2018 is unconstitutional under the New York State Constitution".

So, too, was Mr. MacDonald's September 9, 2019 letter (Exhibit D) exclusively devoted to the unconstitutionality of Part HHH, Chapter 59 of the Laws of 2018, furnishing, as well, 'the papers filed with the Supreme Court', requested by your *sua sponte* jurisdictional inquiry letter.

Did the Court not examine 'the papers', as its November 21, 2019 Order purports?…" (underlining in the original).